

朱新力老师 2013年10月赠



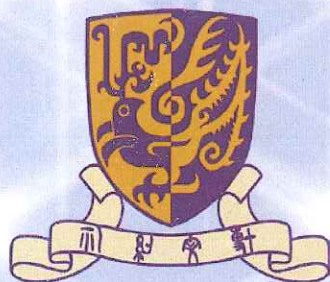
香港中文大學五十周年
50th Anniversary of CUHK

**CUHK
Faculty of Law's
Law Deans' Summit**

**LEGAL EDUCATION IN THE
GLOBAL CONTEXT:
OPPORTUNITIES AND
CHALLENGES**

26 October 2013

Hong Kong



Conference Programme

Distinguished Guests

Session One

Session Two

Session Three

Session Four

Session Five

光華法學院藏書



The Chinese University of Hong Kong 50th Anniversary
Faculty of Law's Law Deans' Summit
Legal Education in the Global Context: Opportunities and Challenges
26 October 2013

30-9:00 **REGISTRATION**

WELCOMING REMARKS

00-9:05 **Prof. Benjamin W. Wah**, *Provost and Wei Lun Professor of Computer Science and Engineering, The Chinese University of Hong Kong*

05-9:10 **Prof. Christopher Gane**, *Dean and Professor of Law, Faculty of Law, The Chinese University of Hong Kong*

10-9:35 **KEYNOTE SPEECH**

THE HON. MR. Justice Kemal Bokhary, GBM, *Non-Permanent Judge of Court of Final Appeal, Hong Kong SAR*

9:35-10:00 Group Photo and Coffee Break

0:00-11:10

SESSION ONE

Presentations: 15 minutes each; Q&A: 10 minutes

Chair: Prof. Christopher Gane, *Faculty of Law, CUHK*

John A. Flood, *University of Westminster*

The Global Challenges for Legal Education

Carolyn Evans, *The University of Melbourne*

Learning Opportunities in Multi-national Law School Classes: Potential and Pitfalls

Mark West, *University of Michigan*

Close the Gates, Seal the Nation: On Parochialism in Legal Education

Ji Weidong, *Shanghai Jiao Tong University*

The Philosophy and Approach of the Reform of Legal Education in China

The Chinese University of Hong Kong 50th Anniversary
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30-12:40

SESSION TWO

Presentations: 15 minutes each; Q&A: 10 minutes

Chair: Prof. Nina Jorgensen, *Faculty of Law, CUHK*

Paul Redmond, *The University of New South Wales*

The Values Dimension of Legal Education

Rita Shackel, *The University of Sydney*

Navigating E-spaces in Legal Education and Legal Practice

Rick Glofcheski, *The University of Hong Kong*

Curriculum Design for Law Graduate Attributes

Mary Anne Bobinski, *The University of British Columbia*

Law Schools and Legal Scholarship: Measured Expectations

12:40-14:00 Catered Lunch

00-15:25

SESSION THREE

Presentations: 15 minutes each; Q&A: 10 minutes

Chair: Prof. Bryan Mercurio, *Faculty of Law, CUHK*

Tim Endicott, *The University of Oxford*

Can Law Students be Taught to Innovate? (Video Conference)

John O. Sonsteng, *William Mitchell College of Law*

A Legal Education Renaissance

Kate Galloway, *James Cook University*

Getting Back to our Roots: Global Law Schools in Local Context

Joellen Riley, *The University of Sydney*

The Challenge of Massive Open Online Courses ('MOOCs') to Traditional Legal Education: A Threat or an Opportunity?

Donna Greschner, *The University of Victoria*

The Chinese University of Hong Kong 50th Anniversary
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15:40-17:05

SESSION FOUR

Presentations: 15 minutes each; Q&A: 10 minutes

Chair: Prof. Gonzalo Villalta Puig, *Faculty of Law, CUHK*

Avrom Sherr, *Institute of Advanced Legal Studies, University of London*

The Case of the Common Law in European Legal Education

Tan Seow Hon, *Singapore Management University*

Critique, Legal Philosophy, and the Role of Legally Trained Citizens in Working towards Just Institutions

Rainer Wernsmann, *The University of Passau*

The Structure, Purposes and Methods of German Legal Education

Hans – Wolfgang Micklitz, *European University Institute*

The Bifurcation of Legal Education: National vs Transnational

Liu Xiaohong, *East China University of Political Science and Law*

Cultivating High-Quality Internationalized Legal Talents under Legal Globalization

17:05-17:20 Coffee Break

17:20-18:45

SESSION FIVE

Presentations: 15 minutes each; Q&A: 10 minutes

Chair: Prof. Robin Huang, *Faculty of Law, CUHK*

Simon Chesterman, *National University of Singapore*

Doctrine, Perspectives, and Skills for Global Practice

Shieh Ming-Yan, *National Taiwan University*

Looking Beyond: Taiwan Towards the Legal Education Reform

Wang Zhenmin, *Tsinghua University*

Legal Education in China: Problems and Solutions

Shi Yanan, *Renmin University of China*

To Integrate the Idea of Global Governance and International Collaboration into Law School Education

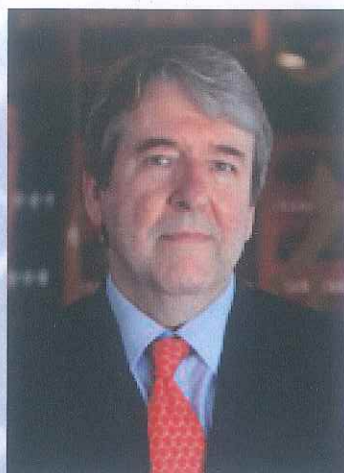
Johannes Chan, *The University of Hong Kong*

Legal Education in Global Context: Opportunities and Challenges

Close

Prof. Christopher Gane

Dean and Professor of Law, The Chinese University of Hong Kong, Faculty of Law



Professor Christopher Gane was appointed Dean of the Faculty of Law in September 2011. Prior to coming to the Chinese University of Hong Kong he held the Chair of Scots Law at the University of Aberdeen where he was Dean of the Faculty of Law from 1995 to 2000. In 2004 he was appointed University Vice-Principal (Pro Vice-Chancellor) and over the next seven years was responsible for a number of strategic portfolios, including Library and Information Services, Culture and Communities and Equality and Diversity. In 2008 he was appointed Head of the College of Arts and Social Sciences (which comprises the Schools of Business; Divinity, History and Philosophy; Education; Language and Literature; Law; Social Sciences).

Prior to his appointment at Aberdeen he held academic appointments at the Universities of Reading, Edinburgh, Lancaster and Sussex. Between 1986 and 1989 he was Head of the Department of Law at the University of Lancaster. From 1991-1994 he was Director of the Centre for Legal Studies at the University of Sussex.

His research and teaching interests include domestic Criminal Law and Procedure, International Criminal Law and Human Rights. He is the author, co-author or editor of twelve books / editions and more than fifty scholarly articles and papers.

He has acted as consultant to the Scottish Executive in respect of their Human Rights obligations under the Scotland Act 1998 and the Human Rights Act 1998, as advisor to the Scottish Parliament on a number of criminal law, criminal justice and criminal procedure Bills and as advisor to the Scottish Government on European Union criminal law and procedure. He was a member of the Committee appointed by the Secretary of State for Scotland to review the Law on disposals of serious violent and serious sex offenders (the McLean Committee) and a member of the Sentencing Commission for Scotland throughout its term of appointment. He was the co-founder of the group which produced the *Draft Criminal Code for Scotland*, published by the Scottish Law Commission. In 1997 he was appointed an Honorary Sheriff of Grampian Highland and Islands at Aberdeen.

Keynote Speech:

The Hon. Mr. Justice Kemal Bokhary, GBM *Non-Permanent Judge of Court of Final Appeal, Hong Kong SAR*



Mr. Justice Syed Kemal Shah Bokhary is a Non-Permanent Judge of Hong Kong's Court of Final Appeal and an Honorary Professor in the Faculty of Law of the University of Hong Kong.

Mr. Justice Bokhary was called to the English Bar in 1970 by the Middle Temple (of which he was made an Honorary Bencher in 2001), was admitted to the Hong Kong Bar in 1971 and appointed Queen's Counsel in 1983. From 1971 to 1989 he practised in Hong Kong and before the Judicial Committee of the Privy Council in London, principally in commercial law and public law. He was appointed to the High Court in 1989, then to the Court of Appeal in 1993 and ultimately to the Court of Final Appeal in 1997.

During the 15 years Mr. Justice Bokhary served as a Permanent Judge of the Court of Final Appeal, he participated in almost every constitutional case which came before the Court and is widely respected for the deep sense of commitment and responsibility he brought to his role.



THE CHINESE UNIVERSITY OF HONG KONG 50TH ANNIVERSARY
FACULTY OF LAW'S LAW DEANS' SUMMIT
LEGAL EDUCATION IN THE GLOBAL CONTEXT: OPPORTUNITIES AND
CHALLENGES



Welcoming Remarks:

Prof. Benjamin W. Wah
Prof. Christopher Gane

*Provost and Wei Lun Professor of Computer Studies and Engineering, The Chinese University of Hong Kong
Dean and Professor of Law, The Chinese University of Hong Kong, Faculty of Law*

Keynote Speech:

The Hon. Mr. Justice Kemal Bokhary, GBM *Non-Permanent Judge of Court of Final Appeal, Hong Kong SAR*

Distinguished guests: (In alphabetical order)

Prof. Mary Anne Bobinski	<i>Dean and Professor, The University of British Columbia, Faculty of Law</i>
Prof. Cai Lidong	<i>Associate Dean and Professor, Jilin University, School of Law</i>
Prof. Johannes M M Chan	<i>Barrister-at-law, Professor and Dean, The University of Hong Kong, Faculty of Law</i>
Prof. Simon Chesterman	<i>Dean, National University of Singapore, Faculty of Law</i>
Prof. Timothy Endicott	<i>Dean and Professor of Legal Philosophy, The University of Oxford, Faculty of Law</i>
Prof. Carolyn Evans	<i>Dean and Harrison Moore Professor of Law, The University of Melbourne, Faculty of Law</i>
Prof. John A. Flood	<i>Professor of Law & Sociology, University of Westminster</i>
Kate Galloway	<i>Senior Lecturer, James Cook University, School of Law</i>
Prof. Donna Greschner	<i>Professor of Law, University of Victoria, Faculty of Law</i>
Prof. Rick Glofcheski	<i>Professor, Department of Law, The University of Hong Kong</i>
Prof. Ji Weidong	<i>Dean, Shanghai Jiao Tong University, KoGuan Law School</i>
Prof. Lin Chih-Chieh, Carol	<i>Associate Professor, National Chiao Tung University, School of Law</i>
Prof. Liu Shang-Jyh	<i>Dean and Professor of Law and Technology Management, National Chiao Tung University, School of Law</i>
Prof. Liu Xiaohong	<i>Vice-President, East China University of Political Science and Law</i>
Prof. Hans-Wolfgang Micklitz	<i>Head of Department of Law, Professor of Economic Law, European University Institute</i>
Prof. Pan Jianfeng	<i>Vice Dean and Professor of Law, Peking University Law School</i>
Prof. Paul Redmond	<i>Emeritus Professor, The University of New South Wales, Faculty of Law</i>
Prof. Joellen Riley	<i>Dean and Professor of Labour Law, The University of Sydney, Faculty of Law</i>
Dr. Rita Shackel	<i>Associate Dean (Learning and Teaching), Senior Lecturer, The University of Sydney, Faculty of Law</i>
Prof. Avrom Sherr	<i>Director and Woolf Professor of Legal Education, Institute of Advanced Legal Studies, University of London</i>
Prof. Shi Yan'an	<i>Vice Dean, Renmin University of China Law School</i>
Prof. Ming-Yan Shieh	<i>Professor of Law and Dean, National Taiwan University, College of Law</i>
Prof. John O. Sonsteng	<i>Professor of Law, William Mitchell College of Law</i>
Prof. Tan Seow Hon	<i>Associate Professor, Singapore Management University, School of Law</i>
Prof. Wang Jianwen	<i>Deputy Dean, Hohai University Law School, Nanjing</i>
Prof. Wang Zhenmin	<i>Dean, Tsinghua University, School of Law</i>
Prof. Dr. Rainer Wernsmann	<i>Dean and Professor, The University of Passau, Faculty of Law</i>
Dean Mark D. West	<i>Dean, University of Michigan Law School</i>
Prof. Xiao Yongping	<i>Dean, Wuhan University, School of Law</i>
Prof. Zhu Xinli	<i>Executive Dean, Zhejiang University, Guanghua Law School</i>



香港中文大學五十周年
50th Anniversary of CUHK

Welcoming Remarks:

Prof. Benjamin W. Wah

Provost and Wei Lun Professor of Computer Studies and Engineering, The Chinese University of Hong Kong



Professor Benjamin Wah was the Franklin W. Woeltge Endowed Professor of Electrical and Computer Engineering at the University of Illinois at Urbana-Champaign, and is a prominent computer scientist, with expertise in non-linear programming, multimedia signal processing and artificial intelligence. He is a fellow of the Institute of Electrical and Electronics Engineers (IEEE), the Association for Computing Machinery (ACM), and the American Association for the Advancement of Science (AAAS) and has served as the President of IEEE Computer Society. Professor Wah has received numerous international honours and awards for his distinguished academic and professional achievements. Among these are the Distinguished Alumni Award in Computer Science of the University of California, Berkeley, the W. Wallace McDowell Award, the Tsutomu Kanai Award and the Richard E. Merwin Distinguished Service Award of the IEEE Computer Society.

In 1998-99, Professor Wah was Professor of Computer Science and Engineering at CUHK, and in that year received an Exemplary Teaching Award. His bonds with the University continued afterwards as he served in the capacity of Adjunct Professor in the Department from 1999 to 2003.

Professor Wah has also long been committed to enhancing the development of higher education and research in Hong Kong. He was a member of the Research Grants Council of the University Grants Committee in Hong Kong between 2005 and 2009, and served as the Chairman of its Engineering Panel between 2006 and 2009. He was re-appointed as member of the RGC in October 2011 and appointed as Chairman of the RGC in January 2013. He was appointed as ex-officio member of the Steering Committee on Innovation and Technology of the HKSAR Government in the capacity as the Chairman of the Research Grants Council in 2013. He is currently member of various UGC Sub-Committees, namely Strategy Sub-Committee, Research Group, Communications Group, and Research Assessment Exercise Group. He also serves on the Innovation and Technology Advisory Committee of the Hong Kong Trade Development Council.

Born and brought up in Hong Kong, Professor Wah graduated from Queen Elizabeth School and pursued further studies in the US. He received his BS and MS in Electrical Engineering and Computer Science from Columbia University, and his MS in Computer Science and PhD in Engineering from the University of California, Berkeley. He began teaching in Purdue University in 1979, and later joined the University of Illinois at Urbana-Champaign in 1985. He also served as Director of the Advanced Digital Sciences Centre established by the University of Illinois in Singapore in 2009, with funding from the Singapore government's Agency for Science, Technology and Research. He was appointed as advisory member of the Expert Task Force of Big Data established by the China Computer Federation in 2013.

Distinguished guests: (In alphabetical order)

Prof. Mary Anne Bobinski

Dean and Professor, The University of British Columbia, Faculty of Law



Prof. Mary Anne Bobinski has served as Dean and Professor of the University of British Columbia's Faculty of Law since 2003. She previously served as the John and Rebecca Moores Professor of Law and Director of the Health Law and Policy Institute at the University of Houston Law Center in the United States. Professor Bobinski's research and teaching interests include Torts, health law, health care finance and bioethics, legal aspects of HIV infection, and reproductive health law issues. She is a co-author of two leading law school casebooks in the United States, *Health Care Law & Ethics* and *AIDS Policy and Law*; the co-author/co-editor of a two volume set on medical ethics; and has authored a number of law review articles and book chapters on health law topics. Bobinski has participated extensively in academic and professional service activities. She is a frequent presenter to academic and other groups on topics ranging from legal education to public health care law and ethics.

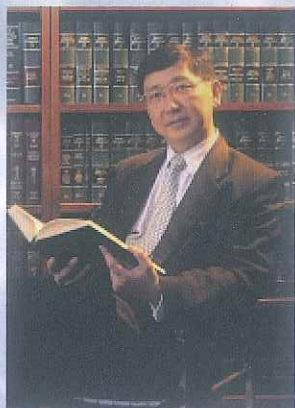
Prof. Cai Lidong

Associate Dean and Professor, Jilin University, School of Law



Prof. Cai Lidong, PhD of Law (Jilin University) is the Associate Dean and professor of School of Law, Jilin University, and professor of the Center for Jurisprudence Research, Jilin University. He is presently a Legal Consultant of the People's Government of Jilin Province, an Arbitrator of Shenzhen Arbitration Committee, an Arbitrator of Changchun Arbitration Committee and a Part-time Lawyer of Jilin Jiwei Law Firm. He was a Visiting Scholar on Corporate Law at London School of Economics and Political Science (LSE) from 2007 to 2008.

Prof. Cai is an expert in Basic Theories of Civil Law, Contract Law and Corporate Law. Some of his representative works are "Study on Corporate Autonomy", published by Beijing University Press in Oct. 2006, "From the Suppressing Administrative Model to the One of Responsive", published in the Chinese Journal of Law, 2003(3) and "Administrative Permission and the Effectiveness of Rights Transfer Contract", published in China Legal Science, 2013(1).



Prof. Johannes M M Chan (陳文敏) is currently the Dean of the Faculty of Law of The University of Hong Kong since 2002. He specializes in human rights, constitutional and administrative law, and has published widely in these fields. His recent books include *Law of the Hong Kong Constitution* (with C L Lim, 2011), *Reflections at the Academia* (翰林隨筆：在公義路上的反思), *General Principles of Hong Kong Law* (香港法概論) (with Albert Chen & Others, 2nd ed, 2009), *Hong Kong Human Rights Bibliography* (2006); *Hong Kong's Constitutional Debates* (with Lison Harris, 2005); and *Immigration Law and Policy in Hong Kong: An Inter-Disciplinary Study* (with Bart Rwezaura, 2004). He is also one of the founding editors of *Hong Kong Public Law Reports* and an editor of *Hong Kong Law Reports and Digest* and *Hong Kong Cases*.

Prof. Chan was called to the Hong Kong Bar in 1982. He has appeared as counsel in many leading human rights, constitutional law cases, and was appointed the first Honorary Senior Counsel in Hong Kong in 2003. Prof. Chan has served on many government/public and professional bodies, including the Bar Council, the Consumer Council, the Broadcasting Authority, the Press Council, the Administrative Appeals Board, the Municipal Services Appeals Board, Law Reform Sub-Committee on Privacy, Hong Kong Red Cross, and the Central Policy Unit (Governor's Think Tank). Prof. Chan has been the chair of the Bar Constitutional Law and Human Rights Sub-Committee and the chair of Consumer Legal Action Fund. He is also a regular commentator of current social issues, and has worked with many regional and international non-governmental organizations on human rights matters.

In 1987, he was elected for the Best Teaching Award. In 1995, he was selected as one of the Ten Young Outstanding Persons in Hong Kong. In 1997, he received the Badge of Honour from the British Red Cross Society. In 1999, he was awarded the Human Rights Press Award.

For more details, please see <http://www.law.hku.hk/faculty/acadstaff.html>



Prof. Simon Chesterman is Dean of the National University of Singapore Faculty of Law. He is also Editor of the *Asian Journal of International Law* and Secretary-General of the Asian Society of International Law.

Educated in Melbourne, Beijing, Amsterdam, and Oxford, Prof. Chesterman's teaching experience includes periods at the Universities of Melbourne, Oxford, Southampton, Columbia, and Sciences Po. From 2006-2011, he was Global Professor and Director of the New York University School of Law Singapore Programme.

Prior to joining NYU, he was a Senior Associate at the International Peace Academy and Director of UN Relations at the International Crisis Group in New York. He has previously worked for the UN Office for the Coordination of Humanitarian Affairs in Yugoslavia and interned at the International Criminal Tribunal for Rwanda.

Prof. Chesterman is the author or editor of twelve books, including *One Nation Under Surveillance* (OUP, 2011); *Law and Practice of the United Nations* (with Thomas M. Franck and David M. Malone, OUP, 2008); *You, The People* (OUP, 2004); and *Just War or Just Peace?* (OUP, 2001).

He is a recognized authority on international law, whose work has opened up new areas of research on conceptions of public authority - including the rules and institutions of global governance, state-building and post-conflict reconstruction, and the changing role of intelligence agencies.

also adopts the six-year undergraduate and postgraduate study scheme and its target is to develop composite advanced legal talents dealing with foreign-related affairs. In the first three years of undergraduate study the students will study in the School of Foreign Languages and the main target is to fully master two official languages of the United Nations or minority languages and professional knowledge of international business. In the fourth year of undergraduate and the two years at the postgraduate level (three years in total) the students will receive advanced legal professional education. They will obtain the bachelor of foreign languages and the Juris Master degrees. If we can win the support from the Ministry of Education, we may enrol third year undergraduate students majored in foreign languages, foreign trade and diplomacy from other foreign-related higher education institutes. The problems of connecting the study schemes and degrees would be solved so that the range of selection and the cultivation of composite advanced legal talents for foreign-related matters would be further enlarged. It is evident that the "3+3" system, as a mode of legal education reform in China, can be copied and promoted. It has a wide modelling effect and it can be used to develop outstanding legal talents with different disciplines.

Apart from traditional judicial organs, for example the public security organs, procuratorates, courts and judicial departments in the government, and the law firms, a considerable amount of law graduates will work in executive administration, public administration and business management positions. However, law schools seldom consider their needs to systematically design the curriculums. Thus, the legal education reform in future should also adjust the curriculum for the cultivation of excellent legal talents in accordance with the diversified social needs. The law schools may jointly offer compulsory and elective courses with the School of Public Administration and the School of Economic Management. Under the circumstances of the increasing outbound investments and international trade frictions, the KoGuan Law School regards the development of elite corporate heads of legal and company lawyers as an important target during the education reform of "non-LLB – Juris Master" programme. Therefore, we established an overseas internship base for corporate heads of legal in Tokyo, Japan. The Corporate Law Research Centre was established in May 2011 and the KoGuan Law School offered a series of course with special topics on several modules including IP law, commercial and financial law and foreign-related economic law developed from the teaching system. If the agreement can be reached, it is possible to jointly cultivate talents on corporate law and government law with relevant schools by the "3+3 System" mode. In fact, the KoGuan Law School is preparing to start an interdisciplinary degree programme of "Corporate Legal Risk Management" with the Antai College of Economics and

Management. The design proposal is finished and it is waiting for approval.

III. The Curriculum Design of Law Schools Require New Ideas

Until now the law schools in China tend to teach the knowledge in books and the difference between the cultivation of practical talents and research talents has not been fully reflected in the curriculum design and teaching methods. Although the civil law tradition emphasises doctrines and the logical relationship between concepts and propositions, but over-emphasising the systematic study may easily neglect the connection between theory and practice and it is difficult for the talents to emerge in the legal practice. The same criticism can also be heard in Germany, France, Japan and South Korea. On the other hand, the education in common law countries uses precedents as the material and it emphasise more on practicality and the training of legal thinking and practical skills. However, it has a problem of over-emphasis on litigation, private law and personal issues and it has not fully recognized the great impact caused by the more organized and industrialized legal profession. In fact, although the Langdell case method does not use the constitution, statutes or doctrines but appellant precedents as the material, it is consistent with the civil law teaching method that it applies the legal principles to the specific facts by close analysis and logical deduction. This teaching method in law can no longer accommodate the increasing complicated and risky social reality. As a result, it seems that reforming the contents and teaching methods of legal education is becoming an internationally common phenomenon.

In terms of teaching contents, it is particularly useful to look at the fundamental curriculum reform of the Harvard Law School in the U.S. started in 2006, after it had finished a three-year research and referred to the experience of reform of medical schools, business schools and schools of public policy. It was regarded as the second revolution of legal education after the Langdell case method. The most important changes in the first year curriculum include: (1) Making international law and comparative law as a compulsory subject, whose purpose is to give the law students a clear picture of the global legal landscape and allow the students to correctly determine the position of national law in the framework of the international society. This compulsory subject can be freely chosen from a range of courses, including public international law, law and international economy, constitutional law and international order, comparative private law doctrines and institution and Chinese law (or other foreign law). (2) Due to the increasing extension of the legislative and executive power, the "Legislation and Control" is made a compulsory subject. This

course focuses on how professional legal practitioners should correctly deal with the statutes and administrative rules, especially the method of interpreting and applying these rules by the judicial organs and the law enforcement agencies. (3) Offering a new compulsory subject called "Problem Solving Workshop". This is an unprecedented innovation, which has changed the scene of the classroom of the junior year and has been highly praised by the professors and students. It will certainly have a great impact on the U.S. and other countries.

"Problem Solving Workshop" is a teaching method that the participants will deal with certain cases or problems under the supervision of a full-time teacher with some experience in practice. It is a core course that closely combines theory and practice. Here, the students act like lawyers and they solve the problems step by step, starting from taking the instruction from the client and preparing the case. The whole process of dealing with the cases cultivates the students' ability to observe, apply the knowledge and make judgments. According to the design of the course, a case takes approximately three days for the team to finish its assignments and discuss. Each team comprises four or five students and they spend three weeks to deal with seven cases. Usually, the teacher will briefly talk about the case in the first day morning and give a list of relevant statutes and cases as well as articles to the students for their reference. After that, each team will start their work and in principle they must submit their assignment in the evening. The two-hour class in the next morning is for the discussion of last day's the assignment and the case. After that the students will continue their work and submit the second assignment before that evening. In the third day morning the teacher will hold the final discussion of the case and finish it, followed by another case to be dealt with. As the solution to the case is proposed by a group within a limited period of time, it creates an intense and exciting atmosphere and it can better motivate the students' initiative and innovation. In the 2010 curriculum of Harvard Law School, there were seven topics within the "Problem Solving Workshop", namely: administrative law and contract law, financial regulation and international finance, property law and conflict of laws, internet law, law and economics, dispute resolution institution and legal professional institution and ethics. Under each topic there are teams with four or five students.

The reform of the compulsory courses for senior year students in Harvard Law School gave more options to the students and they had a very large autonomy in course selection. To avoid the imbalance of knowledge structure due to the freedom of course selection, the Harvard Law School prepared a handbook to guide the credit planning of different categories of courses. There are mainly two methods of guiding

the course selection. The first method is to categorise all subjects and seminars into eighteen categories and each category has its own course list. Another method is to confirm the senior year research project and give advice to the order of studying different subjects within a specific area. For example, there were six research projects in 2011, including law and government, law and business, international law and comparative law, law and science and technology, law and social changes and criminal law and justice. Each research project comprises elementary courses, advanced courses, seminars, legal clinic experience, relevant research areas and interdisciplinary subjects. Although these reforms were based on the conditions of U.S. and they may not be suitable for legal education in other countries, it can be a useful example for the curriculum reform to cultivate excellent legal talents in China.

In recent years, the KoGuan Law School of Shanghai Jiaotong University has made a significant reform to the curriculum to meet the needs of cultivating outstanding legal talents. One important measure of the reform is to enhance the training of practical skills. Thus, the Training Centre for Legal Experimental Teaching was established and there are five full-time teachers responsible for its operation. A new teaching mode was carefully designed and it provides a series of attractive course lists which covered different modules including practice courses, clinical education, moot court, negotiation training, competition projects and legal aid centre. According to statistics, there are 23 full-time teachers involved in practical teaching and the skill training courses represent 20% of all courses in the KoGuan Law School. The KoGuan Law School co-operates with government departments, arbitration and judicial organizations, industrial organizations, international enterprises and top-20 law firms in Shanghai and 25 "Practical Teaching Bases" and "Overseas Practical Teaching Bases" have been established. Every year more than 150 undergraduate and postgraduate students work as interns in these bases. In the fall semester of 2010, the KoGuan Law School started a Mooting on Intellectual Property Law course which adopted the Chinese-English bilingual teaching method and it was mainly for Juris-Master students. Using the experience of Harvard Law School as an example, the KoGuan Law School started a "Legal Negotiation" course with prestigious law firms in 2011. In 2009, the KoGuan Law School started to establish a "Virtual Law Firm" system with reference to the Glasgow Mode and it would be an elective for law students in 2014. This project aims at enabling the students to learn the methods and skills to deal with complicated legal disputes in a multi-party and multithreaded virtual environment by using the internet.

IV. Restructuring of Law Schools and Assessment Criteria

The 1960s was the golden era for the continuous expansion and prosperity of universities in the U.S. In those days, the growth of youth population and the increase of budget for higher education undoubtedly led to the development of higher education. However, in the early 80s, the difficulty in the enrolment and employment of students as well as the deficit of the universities suddenly appeared in the higher education industry in the U.S. The number of students in the universities in 1989 was 40% smaller than 1983 and it dropped a further 60% in 1997, which was a big surprise. In the 90s, the decrease of youth population, which was a structural change, led to a fiercer competition between the universities in Japan. The establishment of the independent administrative legal personality of national universities and the reorganization of private universities came into the agenda in this context. In a sharp contrast, the higher education in China has expanded for more than 20 years. However, with the recent decrease of birth rate and the aging population, concerns about the stringency of universities began to appear in China. If the universities in China could face the crisis of recession and bankruptcy in the near future, the already over-sized legal education industry would be the first to suffer. Considering this, the plan of establishing the "Education and Training Bases for Excellent Legal Talents" is forward-looking. It involves a significant adjustment of the faculty - university - department layout in the next 15 years and it will further stimulate the competition amongst the legal higher education industry. The elimination mechanism will improve the standard of law school operation and the quality of cultivating the talents. In order words, the Excellence Plan will restructure the legal education industry in China.

During the process of "the fittest survive", the significance of assessment, recognition and ranking will be more obvious and these activities will to some extent affect the allocation of resources. Thus, establishing a reasonable and authoritative quality assessment system is a basic task that cannot be avoided. It is easy to measure and compare the quantity, but quality includes values that are difficult to measure, for example tradition, reputation, tone of a school, brand name, support for graduates and fund raising capacity. These factors will have a great impact on the social position of the higher education institutes and it is a very complicated question on determining the relevant indicators. In terms of the plan of establishing the "Education and Training Bases for Excellent Legal Talents", quality is more important because from its concept "quality" means excellent performance or effectiveness. The subject of evaluating the education results can be the universities, faculties, management, teachers and association of universities (self-evaluation of the first person). It can also

be evaluated by the students, parents, employers of the graduates and enterprises (the second person). However, the most important evaluation is to be conducted by the standard recognition agencies, independent evaluation agencies, public media and preparatory schools for examinations (the third person). It is arguable that the third person evaluation is the basic guarantee of the quality of education and research. Generally speaking, continuous evaluation and recognition of the quality of law schools by an organization consisted of the governmental education departments, legal institutes and users of legal service as an independent third party is an appropriate way to maintain the standard of quality and has a stronger credibility.

The evaluation of national universities and their law schools is usually conducted by the government department in charge and its main purposes are to maintain and improve the quality, determine the allocation of resources, hold the management accountable and disclose information. Therefore it is necessary to establish a national standard to ensure the objectiveness and justice of the evaluation. Although the evaluation systems differ from each other, the objective criteria usually include the following items: first, research – number of articles published in anonymously reviewed journals, the number of articles being referred to, the number of publication of monograph, the number of speeches made in international academic conferences, the number of papers and conference reports of postgraduate students, the application of research results, the number of policy consultation reports being adopted and the number of research projects and research grants; second, cultivation of talents – the degree of activity of the graduates in academic research and the society, the employment status of the graduates in overseas universities or research institutes, acceptance of visiting students, degree awarding and the efforts made in the curriculum and teaching methods of cultivating excellent legal talents; third, internationalisation – the number and percentage of degree students studying abroad, the number and percentage of short term students studying abroad, the number and percentage of foreign degree students accepted, the number of subjects taught in foreign languages, the number of degrees awarded to foreign students, the international experience of professors, the number of papers published in foreign languages, research with foreign academics and the percentage of foreign teachers; fourth, social contribution – receiving scholarships, donations, research instruction and co-ordinated research, the instructions from the industry and companies to the professors, legal aid and legal consultation, participation in the government and public bodies' policy consultation and the consultation of international bodies; fifth, conditions and mechanisms of operation – the efficiency of the organization, the implementation of external evaluation, environment and support for education and

research (libraries, IT and relevant facilities and equipments).

For the subjective quality evaluation, it is very difficult to use a set of specific criteria to regulate. The key is to establish the method or mechanism of self-evaluation, peer evaluation and external evaluation and its sustainability. For example every teacher may be required to submit a written report on his teaching and research periodically (every year or every three years). The report will be evaluated by the faculty and the evaluation result will be reported to all teachers. The teachers can listen to the class of each other or study from each other and conduct evaluation. The faculty should conduct self-evaluation and external evaluation on its education and research periodically and publish the relevant data to fulfil the obligation of explanation. For the law schools, the passing rate of the Judicial Examination can, to a certain extent, be an important indicator of teaching quality evaluation. From another perspective, the Judicial Examination can be the baton of legal education. Thus, it is necessary to connect the reforms of these two systems. If serious defects exist in the Judicial Examination system and personnel system, the effect of legal education reform will be affected however it is carried out and the plan of cultivating legal talents may lose its realistic impact.

The Chinese University of Hong Kong 50th Anniversary
Faculty of Law's Law Deans' Summit
Legal Education in the Global Context: Opportunities and Challenges
26 October 2013

THE VALUES DIMENSION OF LEGAL EDUCATION

Prof. Paul Redmond

Emeritus Professor, Faculty of Law,
University of New South Wales
Sir Gerard Brennan Professor, Faculty of Law
University of Technology, Sydney

The technical component of legal education is relatively clear even if disputes persist about priorities in curriculum and skills training elements and the balance generally between academic and professional dimensions. What is less certain is the values dimension of legal education. Law, it is widely said in professional reviews of the objectives and purposes of legal education, is a public profession in that its practitioners assume responsibilities of a public character. Law's connection with justice, and its role in distributing power and rights and calling the exercise of each to account, means that its practice is more firmly impressed with the claims of the public interest and service than many other callings. This paper explores some intellectual foundations for claims that legal education should also be education for justice and the promotion and protection of the rule of law. The paper examines evidence of apparently negative effects of legal education itself upon student values and their justice consciousness. It concludes with an exploration of potential options and options and strategies for successful implementation of such values component in legal education programs.

Faculty of Law

The Chinese University of Hong Kong

The values dimension of legal education

Paul Redmond
Emeritus Professor, Faculty of Law,
University of New South Wales
Sir Gerard Brennan Professor, Faculty of Law,
University of Technology, Sydney

Argument, in summary

- Consciously or unconsciously, legal educators inevitably model for students values of professional conduct and purpose
- The values modelled shape students' professional lives and social contribution
- We need therefore to model values with deliberation and judgment
- How are we to provide in legal education a 'powerful experience of the best sense of what it means to take up a profession'?

The objectives of law courses?

- Professional preparation *or* liberal education?
 - To what extent is law school concerned with socialisation to the profession of law?
- Precise goals of legal education vary with local context and structure (UG, PG, post-degree professional training etc)
- LLB and JD courses are preparation for practice of law
 - With some concomitant responsibility for formation of student's professional identity

An explicit social contract underlies each profession's privilege

- Lawyer's multiple roles: client advocate *and* public role as officer of the court
 - Lawyers' collective and individual responsibilities for justice system operation in securing rights
 - As architects and regulators of social relations through transactional and counselling roles
- Role duality reflected in official reviews
- Implications for legal education?
 - Mere rhetoric or enduring responsibility?
 - Displaced by contemporary business reality?
 - Does that reality itself enlarge law school responsibility?

Lawyers' public responsibilities: Typology from official statements

- *Ethical sensitivity*: to recognise and resolve dilemmas arising in professional work
- *Legal values for which the profession has a particular responsibility*
 - protection of the rule of law
 - promotion of justice
- *Responsibility for provision of legal services*
 - through access to justice and
 - provision of competent representation

5

Implications for legal education?

- Securing 'ethical-social' values dimension?
- Yet, negative effects of legal education on student justice orientation
 - Legal analysis focus firmly segregates legal and moral issues: 'forced decontextualization'
 - Tacit message of the irrelevance of justice dimension, the merits of the case
 - 'When I took criminal law, I started to think of it in technical terms and stopped looking at the human side.'
 - No exposure to clients and their experience
 - Loss of sense of law's social purpose and function
- Depression incidence: law students *and* lawyers

5

Some desirable law school responses

- Conscious advertence to staff value modelling
- Keep moral and justice dimensions in the frame along with legal analysis
 - Allow students to interrogate their justice intuitions
 - Pervasively, across curriculum (eg, corporate law)
- Emphasise lawyers' role as counsellors, architects of social collaboration, and sources of trust generation and prudential wisdom

7

Law school responses (ctd)

- Legal ethics courses
 - Distinguish 'law of lawyering' courses from those that also address questions of ethics and morals
- Sensitivity to institutional signals as to hierarchy of prestige in graduate destinations
 - Include perspectives going to satisfaction and purpose, diversity of choice and role incidents
- Clinical legal education
- Encouragement for *pro bono* work
- Experiential learning programs
- Voluntary extra-curricular programs

9

Brennan Justice and Leadership Program @ UTS:Law

- Voluntary program to strengthen justice consciousness, idealism and sense of service
- *Reflections on Justice*: engage with the themes of justice and its social contexts through lectures, discussion groups
- *Leadership through service*: voluntary service in legal and / or non-legal settings
- Brennan Justice and Leadership Award

9

Lessons from Brennan Program

- Find an inspiring exemplar: Sir Gerard Brennan
 - Need for engaging embodiments of the professional ideal
 - Who enable students to shape constructively their emerging professional identity and ideals
 - *Inspirational careers* lecture series
- Variety of means: films, debates, soapbox etc
- Partnership with law student society
- Membership vs engagement

10

The challenge for legal education

- Develop legal technique *and* social purpose
- 'Seen from a formation perspective, law school ought to provide the richest context possible for students to explore and make their own the profession's possibilities for a rich and fulfilling life.' *Educating Lawyers*, 2007, 85
- Sisyphean task?
 - Endless, difficult but not futile
 - 'It is not for you to complete the task; neither are you free to desist from it.'

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NAVIGATING E-SPACES IN LEGAL EDUCATION AND LEGAL PRACTICE

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The Chinese University of Hong Kong

**CUHK 50th ANNIVERSARY
FACULTY OF LAW'S LAW DEANS'
SUMMIT**

**LEGAL EDUCATION IN THE GLOBAL
CONTEXT: OPPORTUNITIES AND
CHALLENGES**

*Navigating e-spaces in legal education and
legal practice*

26 October 2013, Hong Kong
Rita Shackel
SYDNEY LAW SCHOOL

The concept of *E-learning*

- › *E-learning* = broad concept and inclusive of varied teaching and learning strategies; often utilises multi-media.
- › An evolving terrain & influenced by particular professional approaches and interests.
- › Influenced also by particular discipline of study and learning objectives.

E-learning in legal education

The e-medium signals

- › Fertile ground for active, student-led and collaborative learning = deep and quality learning.
- › A key intermediate between law student and legal profession and realities of law practice.

**Panacea for current challenges
facing law schools?**

UNLIKELY but may be a transformative influence at a key inflection point in evolution of legal education and legal professional training.

Why?



Challenges currently facing law schools

- › Fierce market competition.
- › Pressure to produce practice ready graduates.
- › Curriculum review with thrust for redevelopment and INNOVATION.

5



ABA Task Force on The Future of Legal Education (20 September 2013)

- › Greater heterogeneity in law schools and in programs that deliver law-related education.
- › Emphasis on the delivery of value to students in law schools.
- › Clear recognition that law schools exist to teach people to provide law-related services.
- › Greater INNOVATION in law schools and programs that deliver law-related education.

6



Purpose of law schools?

- › Unclear?
- › To train lawyers? What does this entail?
- › Law as a generalist degree? Impact?

7



Law school as conduit for graduate employability

- › Capacity to navigate e-technology and e-spaces in provision of legal services.
- › Respond to ethical and professional challenges of e-lawyering.
- › What role do law teachers have?

8



Technology of law as scaffolding for curriculum review

Justification

- (i) the widespread use of e-technology in practice;
- (ii) the power of technology in promoting access to justice and legal services;
- (iii) the need to evaluate the impact of technology on development of law and its processes; and
- (iv) the practical necessity for law graduates to understand, navigate and ultimately drive the use of technology and new e-spaces in legal work.



Impact of e-technology on legal practice

- › E-spaces and information technologies have permanently reconfigured the legal profession and legal services marketplace.
- › Competency in legal technology is an element of the duties of a lawyer – what does such competency require?
- › Role of law schools in ensuring threshold level of lawyer competency in legal technology?



E-technology in learning and teaching at law school

Serves 3 goals:

- › enables active, student-engaged and collaborative learning as a pathway to quality in experience and education;
- › provides opportunity to develop understanding of and skills in using the technology that is shaping the legal services marketplace; and
- › Provides opportunity to reflect upon and experience some of the professional and ethical challenges thrown up by e-based technologies.



*What are the opportunities for the use of
e-technologies in the law curricula?*



How do these opportunities enable student learning and enhance the law school experience for students?

13



How does the e-medium for learning bridge the gap between law as an academic focus and preparation for the realities of legal practice?

14



Can law schools and law teachers meet the challenge of e-lawyering?

15

NAVIGATING E-SPACES IN LEGAL EDUCATION AND LEGAL PRACTICE

Rita Shackel
Sydney Law School

Abstract

The development of e-based technologies has altered learning and teaching spaces in legal education and reshaped the delivery of legal services. This paper explores how e-based technologies and e-spaces can support collaborative teaching and learning experiences in law and build sustainable communities of learning. The paper examines some of the pedagogical and ethical challenges posed by e-based teaching and learning strategies, particularly within legal education. It argues that e-based learning strategies within law curricula, not only provide strong pathways for engaged student-led learning, but also represents a platform enabling students to acquire the knowledge and skills necessary to navigate an increasingly e-based profession and legal services marketplace. E-based approaches to learning in law also provide an experiential vehicle through which law students can be sensitised to the ethics of e-based legal practice and delivery of legal professional services.

Introduction

This paper discusses the use of e-spaces and information technology as a vehicle for teaching and learning in legal education. The notion of *e-learning* is a broad concept and inclusive of teaching and learning strategies that utilise a wide range of electronic, information and technological media and tools, often in combination with one another including the Internet, video, audio, intranet and computer based platforms. E-based learning can take many varied shapes and forms and may be asynchronous or synchronous in format and delivery. Indeed a single definition of e-learning is difficult to advance despite its extensive usage, this is not only because the subject is in constant change and is evolving but arguably 'different understandings of e-learning are conditioned by particular

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professional approaches and interests'¹ and shaped by the particular discipline and focus of study and specific learning objectives.

This paper argues that in the context of legal education, not only does the e-medium provide a fertile ground for active, student-led and collaborative learning – learning styles which typically characterise deep and quality learning experiences - but importantly e-learning spaces also represent a powerful key intermediate between law school and the new realities of professional engagement in an e-based legal services market and a new e-age in legal practice.

Many law schools around the world are in the moment confronted by various challenges including fierce market competition, increased pressure from students and employers for a practice ready graduate, and close scrutiny of law school curricula from professional and regulatory bodies with a thrust towards redevelopment and the innovation of legal education.² The ABA Task Force on the Future of Legal Education, for example, in its recent Draft Report published in September 2013,³ has made several recommendations for reform of legal education in the United States recognising in particular the need for:

- greater heterogeneity in law schools and in programs that deliver law related education;
- emphasis on the delivery of value to students in law schools and in law related education;
- clear acknowledgment that law schools exist to teach people to provide law-related services; and
- greater innovation in law schools and programs that deliver law-related education.

¹ Sangra, A., Vlachopoulos, & Cabrera, N. (2012) 'Building an Inclusive Definition of E-learning: An Approach to the Conceptual framework' 13 *The International Review of research in open and Distance Learning* 145.

² See, for example, ABA Taskforce on the Future of Legal Education.

³ ABA Taskforce on the Future of Legal Education (September 20, 2013). Draft Report and Recommendations available at:

<http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/taskforcecomments/task_force_on_legaleducation_draft_report_september2013.authcheckdam.pdf>.

These recommendations arguably are fuelled by, and reflect a growing sentiment manifest in various professional quarters, that law school programs and law curricula are in the moment orphaned from the professional roots and practice origins from which legal education is derived and that the learning outcomes of legal study need to be more congruent and be better aligned with the needs of the modern day legal profession and the actual exigencies and realities of a contemporary legal services marketplace; namely a marketplace that is now being re-shaped by new technologies and e-based platforms for communication, information exchange, professional engagement and business activities.

Thus against this backdrop, and at a moment which might well represent a key inflection point in the evolution of legal education and legal professional training on a global scale, the need to examine the role of e-media as a potentially transformative tool in legal education and in the professional training of lawyers is indeed very timely.

A. The purpose of law schools?

The very purpose of legal education is a key question that must be considered at the outset of any discussion about reform of law curricula, legal program design and the pedagogy of legal instruction. The ABA Task Force (2013) on the Future of Legal Education has noted wide disagreement about the purpose of law schools:⁴

...a commonly stated purpose of law schools is to train lawyers, but there is no consensus about what this means. It matters, for example, whether one takes a view of lawyers as just (or at least primarily) deliverers of technical services requiring a certain skill or expertise, or as persons who are broad-based problem solvers and societal leaders. Different views about what it means to “train lawyers” yield different views about curricula; different views about faculty; and different emphases regarding services to students.

⁴ Ibid at 13.

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Most law schools would recognise they have a fundamental role in educating the next generation of lawyers but increasingly law schools also are catering for students who see law as a generalist degree that creates pathways for graduate entry into careers such as politics, international relations, economics, finance, accounting and public policy. Indeed legal training

can also be extremely valuable – not just because law graduates have a grasp of a large body of rules and regulations, but for the intellectual rigour, the clarity of analysis, the precision with language, the facility for critical thought, the capacity for intensive research, and the confidence in public speaking that a good degree in law should build and provide.⁵

However, the demand for law as a generalist degree may inadvertently have diluted the professional focus of legal education. As a teacher of a legal professional responsibility core unit of study in undergraduate law and the JD program, for example, I am regularly challenged in class by students who feel that studying the ethics of lawyering is not an effective use of their time as they do not intend to practice law. Of course, the value of such a course extends beyond those who must, because of admission requirements understand the ethical obligations and duties of a lawyer; its value lies in understanding and encouraging deep and reflexive thinking about a range of ethical issues relevant to professional work in many spheres beyond legal practice and the insight and self-awareness that such reflection is capable of precipitating.

Undoubtedly individual law schools have developed their learning outcomes and graduate attributes consistent with their particular school's mission, institutional values and philosophy and the local legal professional context. The learning objectives of a law school are inextricably linked to the pedagogy of its law curricula. A school for example that seeks to develop its students' capacity for critical argumentation will adopt teaching and learning strategies that promote development of such skills and which create learning spaces that promote opportunities for students to gain experience in analytical approaches.

⁵ Susskind, R. *Tomorrow's lawyers: An introduction to your future* (Oxford University Press, 2013), E-book Ch. 13. Training Lawyers for What? (3-4/11).

Similarly a law school that views social justice as a priority or legal policy analysis as a core competency in legal education will facilitate learning experiences for its students that enable a deep, holistic and real-world analysis of law, economics and politics, and may for example do this by providing opportunities for students to participate in legal clinics or undertake relevant legal placements or internships. However, irrespective of the particular emphasis or priorities that individual schools identify and articulate, surely, as a legal education provider, every law school in providing programs towards a professional qualification and accreditation, must have as one of its fundamental concerns, the skilling up and employability of its legal graduates. However, in reality 'little space in the curriculum is typically devoted specifically to preparing students to pursue and compete for jobs [and transition into the legal profession]. Rather, it is generally delegated to a non-academic unit of the law school.'⁶

Evidence suggests that current market forces increasingly will require that law schools: (i) align curricula with its key function as a legal education provider and the training of lawyers; and (ii) adapt programs or practices to meet the demands of the marketplace and the pressures of business competition.⁷

If this view is correct and law schools cannot resist market considerations then law school curricula must transition consistent with the needs and realities of the current legal services marketplace. Returning then to the modern law school's role in ensuring its graduates' employability, in the current legal services market and considering the likely needs of future legal professionals, a key element of graduate employability is arguably capacity to navigate the e-technology which is visibly transforming modern day legal practice and a graduate's capacity to understand and respond to the professional and ethical challenges that this new and still rapidly evolving e-terrain throws up for the modern lawyer. In other words not only do law curricula need to dovetail more

⁶ ABA Taskforce on the Future of Legal Education, above n 3 at 13.

⁷ Ibid.

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with the practising branches of the legal profession⁸ looking forward but law school must prepare 'the next generation of lawyers to be more flexible, team-based, hybrid professionals, who are able to transcend legal boundaries, speak the language of the boardroom, and are motivated [and capable] to draw on techniques of modern management and information technology.'⁹

If legal education is to effectively harness the opportunity to leverage law student experience of, and learning in legal technology, then inevitably it is law teachers that must lead the way and carve out appropriate learning spaces and create appropriate pathways within law curricula for such learning to take place. Goodenough (2013) suggests this may pose a challenge for the legal academy noting that:

A technology-driven revolution is overturning how America practices law, runs its government, and dispenses justice, and the revolution has so far gone almost completely unnoticed by the people who teach aspiring lawyers. This has to change.¹⁰

In a similar vein Susskind (2013) argues

In many law schools, the law is taught as it was in the 1970s, by professors who have little insight into or interest in the changing legal marketplace. Too often, scant attention is paid to phenomena such as globalization, commoditization, information technology, modern business management, risk assessment, decomposing and alternative sourcing.¹¹

It is likely that legal academics elsewhere around the world are similarly no further along in bridging the disconnect between the technological realities of a rapidly developing 'e-lawyering' era and traditional law school curricula and pedagogy. As Goodenough (2013) challenges "teaching the technology of law is a

⁸ Susskind (2013), above n 5, Ch. 13. Training Lawyers for What? (4/11).

⁹ Ibid at Ch. 13. Training Lawyers for What? (6/11).

¹⁰ Goodenough, O. (2013). 'Developing an e-curriculum: reflections on the future of legal education and on the importance of digital expertise.' 88 *Chicago-Kent Law Review* 845, 847.

¹¹ Susskind (2013), above n 5, Ch. 13. Training Lawyers for What? (10/11).

¹¹ Ibid at Ch. 13. Training Lawyers for What? (6/11).

subject that really does require its law trained teachers to master new ways of thinking, new realms of knowledge, and new domains of performance.”¹² The technology of law as a scaffold to enliven curriculum reform in legal education is as Goodenough (2013) argues, justified for at least four reasons: (i) the widespread use of e-technology in practice; (ii) the power of technology in promoting access to justice and legal services; (iii) the need to evaluate the impact of technology on development of law and its processes; and (iv) the practical necessity for law graduates to understand, navigate and ultimately drive the use of technology and new e-spaces in legal work.¹³

Thus far this paper has presented arguments for why law schools must reform law curricula in ways that seek to bridge the purpose of legal education with the realities of modern day legal practice, and in particular recognise that law as a profession is being transformed by information technology and an e-based marketplace. This paper will now examine the impact of e-spaces and information technologies on the work that lawyers undertake and the provision of legal services. It will argue that e-lawyering raises a suite of ethical and professional issues transfigured from those grounded in traditional legal practice. It will then examine how law curricula can harness legal technology as a tool not only for more effective teaching and learning in law, but also as a springboard for both enhancing the law student experience and as a vehicle for better preparing and equipping law students for the realities of an e-based legal marketplace and the professional challenges of ‘e-lawyering’.

B. The impact of e-based technologies on the legal services market place and legal professionalism

Much has been written over the past four or five years in particular about the impact of technology on legal practice.¹⁴ As foreshadowed by Richard Susskind

¹² Goodenough, above n 10, at 860.

¹³ Ibid at 863.

¹⁴ See, for example, Gordon, T., Shackel, R., & Mark, S. (2012). Regulation of legal services in the e-world: a need to short circuit hot spots in ethics and novel practices? ¹⁹ *International Journal of*

(2008) 'various existing and emerging technologies' have challenged the way in which lawyers work.¹⁵ The Internet in particular is having a profound impact on lawyering and is both opening up new opportunities for legal practice and challenging some fundamentals of traditional legal professionalism.¹⁶

Susskind (2008) has described the Internet as not just a

global network of networks, but also...a technology infrastructure that supports three main utilities. The first is electronic mail, an application that has revolutionized the communication habits of hundreds of millions of people on our planet. The second is the Web, the world's largest information resource, which has transformed our information-seeking habits. The third is online community – with human beings connected to one another through the Internet, this gives rise to fundamental new ways for us to interact and collaborate with one another.¹⁷

Today the use of email, the Web and online communities are integral to the way legal information is shared and legal work conducted. Email is a common mode of communication now between lawyers, between lawyers and clients and third parties. Even confidential communications are as a matter of common practice typically exchanged via email. The Web is widely utilised as a portal for clients to access lawyers and the legal system, and is now a staple medium through which lawyers service clients and the market place. On-line communities provide a platform for communication, production, collaboration, networking, community-building, trading and exchange.¹⁸ On-line communities increasingly are shaping all manner of social relationships and professional domains and the law and legal practice are no exception. As described by Susskind (2013):

There are over 2.2 billion Internet users, 800 million subscribers to Facebook, 3.5 billion email accounts, 1 million kilometres of sub-sea fibre-optic cables,

the Legal Profession 55; Susskind, R. *The end of lawyers?: Re-thinking the nature of legal services* (Oxford University Press, 2008); and Susskind (2013) above n 5.

¹⁵ Susskind (2008), above n 14.

¹⁶ Gordon, Shackel & Mark, above n 14.

¹⁷ Susskind (2008), above n 14, Ch. 3 (17/62).

¹⁸ *Ibid* at Ch. 3 (17-18/62).

more than 5 billion subscriptions to mobile phones, and, every two days, according to Google's Eric Schmidt, 'we create as much information as we did from the dawn of civilisation up until 2003.' Every two days, in fact, we create more than 5 quintillion (5×10^{18}) bytes of data.¹⁹

Moreover, as recently documented by Gordon, Shackel and Mark (2012):

In the US alone, 2010 saw a 12.6 per cent growth in online retail sales reaching US\$176.2 billion, despite a challenged economy. US eCommerce is expected to reach US\$278.9 billion in 2015. Similar double digit growth is also expected in Western European markets. In Australia, online retail sales are projected to double from A\$16.9 billion in 2009 to A\$33.3 billion in 2015.²⁰

Legal practice in cyberspace is also exploding and e-spaces and new information technologies have permanently reconfigured the structure of the legal profession and the provision of legal services. Virtual law practices and extra-jurisdictional outsourcing are firm landmarks in the new e-terrain, and social media and networking sites like Facebook, MySpace, Twitter, LinkedIn and blogging sites are now well used tools to both market and provide legal services.²¹

It is thus indisputable that information technologies and e-spaces have altered the contours of the administration of justice, the nature of the lawyer-client relationship, the way lawyers deliver legal services and how legal clients experience justice and interact with the law. Some common examples of e-lawyering and e-justice practices that have emerged around the globe, with particular implications for increased access to justice, include courts increasingly automating their processes, for example adopting e-filing procedures; lawyers managing litigation and dispute resolution through e-mechanisms such as e-discovery; we have also seen an explosion in the use of document assembly software products; and automated search and research processes.²² It is

¹⁹ Susskind, R. *Tomorrow's lawyers: An introduction to your future* (Oxford University Press, 2013), Three Drivers of Change (11-12/20).

²⁰ Gordon, Shackel & Mark, above n. 14, at 55.

²¹ Ibid at 56.

²² Goodenough, above n 10.

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unlikely that the e-wave and its impact on legal services and business more broadly will subside in the future. Susskind (2013) in his most recent book, *Tomorrow's Lawyers: An Introduction to Your Future*,²³ suggests that

...it might be time for lawyers to rethink some of their working practices. It is simply inconceivable that information technology will radically alter all corners of our economy and society and yet somehow legal work will be exempt from any change.

It is exciting and yet disconcerting to contemplate that there is no finishing line for IT and the Internet.

One key challenge for the legal profession, however, is to adopt new systems earlier; to identify and grasp the opportunities afforded by emerging technologies.

We need, as lawyers, to be open-minded because we are living in an era of unprecedented technological change.

The pervasive use of new technologies and e-based spaces in the practice of law thus renders competence in technology an essential element of legal professional responsibility and the duties of a lawyer.²⁴ This is increasingly being recognised by professional bodies around the globe and reflected in formal statements. For example the ABA House of Delegates in August 2012 approved the ABA's Commission on Ethics 2020 proposal to include direct reference to a lawyer's duty to maintain technological competence in the Comment to Rule 1.1. This Rule states that

²³ Susskind (2013), above n 5, Ch. 1 Three Drivers of Change (15-17/20).

²⁴ Goodenough, above n 10 at 863.

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A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.²⁵

Comment [8] as approved by the House of Delegates²⁶ provides that

To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

Similarly the Commentaries to the Canadian Bar Association Code of Professional Conduct (2009)²⁷ state that

4. Competence involves more than an understanding of legal principles; it involves an adequate knowledge of the practice and procedures by which those principles can be effectively applied. To accomplish this, the lawyer should keep abreast of developments in all areas in which a lawyer practises. The lawyer should also develop and maintain a facility with advances in technology in areas in which the lawyer practises to maintain a level of competence that meets the standard reasonably expected of lawyers in similar circumstances.²⁸

A lawyer's competence in the technology that today supports the legal services marketplace generally, and in particular areas of the lawyer's practice and legal work more specifically is thus an essential dimension of a lawyer's professional responsibility. But a lawyer's professional responsibility also necessitates that lawyers understand not only how relevant technology works but also how such technology may challenge a lawyers' duties to the court, to clients and to third

²⁵ ABA, *Model Rules of Professional Conduct*, Rule 1.1 available at: <
http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents.html>.

²⁶ ABA House of Delegates approval of Commission's Resolution 105A (Technology & Confidentiality) 6 August 2012 available at <
http://www.americanbar.org/content/dam/aba/administrative/ethics_2020/20120808_revised_resolution_105a_as_amended.authcheckdam>.

²⁷ Canadian Bar Association, *Code of Professional Conduct* (2009) available at: <
<http://www.cba.org/CBA/activities/pdf/codeofconduct.pdf>>.

²⁸ Ibid Chapter II.

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parties. E-spaces increase the risk, for example, of inadvertent disclosure of confidential information, conflicts of interest, inadvertent communications or unintended professional relationships.²⁹ Lawyers thus must be able to both navigate the practical and ethical contours of new technologies in conduct of legal work.

Thus the question that arises next is to what extent are law schools responsible for ensuring that law graduates have obtained at least a threshold level of competence in legal technology and understanding of the ethical challenges such media present? The New York Bar Association in its 2011 report of the Task Force on the Future of the Legal Profession concluded that law schools should play a greater role in training prospective lawyers about practical ways to use technology in legal work stating that

Law schools throughout the state should place greater emphasis on practical courses in various aspects of legal technology such as eDiscovery, document management technology, advanced online research, legal technology in the courtroom, and project management...law schools can better serve their students and the profession by offering instruction in a broader range of technological subjects and integrating such classes into the requirements for graduation.³⁰

Whilst competence in legal technology is one thing, arguably however lawyers and particularly the lawyers of the future will have to go beyond a threshold level of technological competency. As Susskind (2013) challenges lawyers must ‘...innovate, to practise law in ways that we could not have done in the past.’³¹ The challenge then for law schools and law teachers is to ensure that the foundations for such innovation are laid down as a core part of legal education, with a view not only to ensure law graduates are competent to navigate the future e-landscape of legal practice but to innovate it, shape its contours and to

²⁹ Gordon, Shackel and Mark, above n 20.

³⁰ New York State Bar Association, Report of the Taskforce on the Future of the Legal Profession (April 2, 2011), 99 available at: <http://www.nysba.org/WorkArea/DownloadAsset.aspx?id=26691>.

³¹ Susskind (2013), above n 15 at 1. Three Drivers of Change (18/20).

do so in a way that meets the needs of the market and also ensures that public confidence in the administration of justice and in the legal profession is preserved and that legal professional responsibility and ethical decision-making in legal practice is not eroded but rather remains a concrete cornerstone of lawyering even in the new e-world and e-based marketplace.

The next section of the paper thus considers how e-based technologies can be utilised as a tool for teaching law so as to meet the needs of law graduates, the legal profession, the legal services marketplace and the administration of justice.

B. *E-based technologies as a tool for teaching and learning in law*

Drawing in part on the discussion above, it is clear that utilising e-based technologies in legal education serves at least 3 primary goals: (i) e-based technologies provide a medium to enable active, student-engaged and collaborative learning as a pathway to quality in experience and education; (ii) provides students with the opportunity to develop understanding of and skills in using the technology that is shaping the legal services marketplace; and (iii) provides students with an opportunity to reflect upon and experience first-hand some of the professional and ethical challenges thrown up by e-based technologies.

In consideration of how e-based technologies can serve learning in law and fulfil the role of legal education, we must first ask: *What are the opportunities for the use of e-technologies within the law curricula?* Secondly: *How do these opportunities enable student learning and enhance the law school experience for students?* And thirdly: *How does the e-medium in legal education bridge the gap between law as an academic focus and preparation of students for the realities of legal practice?*

Much has been written about the pedagogical value of 'flipped' or 'blended learning' in higher education³² including specifically within the law curricula.³³ Flipped or blended learning³⁴ is a teaching strategy that utilises on-line or electronic modes of teaching in conjunction with traditional face-to-face classroom based modes of teaching. For example, teachers can provide material to students online and create channels for student learning in a myriad of ways such as using podcasts, webinars, videos, blogs or online discussion boards including in conjunction with one another in varied ways. These learning activities are coupled or 'blended' with face-to-face modes of teaching and learning. The study of law creates many rich opportunities for blended learning, for example, learning activities outside of the classroom supported by various forms of e-media can be used to help students develop research, statutory interpretation, case analysis and critical thinking skills. Classroom time can then be devoted to activities, such as problem questions, moots, and classroom discussion or debates that create opportunities for students to share the knowledge and skills they have acquired outside the classroom and further build upon, extend and refine such knowledge, understanding and skills with guidance from their peers and teacher.

E-based learning thus can be seen to encourage flexible and independent student learning and facilitates individualized, student-driven learning by permitting students to work at their own pace outside of the classroom, when and how they find most productive. The e-learning space creates a cradle for students to explore and engage with new information and knowledge. This effectively flips the traditional teacher-student dynamic from teacher-centred to student-centred. The teacher is effectively ousted from "sage on the stage"³⁵ to the role of a facilitator in student learning. The classroom thus becomes a forum for

³² See, for example, U.S. Department of Education, Office of Planning, Evaluation, and Policy Development, *Evaluation of Evidence-Based practices in Online Learning: A Meta-Analysis and Review of Online Learning Studies* (Washington, D.C., 2010).

³³ Lambert, S. & Brewer, C. (2007) '1st, 2nd and 3rd Generation Implementations of an eLearning Design: Re-use from Postgraduate Law to Block/online Engineering Course' 2 *Journal of Learning Design* 70.

³⁴ Stubbs, M., Martin, I., & Endlar, L. (2006). 'The structuration of blended learning: putting holistic design principles into practice.' 37 *British Journal of Educational Technology* 163.

³⁵ King, A. (1993). 'From Sage on the Stage to Guide on the Side'. 41 *College Teaching* 30.

engaging students in active, collaborative and problem-based learning activities and providing students with targeted formative feedback. Research suggests that flipped or blended learning is as effective and in some settings even more effective for adult learners compared to teaching that is entirely classroom based.³⁶ For the adult learner e-based learning opens up spaces for collaborative and shared learning experiences which arguably do not only deepen the student's learning experience but simultaneously creates pathways for sustainable communities of learning in the educational setting which can also extend beyond into professional spaces. Given the increased importance of connectivity, networking and community building in the e-landscape of legal practice and business, this collateral benefit of e-based learning is not to be underestimated and indeed should be actively cultivated within the law school setting.

Importantly also e-learning provides law students with a first hand experience of the e-medium. This creates an important opportunity for students to also navigate the ethical contours and dynamics of e-communication and e-spaces. E-lawyering throws up many ethical challenges for the modern lawyer that extend beyond the duty of competence into duties of confidentiality and security, supervision, conflicts of interest, the nature of lawyer-client relationships and the risk of inadvertent or inappropriate communications.³⁷ As students navigate and utilise e-learning tools and platforms many of the same challenges will present themselves in the course of students accessing, communicating and producing information as part of their learning journey. This provides students with an invaluable opportunity to become sensitised to these ethical realities of e-spaces outside of the social context, which they are likely to already be familiar with, and confront such issues within the context and parameters of professional engagement and exchange.

The use of e-based teaching and learning strategies offers law teachers fertile ground for providing students with a deep, quality and positive learning

³⁶ Lambert & Brewer, above n 33.

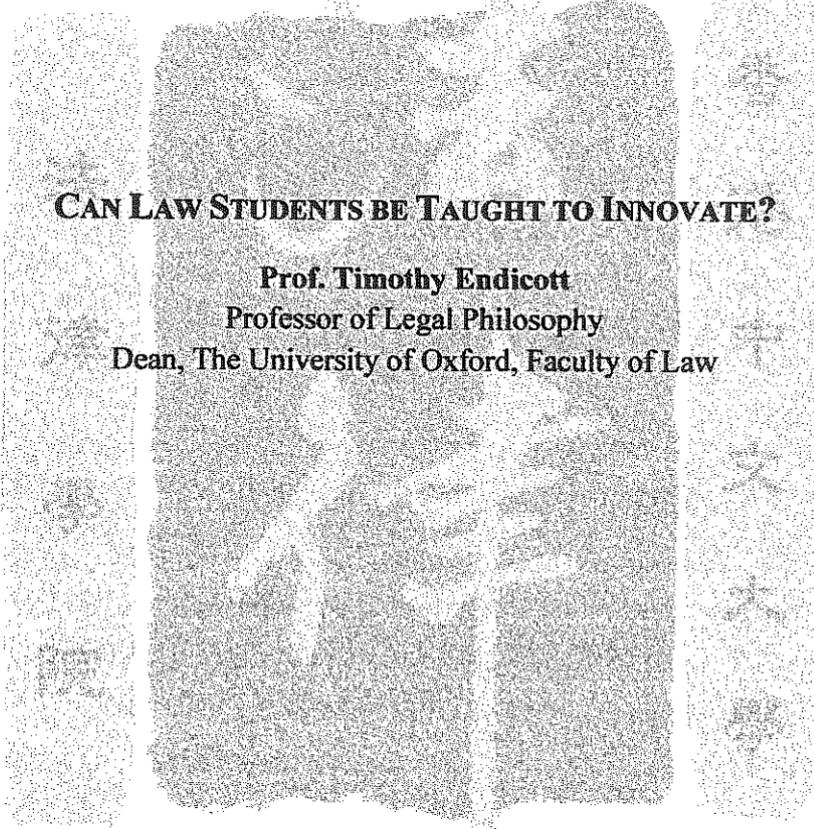
³⁷ See generally Gordon, Shackel & Mark above n 20.

experience at law school, and one that can help law students attain the substantive knowledge needed for modern legal practice, sensitise students to the ethical challenges of e-lawyering, obtain the skills necessary to navigate legal technology and additionally can create opportunities for students to build long-lasting relationships that can be taken forward into the professional context. In this way e-learning can be a vehicle for planting various seeds during the law school years which can with time be harvested by graduates as they transition into the legal profession and upon which they can draw as they navigate the contours of the e-terrain that now sustains legal practice and the legal services marketplace.

The benefits of e-based learning in legal education have been clearly outlined in the discussion above, this however is not to suggest or ignore the challenges that information technologies and blended modes of learning present to law schools and law teachers. Apart from the potential resource implications that such learning strategies give rise to, e-media also potentially raises some ethical issues for the law school teacher, these include that e-based learning activities and asynchronous modes of learning are arguably more open to being abused by students, for example, through inappropriate student collusion, recycling of student materials/answers, plagiarism and there is also the risk that some students may flounder rather than thrive in such a flexible learning environment. Ultimately, however it is the role of the law teacher to shape such activities in ways that offer students sufficient structure in their learning and at the same time minimise such risks and pitfalls. Indeed it is well recognised that e-learning strategies are not only labour intensive for teachers but demand a high level of expertise and technical proficiency on the part of the teacher. This of itself may also be an important factor that ultimately helps bridge the gap between law school academic and legal profession. As Susskind (2013) suggests “[i]nvolving practitioners in the delivery of...courses would be good, both to give students insight into evolving experience in the market and to encourage cross-fertilization between the academic and practising branches of the profession.”³⁸

³⁸ Susskind (2013), above n 5, Ch. 13. Training Lawyers for What? (10/11).

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26 October 2013



CAN LAW STUDENTS BE TAUGHT TO INNOVATE?

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A LEGAL EDUCATION RENAISSANCE

Prof. John O. Sonsteng
Professor of Law
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Faculty of Law

The Chinese University of Hong Kong

An Empirical Study Demonstrating the Effectiveness of General Law School Curriculum in Preparing Lawyers for the Practice of Law©*

By

Professor John Sonsteng**

With

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I. INTRODUCTION

Four studies conducted over thirty-eight years demonstrate that lawyers perceive themselves as increasingly more prepared to effectively practice laws upon graduation from law school. However, an analysis of the primary sources of legal training: General Law School Curriculum, Law Related Work While in Law School and the Lawyer's Own Experience demonstrates that the General Law School Curriculum provides less training than the other two primary sources of legal training.

This paper is designed to assist law schools in the examination and revision of their missions, curriculum, teaching and learning objectives to meet the demands of students who must be prepared to practice law upon graduation. This paper demonstrates where law schools may more effectively direct resources.

From 1975 to 2013 four studies analyzed the effectiveness of the general law school curriculum in preparing students to practice effectively in the legal profession.

1975/76 Zemans and Rosenblum. Frances Kahn Zemans and Victor G. Rosenblum conducted a study in 1975 and 1976 on the legal profession¹ that was published in 1981. Zemans and Rosenblum sought a better understanding of how law school education affected the professional development of lawyers.² The survey asked the attorneys about "Knowledge and Skills Important to the Practice of Law," including the relative importance of selected skills and areas of knowledge,³ the law school's contribution to skills and areas of knowledge important to the practice of law showing how prepared the lawyers were after law school,⁴ and whether the skills and areas of knowledge could be taught effectively in law school.⁵ The important score was the mean response on a 5-point scale with 1 being the most important and 5 of the lowest importance.⁶

1991/92 Garth and Martin. Fifteen years later, from 1991 to 1992, Bryant G. Garth and Joanne Martin conducted a series of four surveys.⁷ Garth and Martin sought, first of all, to compare their survey to the earlier Zemans and Rosenblum survey and measure any of the changes that had occurred since the late 1970's.⁸ Thus, their survey repeated portions of the Zemans and Rosenblum study in order to survey many of the same skills.⁹ The survey of "young Chicago lawyers"¹⁰ (who were admitted to the bar between 1986 to 1991)¹¹ by Garth and Martin asked the lawyers to rank the "importance" of seventeen legal skills and areas of knowledge.¹² (These same skills were used in the Minnesota Studies.) The Garth and Martin survey, like the Zemans and Rosenblum survey, was based on a 5-point scale with 1 being "extremely important" and 5 being "not important at all."¹³ Second, Garth and Martin sought to update

1. See FRANCES KAHN ZEMANS & VICTOR G. ROSENBLUM, *THE MAKING OF A PUBLIC PROFESSION* (1981).

2. See *id.* at xiii.

3. See *id.* at 123-28. (The earlier 1975-76 Zemans and Rosenblum study surveyed several aspects of "importance" of lawyering skills that were similar to both the survey of Minnesota lawyers and the 1991-92 Garth and Martin survey including the following areas: Ability to understand and interpret opinions, regulations, and statutes; Drafting legal documents; Knowledge of substantive law; Legal research; Fact gathering; Effective oral expression; Letter writing; Instilling others' confidence in you; Negotiating; and Knowledge of procedural law.)

4. See *id.* at 135-50.

5. See *id.* at 140-50.

6. See *id.* at 127 tbl.6.1.

7. See Bryant G. Garth & Joanne Martin, *Law Schools and the Construction of Competence*, 43 J. LEGAL EDUC. 469 (1993). The Garth and Martin study consisted of 4 surveys and sample groups. See *id.* at 471. (The first survey, which was conducted by telephone, targeted hiring partners in all firms in Chicago that had a minimum of five partners. The second survey was of practicing lawyers in Chicago who had been admitted to the bar between 1986 and 1991, the "young Chicago lawyers." A random sample of 1500 attorneys was mailed surveys and over 50% responded. See *id.* The final two surveys were sent to two urban context samples in Missouri. These two surveys were similar to the survey conducted of the "young Chicago lawyers.")

8. See *id.* at 471.

9. See *id.*

10. See *id.* at 473 tbl.1.

11. See *id.* at 471.

12. See *id.* at 473 tbl.1.

13. See *id.* at 472.

the list of the surveyed legal skills by including parts of the MacCrate Report list.¹⁴ Third, Garth and Martin probed the lawyers' ability to obtain and keep clients.¹⁵

1997/99 and 2013 Minnesota Studies –Sonsteng. In 1997/98, 1999 and 2013, the Minnesota Studies undertook to determine to what extent law schools provided Minnesota lawyers consistent training in the important legal practice and law practice management skill areas. The Legal Practice Skills surveyed are the same seventeen that were used in the Garth and Martin survey,¹⁶ which Garth and Martin had expanded upon from the MacCrate Report.¹⁷ The list of practice management skills was taken from the Lawyer's Handbook.¹⁸

Minnesota lawyers were surveyed between October 17, 1997 and August 12, 1998, and again between August 10, 1999 and September 30, 1999.¹⁹ The most recent survey was conducted between May 29, 2013 and August 9, 2013.²⁰ The Minnesota survey instrument was designed to study how well prepared Minnesota lawyers felt after law school in seventeen legal practice skills and nine management skills.²¹ The lawyers were also asked to what extent Minnesota lawyers perceived those skills to be important and from what sources they received those skills.

The 1992 MacCrate Report²² identified ten fundamental lawyering skills:

1. Problem Solving;
2. Legal Analysis and Reasoning;
3. Legal Research;
4. Factual Investigation;
5. Communication;
6. Counseling;
7. Negotiation;
8. Litigation and Alternative Dispute Resolution Procedures;
9. Organization and Management of Legal Work; and
10. Recognizing and Resolving Ethical Dilemmas.²³

14. See *id.* at 471.

15. See *id.*

16. See Garth & Martin, *supra* note 8.

17. See *id.* at 138-40.

18. See generally THE LAWYER'S HANDBOOK: HOW TO EFFECTIVELY, EFFICIENTLY AND PROFITABLY MANAGE YOUR LAW FIRM (Austin G. Anderson et. al. eds., 3d ed. 1992).

20. Of the 726 Minnesota attorneys in the 1999 survey, 288 respondents (39.7%) attended William Mitchell, 165 respondents (22.7%) attended the University of Minnesota Law School, 96 respondents attended Hamline University College of Law (13.2%), while 177 respondents (24.4%) attended other law schools. Of the 1042 respondents who completed the 1997-98 survey, 354 (41.4%) graduated from William Mitchell, 264 (30.9%) graduated from the University of Minnesota, and 50 (5.9%) graduated from Hamline University and the remainder attended law schools throughout the country. See Frequency Statistics (on file with author).

21. Of the 1108 Minnesota attorneys in the 2013 survey, 503 respondents (45.4%) attended William Mitchell, 131 respondents (11.8%) attended the University of Minnesota Law School, 166 respondents attended Hamline University College of Law (15.0%), 83 respondents (7.5%) attended University of Saint Thomas Law School, and 190 respondents (17.1%) attended schools outside of Minnesota. (35 respondents (3.2%) did not respond to this question.)

607 respondents (54.8%) were women, 501 respondents (45.2%) were men.

The 2013 survey was sent to Minnesota attorneys who passed the Minnesota bar in the past 10 years. 96 respondents (8.7%) were admitted in 2012, 100 respondents (9.0%) in 2011, 118 respondents (10.6%) in 2010, 110 respondents (9.9%) in 2009, 120 respondents (10.8%) in 2008, 129 respondents (11.6%) in 2007, 111 respondents (10%) in 2006, 87 respondents (7.9%) in 2006, 87 respondents (7.9%) in 2005, 95 respondents (8.6%) in 2004, 94 respondents (8.5%) in 2003, 9 respondents (0.8%) in 2002, 3 respondents (0.3%) in 2001, 4 respondents (0.4%) in 2000, 20 respondents (1.8%) from earlier than 2000, and 11 respondents (1%) did not enter a legible response.

21. See *infra* Appendix A (the survey instrument.)

22. See ABA SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT – REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992) [hereinafter MACCRATE REPORT]

The Minnesota Studies follow the Bryant G. Garth and Joanne Martin surveys, which expanded the number of lawyering skills set out in the MacCrate Report and surveyed the following seventeen areas:

1. Ability to diagnose and plan solutions for legal problems,
2. Ability in legal analysis and reasoning,
3. Knowledge of substantive law,
4. Knowledge of procedural law,
5. Library legal research,
6. Computer legal research,
7. Factual gathering,
8. Oral communication,
9. Written communication,
10. Counseling,
11. Instilling others' confidence in you,
12. Ability to obtain and keep clients,
13. Negotiation,
14. Litigation,
15. Organization and management of legal work,
16. Sensitivity to professional and ethical concerns, and
17. Drafting legal documents.²⁴

All surveys from 1975-2013 asked the respondents

1. to rank the importance of each legal practice skill, and
2. to rank the extent they perceived they were prepared for the practice of law in each legal skill.²⁵

The 1997/98 and 2013 Minnesota Studies also asked respondents:

1. Which of the practice skills did the respondents believe could be learned in law school?
2. What was the source of training in each of the skills?

The Minnesota Studies analyzed nine additional Law Practice Management Skills:

1. Fee arrangements, pricing, billing,
2. Human resources, hiring, support staff,
3. Capitalization, investment,
4. Project and time management, efficiency,
5. Planning, resource allocation, budgeting,
6. Market, client development,
7. Technology, computers, communications,
8. Governance, decision-making, long-range strategic planning, and
9. Interpersonal communications, staff relations.²⁶

Respondents were asked to rank the importance and their perceptions of preparedness for each

23. MACCRATE REPORT, *supra* note 23, at 138-40.

24. See Garth & Martin, *supra* note 8, at 472-73. Garth and Martin surveyed practicing lawyers in Chicago, Illinois. See *id.* at 471. The sample of the survey consisted of all firms in Chicago that had a minimum of five partners. See *id.*

25. None of the surveys asked participants to respond to the question: "to what extent did your legal education prepare you to use your law degree in non-law related fields."

26. See generally THE LAWYER'S HANDBOOK: HOW TO EFFECTIVELY, EFFICIENTLY AND PROFITABLY MANAGE YOUR LAW FIRM, *supra* note 19, (providing additional information on the relevant management skills.)

management skill, as well as whether they believed those skills could be learned in law school. Respondents were asked to name their top three sources of training for each legal practice skill and each management skill.

Summary Findings:

1. Nearly all of the Legal Practice and Law Practice Management skills were perceived as important.
2. The Legal Practice and Law Practice Management skills could be learned in law school.
3. The 2013 respondents perceived themselves to be better prepared than earlier respondents in 12 of the 17 Legal Practice skills and in 7 of the 9 Law Practice Management skills than the respondents in the 1997/99 survey.
4. There are five sources of training in the Legal Practice Skills that were ranked as first, second and third in importance as a source of training in both the 1997/99 and 2013 surveys.

	Rank	First	Second	Third
Source of Training				
Law School Curriculum		6 times	1 time	4 times
Own Experience		6 times	2 times	7 times
Law Related Work while in School		3 times	6 times	2 times
Observing other Lawyers		1 time	5 times	3 times
Advice from others		1 time	2 times	

5. There are five sources of training in the Law Practice Management skills that were ranked as first, second or third in importance as a source of training in both the 1997/98 and 2013 surveys.

	Rank	First	Second	Third
Source of Training				
Law School Curriculum			1 time	
Own Experience		8 times	1 time	
Law Related Work while in School				2 times
Observing other Lawyers			2 times	5 times
Advice from others		1 time	5 times	2 times

6. All seventeen Legal Practice skill areas and all nine Law Practice Management skills were perceived by attorneys as important to their practice of the law and a significant number of attorneys believe these subjects could be taught successfully in law school.

The results of the studies suggest that law schools should examine their missions, curriculum and teaching and learning methods to determine if they meet the law school's objectives and priorities and whether the law school provides sufficient training and learning opportunities for students.

II. SURVEY RESULTS

A. IMPORTANCE OF LEGAL PRACTICE SKILLS

Minnesota attorneys were asked to rate the importance of the legal practice skills on a scale of 1 (not at all important) to 7 (very important).²⁷ A skill was considered "important" if it received a score of 5, 6 or 7.²⁸ Well over a majority of respondents in both the 1997/98, 1999 and 2013 surveys indicated they perceived each of the seventeen legal practice skills as important to their practice of law.

Table 1. Legal Skills: Changes in Perceptions of Importance Over Time

<u>Legal Practice Skill</u>	<u>Zemans-Rosenblum 1975-76²⁹</u>	<u>Garth-Martin 1986-91³⁰</u>	<u>Minnesota Lawyers 1997/99</u>	<u>Minnesota Lawyers 2013</u>
Ability to diagnose and plan for legal problems	*	81.5	97.9	96.1
Ability in legal analysis and legal reasoning	86.6	90.9	97.5	96.8
Written communication	*	96.3	97.2	97.4
Oral communication	87.4	97.6	96.8	96.0
Instilling others' confidence in you	88.6	90.5	92.0	89.0
Negotiation	78.9	73.4	90.0	86.2
Sensitivity to professional and ethical concerns	*	68.9	86.4	85.4
Fact gathering	93.0	71.6	85.9	86.6
Drafting legal documents	74.2	84.9	85.8	91.0
Organization and management of legal work	*	75.4	85.0	85.2
Counseling	*	62.0	82.6	86.4
Ability to obtain and keep clients	*	54.0	80.2	80.4
Knowledge of procedural law	62.9	67.8	79.6	80.2
Knowledge of the substantive law	90.1	83.0	79.1	79.4
Computer legal research	*	34.9	76.6	87.1
Library legal research	80.6	59.8	69.1	28.5
Understanding and conducting litigation	*	62.2	69.0	71.5

*Represents a legal skill that was not specifically surveyed by the 1975-76 Zemans-Rosenblum study.

27. See *infra* Appendix A.

28. For the purposes of this comparison, the "percentage important" includes the responses of "extremely important" and "important," i.e., the responses of 1 and 2 on a 5-point scale of importance for the Zemans and Rosenblum study and Garth and Martin survey. The "percentage important" in the survey of Minnesota lawyers consisted of the rankings of 5 through 7, the rankings of "important" to "very important."

29. See ZEMANS & ROSENBLUM, *supra* note 1, at 125 tbl.6.1

30. See Garth & Martin, *supra* note 8, at 473 tbl.1

B. PERCEPTION OF PREPAREDNESS FOR LEGAL PRACTICE SKILLS

The 1975-76 Zemans and Rosenblum study asked respondents whether they learned specific lawyering skills and area of knowledge.³¹ The responses were tallied in a "Yes" or "No" format.³² The 1991-92 survey of "young Chicago lawyers" by Garth and Martin also asked their respondent lawyers the same question, whether the seventeen skills or areas of knowledge were "learned essentially through law school,"³³ in the same format. The Minnesota survey asked essentially the same question, asking "how prepared" the lawyer was immediately after law school.³⁴

A comparison of all the 1975-2013 surveys demonstrates the changes in how prepared lawyers perceived themselves to be in the seventeen legal practice skills immediately after law school.

Table 2. Legal Skills: Changes in Perceptions of Preparedness Over Time

<u>Legal Practice Skill</u>	Zemans- Rosenblum 1975-76	Garth- Martin 1986-91	Minnesota Lawyers 1997/99	Minnesota Lawyers 2013
Ability to diagnose and plan for legal problems	*	33.0	54.9	58.3
Ability in legal analysis and legal reasoning	77.0	71.0	85.0	84.3
Drafting legal documents	11.0	18.0	33.2	45.0
Knowledge of the substantive law	79.0	81.0	61.9	57.1
Library legal research	75.0	83.0	83.7	59.1
Computer legal research	*	66.0	76.0	81.7
Fact gathering	16.0	10.0	37.5	49.8
Oral communication	15.0	6.0	69.3	72.7
Written communication	*	27.0	81.1	78.6
Counseling	*	1.0	28.6	39.1
Instilling others' confidence in you	4.0	4.0	37.7	42.0
Negotiation	2.0	9.0	29.9	43.6
Knowledge of procedural law	50.0	53.0	49.0	45.6
Understanding and conducting litigation	*	11.0	25.7	28.7
Organization and management of legal work	*	4.0	20.5	30.7
Ability to obtain and keep clients	*	2.0	13.2	10.0
Sensitivity to professional and ethical concerns	*	74.0	68.2	50.0

*Represents a legal skill that was not specifically surveyed by the 1975-76 Zemans-Rosenblum study.

31. See ZEMANS & ROSENBLUM, *supra* note 1, at 135-50.

32. See *id.* at 222 app. 1.

33. See Garth & Martin, *supra* note 8, at 479 tbl.4.

34. For the purposes of this analysis, the percentage of "Yes's" from the Zemans and Rosenblum and the Garth and Martin surveys were compared to the rankings of 5 through 7 in the study of Minnesota lawyers ("prepared" to "very well prepared.")

C. WHETHER LEGAL SKILLS CAN BE LEARNED IN LAW SCHOOL

Minnesota lawyers were asked whether they believed the identified legal skills could be learned in law school.³⁵ Respondents answered "yes" or "no."

Table 3. Legal Skills: Whether Skills Can Be Learned in School

<u>Legal Practice Skills</u>	Skill can be learned in law school 2013	Skill can be learned in law school 1997/99
Ability to diagnose and plan solutions for legal problems	90.7	90.5
Ability in legal analysis and legal reasoning	99.4	97.7
Written communication	96.4	95.0
Oral communication	88.9	85.6
Instilling others' confidence in you	54.7	35.0
Negotiation	86.8	85.2
Sensitivity to professional and ethical concerns	95.8	95.9
Fact gathering	80.9	78.7
Drafting legal documents	96.2	94.1
Organization and management of legal work	68.7	58.7
Counseling	74.7	70.0
Ability to obtain and keep clients	47.4	32.7
Knowledge of procedural law	96.4	97.5
Knowledge of the substantive law	95.2	95.3
Computer legal research	99.6	99.7
Library legal research	99.3	100
Understanding and conducting litigation	81.9	81.3

35. See *infra* Appendix A Question 7.

D. IMPORTANCE OF LEGAL PRACTICE MANAGEMENT SKILLS

The 1997/99 and 2013 surveys of Minnesota attorneys in practice ten years or less also asked about respondents' perceptions of the importance to their practice of a number of management skills. The management skills were:

1. Fee arrangements, pricing, billing,
2. Human resources, hiring, support staff,
3. Capitalization, investment,
4. Project and time management, efficiency,
5. Planning, resource allocation, budgeting,
6. Market, client development,
7. Technology, computers, communications,
8. Governance, decision-making, long-range strategic planning, and
9. Interpersonal communications, staff relations.³⁶

Table 4. Management Skills: Importance

<u>Management Skills</u>	Importance 2013	Importance 1997/99
Project and time management, efficiency	91.0	91.9
Interpersonal communications, staff relations	81.5	91.6
Technology, computers, communications	80.4	81.9
Marketing, client development	67.9	69.7
Governance, decision-making, long range strategic planning	62.7	61.9
Planning, resource allocation, budgeting	67.5	61.2
Fee arrangements, pricing, billing	64.0	59.2
Human resources, hiring, support staff	49.0	57.8
Capitalization, investment	32.7	29.9

36. See generally THE LAWYER'S HANDBOOK: HOW TO EFFECTIVELY, EFFICIENTLY AND PROFITABLY MANAGE YOUR LAW FIRM, *supra* note 19, (providing additional information on the relevant management skills).

E. PERCEPTIONS OF PREPAREDNESS IN MANAGEMENT SKILLS

Respondents were asked how well prepared they perceived themselves to be upon graduation from law school to practice management skills.

Table 5: Management Skills: Perceived Preparedness

<u>Management Skills</u>	Preparedness 2013	Preparedness 1997/99
Project and time management, efficiency	40.3	31.9
Interpersonal communications, staff relations	39.6	42.1
Technology, computers, communications	53.4	50.3
Marketing, client development	10.2	7.9
Governance, decision-making, long range strategic planning	13.4	13.3
Planning, resource allocation, budgeting	13.7	12.8
Fee arrangements, pricing, billing	9.0	6.3
Human resources, hiring, support staff	8.9	10.2
Capitalization, investment	4.0	3.1

F. WHETHER MANAGEMENT SKILLS CAN BE LEARNED IN LAW SCHOOL

Table 6: Management Skills: Whether Skills Can Be Learned in Schools

<u>Management Skills</u>	The skill can be learned in law school 2013	The skill can be learned in law school 1997/99
Project and time management, efficiency	81.8	77.3
Interpersonal communications, staff relations	58.6	51.9
Technology, computers, communications	88.2	94.0
Marketing, client development	72.1	67.7
Governance, decision-making, long range strategic planning	62.2	57.5
Planning, resource allocation, budgeting	70.4	64.6
Fee arrangements, pricing, billing	76.0	73.0
Human resources, hiring, support staff	54.7	49.0
Capitalization, investment	56.7	53.7

III. SOURCES OF LEGAL PRACTICE SKILLS TRAINING

In the 1997/98 and 2013 Minnesota Studies, attorneys were asked to select up to three sources that most led to their development in each of the seventeen legal skills.³⁷ The goal of these questions was to determine the extent to which law schools provided training in these skill areas, and to what extent lawyers got their training from other sources. The fifteen sources to select from were:

1. General law school curriculum,
2. Moot court/other competitions,
3. Law related work experience in summers or during academic year,
4. Your own experience,
5. Continuing legal education courses,
6. Training by another school,
7. Legal practice simulations in law school,
8. Law review experience,
9. Client contacts through law school clinics,
10. Observation of other lawyers,
11. Advice from other lawyers,
12. Observation of nonlawyers,
13. Advice from nonlawyers,
14. Training by product or service vendors, and
15. Other.

IV. LEGAL SKILLS: IDENTIFIED SOURCES OF LEGAL SKILLS OF MINNESOTA LAWYERS

[See Appendix for complete tables]

Table 7. Top 3 Sources of Legal Practice Skills from Minnesota Studies

7A. Ability to Diagnose and Plan for Legal Problems

Top 3			
2013	%	1997/99	%
1. Law Related Work Experience	63.7	1. Law Related Work Experience	53.5
2. Own Experience	46.0	2. Own Experience	52.2
3. Law School Curriculum	44.3	3. Law School Curriculum	51.2
Law School Training			
2013		1997/99	
Law School Curriculum	44.3	Law School Curriculum	51.2
Legal Practice Simulations	26.6	Legal Practice Simulations	20.2
Law School Clinics	16.9	Law School Clinics	8.5
Law Review	1.0	Law Review	1.0
Moot Court/Competitions	7.7	Moot Court/Competitions	9.8

37. See *infra* Appendix A.

7B. Ability in Legal Analysis and Legal Reasoning

Top 3			
2013		1997/99	
1. Law school curriculum	88.3	1. Law school curriculum	88.2
2. Law related work experience	57.5	2. Law related work experience	54.0
3. Own experience	30.2	3. Own experience	38.3
Law School Training			
2013		1997/99	
Law School Curriculum	88.3	Law School Curriculum	88.2
Legal Practice Simulations	20.4	Legal Practice Simulations	14.5
Law School Clinics	8.2	Law School Clinics	3.8
Law Review	9.3	Law Review	9.4
Moot Court/Competitions	16.5	Moot Court/Competitions	17.6

7C. Drafting Legal Documents

Top 3			
2013		1997/99	
1. Law related work experience	60.3	1. Law related work experience	59.8
2. Law school curriculum	43.5	2. Own experience	41.0
3. Own experience	36.7	3. Law school curriculum	39.4
Law School Training			
2013		1997/99	
Law School Curriculum	43.5	Law School Curriculum	39.4
Legal Practice Simulations	24.6	Legal Practice Simulations	18.5
Law School Clinics	8.7	Law School Clinics	5.4
Law Review	3.9	Law Review	4.0
Moot Court/Competitions	12.0	Moot Court/Competitions	9.5

7D. Knowledge of the Substantive Law

Top 3			
2013		1997/99	
1. Law school curriculum	84.7	1. Law school curriculum	91.8
2. Law related work experience	52.4	2. Law related work experience	51.5
3. Own experience	33.2	3. Own experience	35.1
Law School Training			
2013		1997/99	
Law School Curriculum	84.7	Law School Curriculum	91.8
Legal Practice Simulations	9.2	Legal Practice Simulations	5.3
Law School Clinics	5.9	Law School Clinics	2.9
Law Review	4.0	Law Review	4.6
Moot Court/Competitions	5.2	Moot Court/Competitions	7.3

7E. Library Legal Research

Top 3			
2013		1997/99	
1. Law School Curriculum	93.4	1. Law School Curriculum	93.7
2. Law Related Work Experience	22.2	2. Law Related Work Experience	52.1
3. Own Experience	20.2	3. Own Experience	34.4
Law School Training			
2013		1997/99	
Law school curriculum	93.4	Law school curriculum	93.7
Legal practice simulations	13.8	Legal practice simulations	8.5
Law school clinics	0.5	Law school clinics	1.2
Law review	17.9	Law review	16.5
Moot court/ competitions	9.0	Moot court/ competitions	15.4

7F. Computer Legal Research

Top 3			
2013		1997/99	
1. Law School Curriculum	84.6	1. Law School Curriculum	84.4
2. Law Related Work	45.0	2. Law related work	43.6
3. Own Experience	36.3	3. Own Experience	40.4
Law School Training			
2013		1997/99	
Law school curriculum	84.6	Law school curriculum	84.4
Legal practice simulations	11.4	Legal practice simulations	6.6
Law school clinics	1.3	Law school clinics	0.8
Law review	17.4	Law review	15.3
Moot court/ competitions	11.1	Moot court/ competitions	10.8

7G. Fact Gathering

Top 3			
2013		1997/99	
1. Own Experience	55.7	Own Experience	63.0
2. Law related work experience	53.2	Law related work experience	44.6
3. Observe other lawyers	36.3	Observe other lawyers	34.7
Law School Training			
2013		1997/99	
Law school curriculum	28.2	Law school curriculum	25.9
Legal practice simulations	15.8	Legal practice simulations	12.9
Law school clinics	15.4	Law school clinics	8.8
Law review	0.7	Law review	2.0
Moot court/ competitions	6.6	Moot court/ competitions	5.3

7H. Oral Communication

Top 3			
2013		1997/99	
1. Own Experience	58.8	1. Own Experience	69.7
2. Observe other lawyers	39.3	2. Law school curriculum	36.9
3. Law School Curriculum	34.2	3. Observe other lawyers	32.7
Law School Training			
2013		1997/99	
Law school curriculum	34.2	Law school curriculum	36.9
Legal practice simulations	25.3	Legal practice simulations	17.3
Law school clinics	12.6	Law school clinics	4.9
Law review	0.8	Law review	1.2
Moot court/ competitions	27.8	Moot court/ competitions	25.6

7I. Written Communication

Top 3			
2013		1997/99	
1. Law school curriculum	66.0	1. Law school curriculum	65.8
2. Law related work experience	49.4	2. Own Experience	56.9
3. Own Experience	44.5	3. Law related work experience	42.9
Law School Training			
2013		1997/99	
Law school curriculum	66.0	Law school curriculum	65.8
Legal practice simulations	19.9	Legal practice simulations	9.8
Law school clinics	7.1	Law school clinics	3.3
Law review	14.4	Law review	14.6
Moot court/ competitions	16.6	Moot court/ competitions	17.2

7J. Counseling

Top 3			
2013		1997/99	
1. Own Experience	52.8	1. Own Experience	63.1
2. Observe Other Lawyers	49.6	2. Observe other lawyers	46.6
3. Law related work experience	36.0	3. Advice from other lawyers	31.6
Law School Training			
2013		1997/99	
Law school curriculum	19.7	Law school curriculum	17.2
Legal practice simulations	16.6	Legal practice simulations	13.2
Law school clinics	19.5	Law school clinics	10.0
Law review	.1	Law review	0.8
Moot court/ competitions	2.9	Moot court/ competitions	3.9

7K. Instilling Others' Confidence in You

Top 3			
2013		1997/99	
1. Own Experience	69.7	1. Own experience	80.4
2. Observe other Lawyers	43.4	2. Observe other lawyers	40.1
3. Advice from other Lawyers	33.9	3. Advice from other lawyers	27.4
Law School Training			
2013		1997/99	
Law school curriculum	6.8	Law school curriculum	7.8
Legal practice simulations	7.5	Legal practice simulations	4.3
Law school clinics	13.4	Law school clinics	6.1
Law review	1.4	Law review	2.0
Moot court/ competitions	4.5	Moot court/ competitions	2.7

7L. Negotiation

Top 3			
2013		1997/99	
1. Own experience	50.5	1. Own experience	65.5
2. Observe other lawyers	45.6	2. Observe other lawyers	47.6
3. Law school curriculum	34.4	3. Advice from other lawyers	28.5
Law School Training			
2013		1997/99	
Law school curriculum	34.4	Law school curriculum	26.3
Legal practice simulations	24.0	Legal practice simulations	15.7
Law school clinics	6.8	Law school clinics	4.9
Law review	0.0	Law review	0.8
Moot court/ competitions	6.1	Moot court/ competitions	4.5

7M. Knowledge of Procedural Law

Top 3			
2013		1997/99	
1. Law school curriculum	78.1	1. Law school curriculum	82.5
2. Law related work experience	50.5	2. Law related work experience	44.9
3. Own experience	32.6	3. Own experience	36.6
Law School Training			
2013		1997/99	
Law school curriculum	78.1	Law school curriculum	82.5
Legal practice simulations	14.1	Legal practice simulations	8.6
Law school clinics	6.9	Law school clinics	3.8
Law review	0.5	Law review	1.2
Moot court/ competitions	5.8	Moot court/ competitions	5.5

7N. Understanding and Conducting Litigation

Top 3			
2013		1997/99	
1. Law related work experience	47.1	1. Law related work experience	44.2
2. Observe other lawyers	44.7	2. Observe other lawyers	43.7
3. Law school curriculum	36.1	3. Law school curriculum	39.8
Law School Training			
2013		1997/99	
Law school curriculum	36.1	Law school curriculum	39.8
Legal practice simulations	23.2	Legal practice simulations	18.6
Law school clinics	7.6	Law school clinics	4.9
Law review	0.0	Law review	0.5
Moot court/ competitions	7.6	Moot court/ competitions	6.1

7O. Organization and Management of Legal Work

Top 3			
2013		1997/99	
1. Own experience	60.2	1. Own experience	63.1
2. Law related work experience	46.0	2. Observe other lawyers	46.1
3. Observe other lawyers	45.5	3. Advice from other lawyers	41.2
Law School Training			
2013		1997/99	
Law school curriculum	12.1	Law school curriculum	11.1
Legal practice simulations	9.3	Legal practice simulations	7.4
Law school clinics	8.5	Law school clinics	5.3
Law review	1.2	Law review	0.7
Moot court/ competitions	1.4	Moot court/ competitions	2.0

7P. Ability to Obtain and Keep Clients

Top 3			
2013		1997/99	
1. Observe other lawyers	55.7	1. Own experience	60.3
2. Advice from other lawyers	55.1	2. Observe other lawyers	55.7
3. Own experience	53.9	3. Advice from other lawyers	50.9
Law School Training			
2013		1997/99	
Law school curriculum	3.9	Law school curriculum	6.1
Legal practice simulations	3.2	Legal practice simulations	3.2
Law school clinics	5.8	Law school clinics	3.9
Law review	0.0	Law review	0.4
Moot court/ competitions	0.0	Moot court/ competitions	0.0

7Q. Sensitivity to Professional Ethical Concerns

Top 3			
2013		1997/99	
1. Law school curriculum	86.8	1. Law school curriculum	84.5
2. Advice from other lawyers	34.2	2. Own experience	39.0
3. Own experience	32.2	3. Advice from other lawyers	31.0
Law School Training			
2013		1997/99	
Law school curriculum	86.8	Law school curriculum	84.5
Legal practice simulations	6.1	Legal practice simulations	4.1
Law school clinics	4.9	Law school clinics	1.1
Law review	0.5	Law review	0.6
Moot court/ competitions	0.8	Moot court/ competitions	1.4

V. LAW PRACTICE MANAGEMENT SKILLS

The 1997/99 and 2013 Minnesota study asked the respondents to identify up to three sources where they acquired their Law Practice Management skills.³⁸

Table 8. Management Skills: Sources of Minnesota Lawyers

8A. Fee Arrangements, Pricing, Billing

Top 3			
2013		1997/99	
1. Advice from other lawyers	55.0	1. Advice from other lawyers	61.5
2. Own experience	51.4	2. Own experience	55.1
3. Observe other lawyers	49.5	3. Observe other lawyers	52.1
Law School Training			
2013		1997/99	
Law school curriculum	7.9	Law school curriculum	4.3
Legal practice simulations	5.3	Legal practice simulations	3.9
Law school clinics	2.0	Law school clinics	1.2
Law review	0.0	Law review	0.4
Moot court/ competitions	0.3	Moot court/ competitions	0.3

38. See *infra* Appendix A Questions 28-36.

8B. Human Resources, Hiring, Support Staff

Top 3			
2013		1997/99	
1. Own experience	64.3	1. Own experience	74.7
2. Observe other lawyers	41.9	2. Observe other lawyers	42.4
3. Advice from other lawyers	40.0	3. Advice from other lawyers	37.9
Law School Training			
2013		1997/99	
Law school curriculum	1.8	Law school curriculum	0.6
Legal practice simulations	0.7	Legal practice simulations	0.0
Law school clinics	0.9	Law school clinics	1.1
Law review	0.0	Law review	0.0
Moot court/ competitions	0.1	Moot court/ competitions	0.3

8C. Capitalization, Investment

Top 3			
2013		1997/99	
1. Own experience	60.0	1. Own experience	64.7
2. Advice from other lawyers	43.7	2. Advice from other lawyers	41.9
3. Observe other lawyers	36.6	3. Observe other lawyers	33.2
Law School Training			
2013		1997/99	
Law school curriculum	2.3	Law school curriculum	1.2
Legal practice simulations	1.0	Legal practice simulations	0.9
Law school clinics	.3	Law school clinics	0.7
Law review	0.0	Law review	0.0
Moot court/ competitions	.2	Moot court/ competitions	0.0

8D. Project and Time Management, Efficiency

Top 3			
2013		1997/99	
1. Own experience	69.5	1. Own experience	78.5
2. Law related work experience	36.2	2. Observe other lawyers	37.4
3. Advice from other lawyers	34.5	3. Advice from other lawyers	36.7
Law School Training			
2013		1997/99	
Law school curriculum	23.0	Law school curriculum	16.9
Legal practice simulations	9.5	Legal practice simulations	4.5
Law school clinics	5.0	Law school clinics	2.6
Law review	4.6	Law review	3.1
Moot court/ competitions	3.1	Moot court/ competitions	2.4

8E. Planning, Resource Allocation, Budgeting

Top 3			
2013		1997/99	
1. Own experience	68.3	1. Own experience	72.7
2. Advice from other lawyers	41.3	2. Advice from other lawyers	42.5
3. Observe other lawyers	39.0	3. Observe other lawyers	37.3
Law School Training			
2013		1997/99	
Law school curriculum	7.1	Law school curriculum	6.25
Legal practice simulations	3.5	Legal practice simulations	2.1
Law school clinics	1.7	Law school clinics	1.7
Law review	1.2	Law review	1.4
Moot court/ competitions	1.3	Moot court/ competitions	1.1

8F. Marketing, Client Development

Top 3			
2013		1997/99	
1. Own experience	58.8	1. Own experience	62.0
2. Advice from other lawyers	54.6	2. Advice from other lawyers	58.8
3. Observe other lawyers	53.1	3. Observe other lawyers	57.6
Law School Training			
2013		1997/99	
Law school curriculum	3.9	Law school curriculum	2.0
Legal practice simulations	1.0	Legal practice simulations	0.8
Law school clinics	1.0	Law school clinics	1.0
Law review	0.1	Law review	0.4
Moot court/ competitions	0.0	Moot court/ competitions	0.4

8G. Technology, Computers, Communications

Top 3			
2013		1997/99	
1. Own experience	74.1	1. Own experience	69.3
2. Law school curriculum	41.0	2. Law school curriculum	49.8
3. Law related work experience	30.2	3. Law related work experience	28.1
Law School Training			
2013		1997/99	
Law school curriculum	41.0	Law school curriculum	49.8
Legal practice simulations	6.0	Legal practice simulations	3.8
Law school clinics	1.5	Law school clinics	2.3
Law review	3.3	Law review	4.5
Moot court/ competitions	1.7	Moot court/ competitions	2.7

8H. Governance, Decision-Making, Long Range Strategic Planning

Top 3			
2013		1997/99	
1. Own experience	65.7	1. Own experience	69.3
2. Advice from other lawyers	44.6	2. Advice from other lawyers	43.1
3. Observe other lawyers	40.1	3. Observe other lawyers	40.7
Law School Training			
2013		1997/99	
Law school curriculum	7.2	Law school curriculum	3.9
Legal practice simulations	2.2	Legal practice simulations	0.8
Law school clinics	0.9	Law school clinics	0.9
Law review	0.3	Law review	1.4
Moot court/ competitions	0.6	Moot court/ competitions	0.4

8I. Interpersonal Communications, Staff Relations

Top 3			
2013		1997/99	
1. Own experience	81.7	1. Own experience	86.8
2. Observe other lawyers	40.8	2. Observe other lawyers	39.2
3. Advice from other lawyers	27.4	3. Advice from other lawyers	27.6
Law School Training			
2013		1997/99	
Law school curriculum	5.0	Law school curriculum	4.3
Legal practice simulations	2.4	Legal practice simulations	1.5
Law school clinics	3.9	Law school clinics	4
Law review	1.2	Law review	2.8
Moot court/ competitions	1.5	Moot court/ competitions	1.5

VI. APPENDIX A

Survey Instrument

A. Letter to Minnesota Lawyers:

Dear Colleague,

William Mitchell College of Law is conducting a survey to help the school identify additions and improvements to its curriculum that best meet the needs of its students and the practicing bar. This survey, a follow-up to the original 1999/2000 study, focuses on attorneys listed with the Minnesota State Bar Association that have been in practice since 2000. We would appreciate your participation in this 10-minute survey. In order that the results truly represent the thinking and attitudes of this segment of Minnesota lawyers, it is important that each questionnaire be completed.

Here is a link to the

survey: http://www.surveymonkey.com/s.aspx?sm=XEqJM1nFmBPCEkdIBkRfsQ_3d_3d

***Please note:** This link is uniquely tied to this survey and your email address. Please do not forward this message.*

We can assure you complete confidentiality. The questionnaire has an identification number for statistical purposes only. Your name will never be placed on the questionnaire or identified with any results.

You may receive a summary of our results by emailing me with a request.

We would be glad to answer any questions you might have. Please contact me at john.sonsteng@wmitchell.edu or at (651) 290-6324. You may also contact my assistant, Jennifer Miller, at jennifer.miller@wmitchell.edu or at (651) 290-6314.

Thank you for your participation.

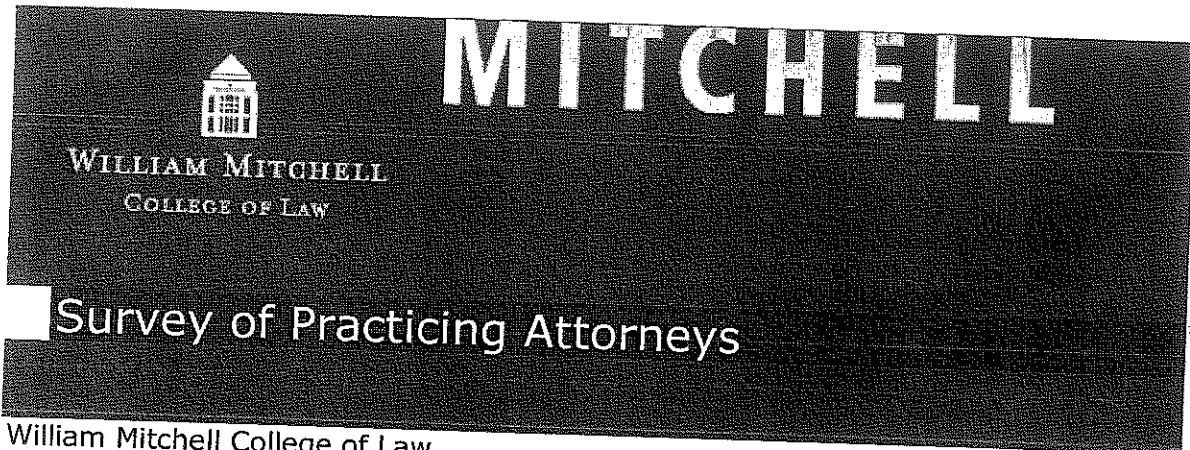
Sincerely,

Professor John Sonsteng
Project Director

B. Link to Survey:

http://www.surveymonkey.com/s.aspx?sm=XEqJM1nFmBPCEkdIBkRfsQ_3d_3d

C. Actual Survey:



William Mitchell College of Law
SURVEY OF PRACTICING ATTORNEYS IN MINNESOTA:
Attorneys in Practice Ten Years or Less

*

1. From what law school did you graduate?

2. What year were you admitted to the bar?

3. What is your gender?

- ☐ Male
- ☐ Female

4. I participated in the following law school experiences (Check all that apply):

- ☐ Client contacts through law school clinics
- ☐ Law related work experience in summers or during academic year
- ☐ Legal practice simulations in law school
- ☐ Law review experience
- ☐ Moot court / other competitions

Other (please specify) _____

5. The following is a partial inventory of legal skills. On a scale of 1 to 7, with "1" being "not important" and "7" being "very important," how would you rate the importance of each of the listed legal skills? Choose one response for each item.

1 Not Important 2 3 4 5 6 7 Very Important

	1 Not Prepared	2	3	4	5	6	7 Very Prepared
Written communication	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>
Counseling	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>
Instilling other's confidence in you	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>
Negotiation	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>
Knowledge of procedural law	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>
Understanding and conducting litigation	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>
Organization and management of legal work	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>
Obtaining and keeping clients	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>
Sensitivity to professional ethical concerns	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>

**7. Do you believe the following legal skills can be learned in law school?
Choose one response for each item.**

	Yes	No
Diagnosing and planning solutions for legal problems	<input checked="" type="radio"/>	<input checked="" type="radio"/>
Legal analysis and legal reasoning	<input checked="" type="radio"/>	<input checked="" type="radio"/>
Drafting legal documents	<input checked="" type="radio"/>	<input checked="" type="radio"/>
Knowledge of the substantive law	<input checked="" type="radio"/>	<input checked="" type="radio"/>
Library legal research	<input checked="" type="radio"/>	<input checked="" type="radio"/>
Computer legal research	<input checked="" type="radio"/>	<input checked="" type="radio"/>
Fact gathering	<input checked="" type="radio"/>	<input checked="" type="radio"/>
Oral communication	<input checked="" type="radio"/>	<input checked="" type="radio"/>
Written communication	<input checked="" type="radio"/>	<input checked="" type="radio"/>
Counseling	<input checked="" type="radio"/>	<input checked="" type="radio"/>
Instilling other's confidence in you	<input checked="" type="radio"/>	<input checked="" type="radio"/>
Negotiation	<input checked="" type="radio"/>	<input checked="" type="radio"/>
Knowledge of procedural law	<input checked="" type="radio"/>	<input checked="" type="radio"/>
Understanding and conducting litigation	<input checked="" type="radio"/>	<input checked="" type="radio"/>
Organization and management of legal work	<input checked="" type="radio"/>	<input checked="" type="radio"/>
Obtaining and keeping clients	<input checked="" type="radio"/>	<input checked="" type="radio"/>
Sensitivity to professional ethical concerns	<input checked="" type="radio"/>	<input checked="" type="radio"/>

For each of the following legal skills, please choose up to **Three Sources** where you acquired the skill from the list. Please enter the information in "other" if a source is not listed.

8. Diagnosing and planning solutions for legal problems

- | | |
|-----------------------------------------------------------------------------------------|---------------------------------------------------------------------|
| <input type="checkbox"/> General law school curriculum | <input type="checkbox"/> Law review experience |
| <input type="checkbox"/> Moot court/other competitions | <input type="checkbox"/> Client contacts through law school clinics |
| <input type="checkbox"/> Law related work experience in summers or during academic year | <input type="checkbox"/> Observation of other lawyers |
| <input type="checkbox"/> Your own experience | <input type="checkbox"/> Advice from other lawyers |
| <input type="checkbox"/> Continuing legal education courses | <input type="checkbox"/> Observation of nonlawyers |
| <input type="checkbox"/> Training by another school | <input type="checkbox"/> Advice from nonlawyers |
| <input type="checkbox"/> Legal practice simulations in law school | <input type="checkbox"/> Training by product or service vendors |
| Other (please specify) | |

9. Legal analysis and legal reasoning

- | | |
|-----------------------------------------------------------------------------------------|---------------------------------------------------------------------|
| <input type="checkbox"/> General law school curriculum | <input type="checkbox"/> Law review experience |
| <input type="checkbox"/> Moot court/other competitions | <input type="checkbox"/> Client contacts through law school clinics |
| <input type="checkbox"/> Law related work experience in summers or during academic year | <input type="checkbox"/> Observation of other lawyers |
| <input type="checkbox"/> Your own experience | <input type="checkbox"/> Advice from other lawyers |
| <input type="checkbox"/> Continuing legal education courses | <input type="checkbox"/> Observation of nonlawyers |
| <input type="checkbox"/> Training by another school | <input type="checkbox"/> Advice from nonlawyers |
| <input type="checkbox"/> Legal practice simulations in law school | <input type="checkbox"/> Training by product or service vendors |
| Other (please specify) | |

10. Drafting legal documents

- | | |
|-----------------------------------------------------------------------------------------|---------------------------------------------------------------------|
| <input type="checkbox"/> General law school curriculum | <input type="checkbox"/> Law review experience |
| <input type="checkbox"/> Moot court/other competitions | <input type="checkbox"/> Client contacts through law school clinics |
| <input type="checkbox"/> Law related work experience in summers or during academic year | <input type="checkbox"/> Observation of other lawyers |
| <input type="checkbox"/> Your own experience | <input type="checkbox"/> Advice from other lawyers |
| <input type="checkbox"/> Continuing legal education courses | <input type="checkbox"/> Observation of nonlawyers |
| <input type="checkbox"/> Training by another school | <input type="checkbox"/> Advice from nonlawyers |
| <input type="checkbox"/> Legal practice simulations in law school | <input type="checkbox"/> Training by product or service vendors |
| Other (please specify) | |

11. Knowledge of the substantive law

- ☐ General law school curriculum
- ☐ Moot court/other competitions
- ☐ Law related work experience in summers or during academic year
- ☐ Your own experience
- ☐ Continuing legal education courses
- ☐ Training by another school
- ☐ Legal practice simulations in law school

Other (please specify)

- ☐ Law review experience
- ☐ Client contacts through law school clinics
- ☐ Observation of other lawyers
- ☐ Advice from other lawyers
- ☐ Observation of nonlawyers
- ☐ Advice from nonlawyers
- ☐ Training by product or service vendors

12. Library legal research

- ☐ General law school curriculum
- ☐ Moot court/other competitions
- ☐ Law related work experience in summers or during academic year
- ☐ Your own experience
- ☐ Continuing legal education courses
- ☐ Training by another school
- ☐ Legal practice simulations in law school

Other (please specify)

- ☐ Law review experience
- ☐ Client contacts through law school clinics
- ☐ Observation of other lawyers
- ☐ Advice from other lawyers
- ☐ Observation of nonlawyers
- ☐ Advice from nonlawyers
- ☐ Training by product or service vendors

13. Online legal research

- ☐ General law school curriculum
- ☐ Moot court/other competitions
- ☐ Law related work experience in summers or during academic year
- ☐ Your own experience
- ☐ Continuing legal education courses
- ☐ Training by another school
- ☐ Legal practice simulations in law school

Other (please specify)

- ☐ Law review experience
- ☐ Client contacts through law school clinics
- ☐ Observation of other lawyers
- ☐ Advice from other lawyers
- ☐ Observation of nonlawyers
- ☐ Advice from nonlawyers
- ☐ Training by product or service vendors

14. Fact gathering

- ☐ General law school curriculum
- ☐ Moot court/other competitions
- ☐ Law related work experience in summers or during academic year
- ☐ Your own experience
- ☐ Continuing legal education courses
- ☐ Training by another school

- ☐ Law review experience
- ☐ Client contacts through law school clinics
- ☐ Observation of other lawyers
- ☐ Advice from other lawyers
- ☐ Observation of nonlawyers
- ☐ Advice from nonlawyers
- ☐ Training by product or service vendors

- ☐ Legal practice simulations in law school
Other (please specify)
-

15. Oral communication

- | | |
|-----------------------------------------------------------------------------------------|---------------------------------------------------------------------|
| <input type="checkbox"/> General law school curriculum | <input type="checkbox"/> Law review experience |
| <input type="checkbox"/> Moot court/other competitions | <input type="checkbox"/> Client contacts through law school clinics |
| <input type="checkbox"/> Law related work experience in summers or during academic year | <input type="checkbox"/> Observation of other lawyers |
| <input type="checkbox"/> Your own experience | <input type="checkbox"/> Advice from other lawyers |
| <input type="checkbox"/> Continuing legal education courses | <input type="checkbox"/> Observation of nonlawyers |
| <input type="checkbox"/> Training by another school | <input type="checkbox"/> Advice from nonlawyers |
| <input type="checkbox"/> Legal practice simulations in law school | <input type="checkbox"/> Training by product or service vendors |
- Other (please specify)
-

16. Written communication

- | | |
|-----------------------------------------------------------------------------------------|---------------------------------------------------------------------|
| <input type="checkbox"/> General law school curriculum | <input type="checkbox"/> Law review experience |
| <input type="checkbox"/> Moot court/other competitions | <input type="checkbox"/> Client contacts through law school clinics |
| <input type="checkbox"/> Law related work experience in summers or during academic year | <input type="checkbox"/> Observation of other lawyers |
| <input type="checkbox"/> Your own experience | <input type="checkbox"/> Advice from other lawyers |
| <input type="checkbox"/> Continuing legal education courses | <input type="checkbox"/> Observation of nonlawyers |
| <input type="checkbox"/> Training by another school | <input type="checkbox"/> Advice from nonlawyers |
| <input type="checkbox"/> Legal practice simulations in law school | <input type="checkbox"/> Training by product or service vendors |
- Other (please specify)
-

17. Counseling

- | | |
|-----------------------------------------------------------------------------------------|---------------------------------------------------------------------|
| <input type="checkbox"/> General law school curriculum | <input type="checkbox"/> Law review experience |
| <input type="checkbox"/> Moot court/other competitions | <input type="checkbox"/> Client contacts through law school clinics |
| <input type="checkbox"/> Law related work experience in summers or during academic year | <input type="checkbox"/> Observation of other lawyers |
| <input type="checkbox"/> Your own experience | <input type="checkbox"/> Advice from other lawyers |
| <input type="checkbox"/> Continuing legal education courses | <input type="checkbox"/> Observation of nonlawyers |
| <input type="checkbox"/> Training by another school | <input type="checkbox"/> Advice from nonlawyers |
| <input type="checkbox"/> Legal practice simulations in law school | <input type="checkbox"/> Training by product or service vendors |
- Other (please specify)
-

18. Instilling others' confidence in you

- | | |
|--------------------------------------------------------|---------------------------------------------------------------------|
| <input type="checkbox"/> General law school curriculum | <input type="checkbox"/> Law review experience |
| <input type="checkbox"/> Moot court/other competitions | <input type="checkbox"/> Client contacts through law school clinics |

Observe non-lawyers	2.0	2.8
Training at other school	0.3	0.7
Training by vendors	1.0	1.1
Other	6.1	1.6

B. Human Resources, Hiring, Support Staff

	2013	1997/99
Source of Skill - Law School Training:		
Law school curriculum	1.8	0.6
Legal practice simulations	0.7	0.0
Law school clinics	0.9	1.1
Law review	0.0	0.0
Moot court/ competitions	0.1	0.3
Source of Skill - Non-Law School Training:		
Own experience	64.3	74.7
Law related work experience	23.9	20.3
Advice from other lawyers	40.0	37.9
Observe other lawyers	41.9	42.4
CLE courses	3.0	2.4
Advice from non-lawyers	11.1	15.3
Observe non-lawyers	11.8	9.3
Training at other school	1.5	4.55
Training by vendors	0.6	0.8
Other	5.3	2.0

C. Capitalization, Investment, Budgeting

	2013	1997/99
Source of Skill - Law School Training:		
Law school curriculum	2.3	1.2
Legal practice simulations	1.0	0.9
Law school clinics	0.3	0.7
Law review	0.0	0.0
Moot court/ competitions	0.2	0.0
Source of Skill - Non-Law School Training:		
Own experience	60.0	64.7
Law related work experience	15.5	12.0
Advice from other lawyers	43.7	41.9
Observe other lawyers	36.6	33.2
CLE courses	4.4	2.5
Advice from non-lawyers	15.2	17.1
Observe non-lawyers	7.4	6.2
Training at other school	1.8	4.7

Training by vendors	.8	1.8
Other	9.0	1.3

D. Project and Time Management, Efficiency

	2013	1997/99
<u>Source of Skill - Law School Training:</u>		
Law school curriculum	23.0	16.9
Legal practice simulations	9.5	4.5
Law school clinics	5.0	2.6
Law review	4.6	3.1
Moot court/ competitions	3.1	2.4
<u>Source of Skill - Non-Law School Training:</u>		
Own experience	69.5	78.5
Law related work experience	36.2	30.5
Advice from other lawyers	34.5	36.7
Observe other lawyers	33.2	37.4
CLE courses	4.8	4.7
Advice from non-lawyers	7.1	4.2
Observe non-lawyers	5.9	4.2
Training at other school	2.1	4
Training by vendors	1.5	1.2
Other	2.8	1

E. Planning, Resource Allocation, Budgeting

	2013	1997/99
<u>Source of Skill - Law School Training:</u>		
Law school curriculum	7.1	6.3
Legal practice simulations	3.5	2.1
Law school clinics	1.7	1.7
Law review	1.2	1.4
Moot court/ competitions	1.3	1.1
<u>Source of Skill - Non-Law School Training:</u>		
Own experience	68.3	72.7
Law related work experience	23.3	18.8
Advice from other lawyers	41.3	42.5
Observe other lawyers	39.0	37.3
CLE courses	3.2	2.8
Advice from non-lawyers	9.9	9.6
Observe non-lawyers	5.4	7.3
Training at other school	1.0	3.8

Training by vendors	.6	1.9
Other	3.5	1.5

F. Marketing, Client Development

	2013	1997/99
<u>Source of Skill - Law School Training:</u>		
Law school curriculum	3.9	2.0
Legal practice simulations	1.0	0.8
Law school clinics	1.0	1.0
Law review	0.1	0.4
Moot court/ competitions	0.0	0.4
<u>Source of Skill - Non-Law School Training:</u>		
Own experience	58.8	62.0
Law related work experience	21.0	15.9
Advice from other lawyers	54.6	58.8
Observe other lawyers	53.1	57.6
CLE courses	8.8	5.1
Advice from non-lawyers	11.9	11.9
Observe non-lawyers	7.5	7.6
Training at other school	1.5	3.7
Training by vendors	1.6	1.1
Other	5.3	1.1

G. Technology, Computers, Communications

	2013	1997/99
<u>Source of Skill - Law School Training:</u>		
Law school curriculum	41.0	49.8
Legal practice simulations	6.0	3.8
Law school clinics	1.5	2.3
Law review	3.3	4.5
Moot court/ competitions	1.7	2.7
<u>Source of Skill - Non-Law School Training:</u>		
Own experience	74.1	69.3
Law related work experience	30.2	28.1
Advice from other lawyers	16.7	11.4
Observe other lawyers	11.3	12.1
CLE courses	6.5	7.8
Advice from non-lawyers	11.9	12
Observe non-lawyers	4.3	4.2
Training at other school	3.3	6.8
Training by vendors	15.6	24.5
Other	2.1	1.8

H. Governance, Decision-Making, Long-Range Strategic Planning

	2013	1997/99
Source of Skill - Law School Training:		
Law school curriculum	7.2	3.9
Legal practice simulations	2.2	0.8
Law school clinics	0.9	0.9
Law review	0.3	1.4
Moot court/ competitions	0.6	0.4
Source of Skill - Non-Law School Training:		
Own experience	65.7	69.3
Law related work experience	19.1	14.2
Advice from other lawyers	44.6	43.1
Observe other lawyers	40.1	40.7
CLE courses	4.0	1.8
Advice from non-lawyers	12.5	11.9
Observe non-lawyers	8.2	8.3
Training at other school	1.8	4.5
Training by vendors	0.7	1.2
Other	5.7	2.2

I. Interpersonal Communications, Staff Relations

	2013	1997/99
Source of Skill - Law School Training:		
Law school curriculum	5.0	4.3
Legal practice simulations	2.4	1.5
Law school clinics	3.9	4.0
Law review	1.2	2.8
Moot court/competitions	1.5	1.5
Source of Skill - Non-Law School Training:		
Own experience	81.7	86.8
Law related work experience	26.6	22.0
Advice from other lawyers	27.4	27.6
Observe other lawyers	40.8	39.2
CLE courses	1.9	2.0
Advice from non-lawyers	10.1	11.8
Observe non-lawyers	14.5	11.7
Training at other school	3.1	5.5
Training by vendors	0.5	0.4
Other	2.7	1.7

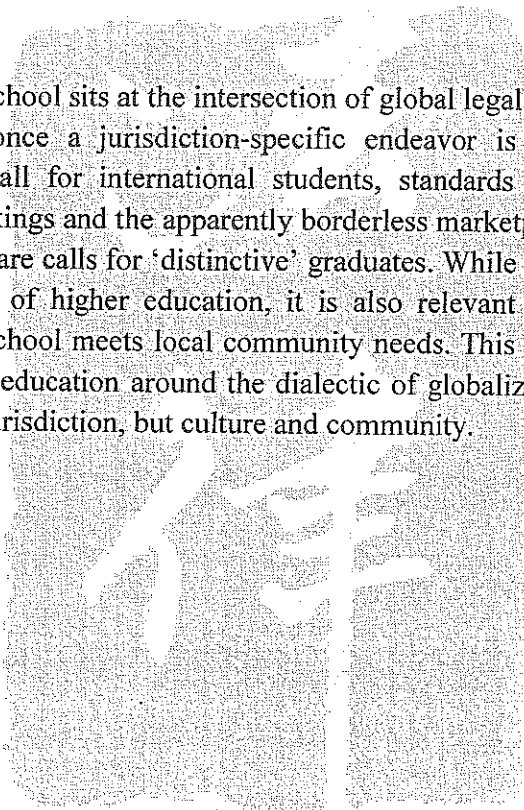
The Chinese University of Hong Kong 50th Anniversary
Faculty of Law's Law Deans' Summit
Legal Education in the Global Context: Opportunities and Challenges
26 October 2013

GETTING BACK TO OUR ROOTS: GLOBAL LAW SCHOOLS IN LOCAL CONTEXT

Kate Galloway
Senior Lecturer, School of Law
James Cook University

The contemporary law school sits at the intersection of global legal practice and global higher education. What was once a jurisdiction-specific endeavor is now ostensibly outward looking, driven by a call for international students, standards requiring equivalence of qualification, global rankings and the apparently borderless marketplace for graduates. At the same time though, there are calls for 'distinctive' graduates. While in one sense this relates to managerialist marketing of higher education, it is also relevant to grassroots community service and how a law school meets local community needs. This paper frames a discussion of the direction of legal education around the dialectic of globalization and place, imputing not just geography and jurisdiction, but culture and community.

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Faculty of Law
The Chinese University of Hong Kong

Getting Back to our Roots

Global Law Schools in Local Context

Global Imperatives

- International students
- International job market
- International laws
- Transnational legal practice

Local Needs

- Access to justice
- Professional standards
- Effective communication
- Social, cultural, language context
- Local practice...right here

Global ↔ Local = tension...

Australian Context

- International
- National (federation)
- State
- Local – city; country
- Multicultural nation

The Tropics as Place

- Place as context for law
- Where are we (and where are our clients)?
- Who are we (and who are our clients)?
- Think beyond black letter

Curriculum: Thematic Lens

- Learning with purpose
- Links between law, culture, people
- Use place to inform what is taught and how
- Place is more than jurisdiction...

Kate Galloway
School of Law
James Cook University

The Chinese University of Hong Kong 50th Anniversary
Faculty of Law's Law Deans' Summit
Legal Education in the Global Context: Opportunities and Challenges
26 October 2013

**THE CHALLENGE OF MASSIVE OPEN ONLINE COURSES ('MOOCs') TO
TRADITIONAL LEGAL EDUCATION: A THREAT OR AN OPPORTUNITY?**

Prof. Joellen Riley
Dean and Professor of Labour Law
Sydney Law School

Faculty of Law

The Chinese University of Hong Kong

The challenge of massive open online courses ('MOOCs') to traditional legal education: A threat or an opportunity?

Joellen Riley

Dean and Professor of Labour Law, Sydney Law School, Australia

Abstract:

This short paper – prepared for delivery at the CUHK Faculty of Law's Law Deans' Summit on Legal Education in October 2013 - will explore the potential impact of Massive Open Online Courses on thinking about the delivery of face-to-face legal education in Australia. The paper will consider responses to the challenges and opportunities, from the perspective of traditional schools that need to meet the demands of Legal Profession Admission authorities. Law schools are (in the main) dependent upon accreditation by local admission authorities, in order to attract students. In New South Wales, for example, the Legal Profession Admission Board (LPAB) jealously guards standards of legal education, so law schools experimenting with electronic course delivery methods need to be particularly mindful that experimentation does not compromise compliance with those standards. Nevertheless, the availability of on-line content provides considerable opportunity to relieve classroom time from the burden of content-delivery, and to engage students more actively in their own learning.

To MOOC or not to MOOC?

Will the phenomenon of the 'Massive Open Online Course' or 'MOOC' – typified by the extensive program of courses offered by the US-based Coursera,¹ Udacity,² and EdX³ – radically change the delivery of a legal education, in the way that it promises to revolutionise the delivery of computer science and business degrees?⁴ I doubt it. There are peculiarities about

¹ See <https://www.coursera.org/#>. As at 20 September 2013, Coursera boasted 4,823,514 enrolled students (called 'Courserians'), and 447 separate courses offered by 87 partner organisations across the world. A number of the courses on offer relate to law.

² See <https://www.udacity.com/> last visited 20 September 2013.

³ See <https://www.edx.org/>.

⁴ See for example plans by Georgia Institute of Technology to mass-market a computer science degree: Gabriel Kahn, 'The master of MOOC', *Australian Financial Review*, Monday 12 August 2013, p 25.

obtaining qualifications to practise law that are unlikely to be met by this form of education – at least not in the short term. It is clear that those Coursera programs presently available in aspects of law (for example, the course on *Constitutional Law* offered by Professor Akhil Reed Amar from Yale,⁵ or the course on *English Common Law: Structure and Principles* offered by Professor Adam Gearey at the University of London⁶) are not being offered for credit towards any formal legal qualification. Nevertheless, I believe we can expect that over time the MOOC – and the digital revolution that has enabled this phenomenon – will influence the way we teach law, even in accredited law degree programs.⁷

In this short presentation – which is unashamedly based on my own experiences – I will present a view from the perspective of a legal educator in Australia, and particularly in New South Wales, who must remain ever mindful of the stipulations of the Legal Profession Admission Board (LPAB) when contemplating even minor changes to curriculum or delivery of accredited law degrees such as the Bachelor of Laws (LLB), or the Juris Doctor(JD). But I imagine that many of my fellow deans around the region will share similar experiences in dealing with their own admission authorities.

New South Wales admission requirements

In order to be admitted to legal practice in New South Wales, a person must hold an LLB or JD from a university, or a Diploma of Law issued directly by the LPAB,⁸ plus a diploma from an accredited 'practical legal training' provider.⁹

⁵ See <https://www.coursera.org/#course/conlaw>.

⁶ See <https://www.coursera.org/#course/engcomlaw>.

⁷ According to Richard Susskind, author of *Tomorrow's Lawyers: An Introduction to your Future*, Oxford University Press, 2013, and *The End of Lawyers? Rethinking the Nature of Legal Services*, Oxford University Press, 2008, the digital revolution will have a much more fundamental impact on the delivery of legal services more generally.

⁸ Teaching of the LPAB's own law qualification is managed by the Law Extension Committee, appointed by the Senate of the University of Sydney. The LPAB directly controls the curriculum and assessment requirements for the Diploma of Law course. See <http://sydney.edu.au/lec/> for more information on this program.

⁹ See http://www.lpab.lawlink.nsw.gov.au/lpab/legalprofession_req_admsn_lawyer.html for admission requirements in NSW.

The LPAB guards the quality and content of accredited law programs particularly jealously. In the short time I have been dean of Sydney Law School¹⁰ I have had two detailed 'please explain' letters from the LPAB about matters related to the content and delivery of the LLB/JD programs. One concerned the extent to which our degree programs provided adequate learning in statutory interpretation. The request for information stipulated that we should demonstrate not only how we teach, but also how we assess competency in statutory interpretation skills. The LPAB is concerned not only with course content, but with graduate outcomes. Every law school in New South Wales was required to respond to this request. We understand that the request for information is to be considered by the national Law Admissions Consultative Committee (LACC) in determining whether to recommend that accredited law schools should offer a stand-alone, special unit of study in statutory interpretation as part of the core curriculum. We are already required (for the purposes of accreditation) to demonstrate that our curriculum contains adequate coverage of what are known as the 'Priestley 11' topics,¹¹ and at our law school, this means that two-thirds of our overall degree program is comprised of compulsory units of study.¹² (We embed statutory interpretation in a number of these courses, and offer an advanced elective in *Interpretation*.)

The second missive from the LPAB required a report on how our law school ensures that all candidates for an LLB or JD complete the equivalent of three years full time study in academic law subjects (not including clinical legal training courses). The correspondence indicated that the LPAB preferred the view that three full time years should be interpreted as three calendar

¹⁰ I assumed my current post on 2 January 2013.

¹¹ The Legal Profession Admission Rules 2005, made under the *Legal Profession Admission Act 2004* (NSW) s 38, conform to the Uniform Admission Rules for Australian jurisdictions. See http://www1.lawcouncil.asn.au/LACC/images/pdfs/212390818_1_LACCUniformAdmissionRules2008.pdf (last accessed 23 September 2013). These rules include the requirement that an accredited law qualification must include coverage of the 11 topics, determined by the Law Admissions Consultative Committee chaired by Justice LJ (Bill) Priestley in 1992. Law schools must demonstrate that their compulsory curriculum covers these topics in order to secure and retain accreditation. The topics are: 1. Criminal Law and Procedure; 2. Torts; 3. Contracts; 4. Property; 5. Equity (including Trusts); 6. Company Law; 7. Administrative Law; 8. Federal and State Constitutional Law; 9. Civil Procedure; 10. Evidence; 11. Ethics and Professional Responsibility.

¹² For the list of compulsory subjects in the Sydney Law School LLB course, see http://sydney.edu.au/law/cstudent/undergrad/docs_pdfs/2013_LLBUnitlist.pdf.

years of full time study. In our response to this enquiry we were put to the task of explaining the way that summer and winter schools fit into our programs of study. Particularly ambitious students who wish to complete their legal studies in less than three calendar years can (if they are diligent enough) complete one or two units of study over the December to February summer break, and they can also complete a single unit of study in the June-July winter break. Consistently using the summer and winter breaks to complete units can enable a candidate to complete the JD qualification in two and a half calendar years.

We believe that we provided a satisfactory answer to the LPAB's concerns, because we were able to demonstrate that a summer school unit of study involves precisely the same requirements – in terms of hours of face-to-face tuition, range of topics, volume of reading, and quantity and quality of assessment – as a unit of study taught during the regular semester. We were particularly mindful in making our responses that the admission authorities harboured some suspicion of any kind of 'intensive' delivery of a law course. Conventional wisdom suggests that law is a complex discipline in which knowledge is absorbed gradually and skills are developed incrementally. Too intensive a format for class delivery challenges those assumptions, and provokes fears that graduates may be inadequately prepared for the rigours of practice.

Given this kind of scrutiny of our regular face-to-face teaching programs, I think the New South Welsh admission authorities would look rather sceptically on any move to provide a legal education through a MOOC. MOOCs may look too much like a cut-price 'short cut' to a jealously guarded qualification. And of course there is no real advantage in a 'global' law degree provided by a MOOC, when each candidate needs a jurisdictionally specific legal education that meets the requirements for admission in a particular jurisdiction.¹³ Nevertheless, law schools – and, dare I say, the admission authorities – will need to respond to the digital revolution, to see what advantage can be taken of the new capacity to provide legal education through on-line course delivery. After all, there is at least one 'distance education'

¹³ See, for example, the Priestley 11 requirements set out above at n 11.

law program in New South Wales already, delivered by the University of New England (UNE), located in northern rural NSW.¹⁴ UNE has been successfully offering law degree by a distance education, supported by some residential schools, for decades.

What MOOCs can and can't do

From scans of web sources,¹⁵ and my conversations with academics in the United States, I understand that MOOCs can be either open and free (i.e. students do not pay any charges to complete the program), or they can be offered for a fee.

What is the benefit to the institution of offering these courses for free? Many of the larger US schools are already well-funded by philanthropic bequests. They can afford to offer services without charging fees, and use these courses as a form of brand marketing.¹⁶ The highly selective schools (like Yale) take very few 'real' students, and will always have a queue at the door of highly qualified students willing to pay for the benefit of a real-time, face-to-face student experience, so they can afford to participate in the Coursera experiment as 'good global citizens'. Even lesser known schools may decide that the relatively small costs of offering an on-line course are worth the potential benefit of gaining a global profile for the school, which may prove valuable as a way of recruiting international students. The institutions who participate on this basis will generally offer nothing more than a certificate acknowledging participation in an on-line course. They will not offer these courses for credit to any degree program. The courses provide a 'taster' for potential students, who may then take the step of seeking enrolment in the face-to-face degree program.

¹⁴ See <http://www.une.edu.au/courses/2014/courses/BLAWS>.

¹⁵ See the web pages for Coursera, Udacity and EdX at nn 1, 2 and 3.

¹⁶ The marketing value of a MOOC is noted as one of five advantages by the Robert McGuire, Editor of *Moocs News and Reviews*, in '5 Tactical Questions Higher Ed Administrators Should Be Asking About MOOCs', 18 July 2013. See <http://moocnewsandreviews.com/5-tactical-questions-higher-ed-administrators-should-be-asking-about-moocs/>.

MOOCs can also provide a self-promotion platform for individual lecturers hungry to acquire international 'rock star' status, and to improve their own employment mobility.

Courses for credit

Some institutions do charge fees, and have even devised ways to assess students and provide grades to acknowledge completion of courses. One obvious concern for an institution purporting to charge fees for a course that offers a recognised qualification is guaranteeing quality of graduates. It is hard for face-to-face learning institutions to prevent plagiarism and other forms of cheating. How much more challenging is this in an on-line environment? There are sophisticated means of identifying students (or so I am told¹⁷) by the way in which they type into a computer, so each student has a 'biometric digital signature' in the form of their characteristic typing patterns. Likewise, webcams can be used to monitor whether a student is alone when completing on-line assessment tasks, to ensure that students don't cheat by calling in expert assistance to help out as they are being examined. Evidently the feed from multiple webcams can be monitored by people paid for that task. This is the kind of work that can be 'offshored' to a jurisdiction with lower labour costs. (This is another 'advantage' of the global digital revolution – there are no boundaries to how far away one can locate a workforce for these kinds of supervision tasks.)

Even assuming that assessment challenges and the risk of cheating can be overcome, I suspect that we are a long way from being able to deliver accredited legal education through MOOCs. As discussed above, legal profession admission authorities jealously guard admission to the profession and are likely to be very reluctant to open admission to candidates whose qualifications have been gained entirely 'on-line'. This is especially so, given that there is little incentive in the currently tight market for legal services for the profession to widen access to

¹⁷ The author derived much of this information from a conversation with Professor Edward Rock of Penn State University. See also Simon Cooper, 'MOOCs: Disrupting the University or Business as Usual?' (2012/2013) 39/40 *Arena Journal* 182-202 at 194 for an explanation of techniques for 'cheat-proofing' MOOC assessments.

entry.¹⁸ The old protectionist voices are again calling for law schools to reduce enrolments to help stem a potential flood of unemployable graduates.¹⁹ The entry of MOOCs into what is already thought to be an overcrowded 'market' for legal qualifications is unlikely to be welcomed by the profession. This does not mean, though, that we cannot learn a great deal from the success of the MOOC in other fields.

How might law schools use MOOCs and other digital platforms?

... As marketing tools

As many of the Coursera offerings show, a MOOC can provide a wonderful channel to showcase the strengths of a particular law school, and enliven student interest (particularly international student interest) in the school. A well-managed MOOC can profile engaging professors and fields of expertise. There is real scope for well-targeted MOOCs to be used to support international student recruitment efforts.

... To relieve some of the pressure of content delivery

Is there a more substantial role for MOOCs in supporting the education of enrolled students? I think there can be. Something I have observed in the twenty years since I first undertook legal studies myself, is the accelerating expansion of the volume of legal materials that students need to master in the course of their studies. I am often called upon to act as an apologist in defending our current legal curriculum from criticism from the elder statesmen of our profession who studied law back in the 1960s and 1970s. These eminent professionals, many of them retired or retiring judges, frequently bemoan the demise of important subjects like

¹⁸ See Leanne Mezrani 'Exclusive: Clerkship System Failing Grads', *Lawyers Weekly*, 20 September 2013 at 1.

¹⁹ See for example the views expressed in blog comments to the article by Elvira Naiman, 'It is the worst time in living history to be a law graduate', at <http://www.lawyersweekly.com.au/news/it-is-the-worst-time-in-living-history-to-be-a-law> (last accessed 23 September 2013).

Legal History and *Roman Law* from the compulsory law curriculum. In attempting to explain the shape of our current curriculum, I remind them of the huge expansion in the Australian legal system since the 1970s. When our elders were at law school, there was no trade practices or consumer protection legislation, and no *Family Law Act 1974 (Cth)*. Many of the current chapters in our corporations legislation (dealing with the regulation of ever more complex securities markets) had not been written yet. Administrative law had not been reformed by the introduction of merits review according to new statutory regimes. The opening of national borders to increasing global trade had not introduced new kinds of legal problems. The immediately post-war generation presently retiring from the courts had yet to witness the explosion of interest in international humanitarian law. Environmental law was hardly imagined. Today there are so many fields of law commanding the attention of lawyers and current law students. It is no wonder that our curricula have become crowded, and in the clamour of many demands, students and teachers find it challenging to cover all aspects of the traditional core of subjects. In our law school *Roman Law* and Topics in *Legal History* are still taught, but only as final year electives to relatively small classes.

This is where the MOOC – and the digital platforms upon which MOOCs are built – can assist the contemporary law school. In many ways, digital tools can supplement the more traditional forms of ‘knowledge transfer’ to free up more class time for interactive learning. Straight lecturing (which was never more than an oral presentation of what could be gleaned from a well-organised text book in any event) can be delivered in engaging on-line formats, so class time can be reserved for Q&A sessions, discussion, debate and problem solving. Of course, we will want to develop our own on-line programs tailored to the specific curriculum requirements of our own units of study. But it may also be possible to free-ride on some of the resources available through free MOOCs offered by other institutions, where those courses provide resources relevant to our own programs. Our own classrooms can be liberated from some of the pressure of content delivery, because genuine, real-time interaction is so much easier in a traditional classroom. Indeed one of the criticism levelled at MOOCs has been that many

courses are delivered in the most old-fashioned pedagogical manner, as one-way transmissions of expert information, without opportunity for real-time critical responses from students.²⁰

... As safe places for students to practise

Digital platforms can also assist us to manage the frequent demands of contemporary students for more 'coaching' in how to write essays and answer legal problems, and more 'feedback' on their attempts at assessment tasks. We are constantly pestered for 'model answers' to exam questions. On-line tools can be created to demonstrate techniques for constructing persuasive legal arguments, and for unpacking in logical sequence the relevant legal issues in a hypothetical problem. At Sydney Law School we have been developing these kinds of on-line resources as a generic tool box to be made available to all students to assist them in managing the assessment requirements for all their units of study.

On-line assessment tools may also prove useful as formative assessment tasks even before they become reliable enough and sufficiently 'cheat-proof' to use for summative assessment. Formative assessment enables students to practise their skills without the risk of influencing their final grades. More practice allows students to become more confident in their skills, and may reduce students' temptation to procrastinate and claim 'special consideration' to defer submitting assignments and taking examinations.

... To enable time-shifting of class- and consultation-time, for the time poor student

A particular advantage of on-line tools is that they can be used at any time of the night or day. We are beginning to realise at Sydney Law School that there is no longer such a creature as a full-time law student. Most students hold down part-time jobs that require many more hours of work than typical student jobs in the past. Once upon a time (in a more highly regulated labour market), students might do some casual retail work on a Thursday evening or Saturday

²⁰ See Cooper above n 17 at 193.

morning, or may wait tables at night. Now, the typical JD student will be doing 20 or more hours a week of professional or semi-professional work, using the skills and knowledge gained during their first degree. In Australia, it is increasingly rare for a university to offer entry directly into a 'straight' law degree to recent school leavers. School leavers more commonly combine Law with another discipline (Arts/Law; Commerce/Law; Science/Law, and even Engineering/Law are popular options) so by the time law students are coming near to the end of their legal studies they already have a qualification in another discipline. A degree in another discipline is mandatory for entry into JD programs. These kinds of students are juggling many responsibilities with their studies. They want greater flexibility in course delivery. Digital platforms for delivering essential course content, and providing formative assessment tasks for skills practice and knowledge testing, can assist them to manage their studies, notwithstanding the many other demands on their time.

At Sydney, we often use on-line discussion boards to deal with student questions after classes. A question posted on line, for all to see the question and the answer, is an efficient and equitable way of dealing with follow up from classes. From the perspective of managing staff workloads, the task of attending the discussion board can be shared by a number of colleagues.

... To introduce international talent to local classes

Even 'real-time' digital tools and social media can enhance the delivery of a world class legal education. As tools such as Skype improve, we may be able to make better use of technology to 'beam' in real-time input from overseas experts. At Sydney Law School we have offered a course in *Comparative Constitutional Law* which is taught by one of our own professors, Helen Irving, assisted via skype by a professor from a US or Canadian law school. In this way, technology allows our students exposure to great minds from around the globe, without the expense of travel costs or inconvenience and discomfort for jet-lagged scholars. All you need is a classroom wired up for skype with a sufficiently large projection screen.

Conclusion

The jurisdictionally specific nature of much of the law curriculum, and the requirement for law schools to meet the accreditation requirements of local admission authorities, is likely to mean that MOOCs will never take over the field of legal education. Not, at least, until the predictions of futurists like Richard Susskind²¹ come to pass. It is difficult to see that happen in my lifetime, at least in New South Wales, which is governed by a relatively conservative legal profession. In person enrolment in a face-to-face degree program is likely to remain the norm, and will always be preferred by elite institutions and the most ambitious and serious students. MOOCs may, however, provide a useful supplement to the many resources law teachers currently call upon to meet the challenges of providing a satisfying and engaging legal education for the student of the digital age.

²¹ See above n 7.

The Chinese University of Hong Kong 50th Anniversary
Faculty of Law's Law Deans' Summit
Legal Education in the Global Context: Opportunities and Challenges
26 October 2013

**THE MELTING ICEBERG: GLOBALIZATION AND THE FUTURE OF
LEGAL EDUCATION IN CANADA (AND ELSEWHERE)**

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The Melting Iceberg

Legal Education in Canada

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20th Century Canadian Legal Education

Features of Iceberg

- * Opaque
- * Most of its bulk is hidden below the surface
- * Moves very slowly

Canadian Law Schools 1950s-2000

- * Opaque - No accreditation process, no transparency
- * Small # of homogenous law schools operated with little accountability.
- * Slow to innovate; resistant to change

Climate Change in Canadian Legal Education

Global "warming" in legal education:

- * Globalization of legal profession, with increased mobility of lawyers, shifting importance of subject areas, changing emphasis on skills
- * Impact of technology

New Canadian Developments:

- * National Accreditation process for common law schools
- * Two new law schools, the first in over 40 years
- * Huge increase in foreign-trained lawyers seeking admission to Canadian law societies: National Committee on Accreditation handles more applicants than any one law school.

Consequences of Climate Change

Melting iceberg splits into pieces that drift in different directions.

Does the metaphor hold?

- * Increased specialization/differentiation of law schools
- * Other possibilities?

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THE CASE OF THE COMMON LAW IN EUROPEAN LEGAL EDUCATION

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The Case of the Common Law in European Legal Education

Professor Avrom Sherr, Institute of Advanced Legal Studies, University of London, England

The journey through the Channel Tunnel may not be far, but the distance that divides systems based on the Napoleonic code from the precedential basis and adversarial process of the Common Law is considerable. One only needs to take account of the horror of the English audience when the Portuguese authorities appeared to be prosecuting the parents of the abducted child Madeleine McCann, on holiday in Portugal in 2007, the disbelief of the US audience when "Foxy Knoxy" was taken through the process of an Italian trial for allegedly killing Meredith Kercher in 2007, or the reactions of the French to the arrest and treatment of Dominique Strauss-Kahn, the Head of the IMF in a New York hotel in 2011. The Common Law countries of Europe suffer an extra set of difficulties in relation to European Legal Education. Not only do they need to contemplate, consider and discuss the development, integration and harmonisation of European law (issues which all European Union countries face); they have the additional difficulty of absorbing the approach of a different juridical family and legal culture. The adjustment involved in trying to keep up with massive political change in the growing coverage of the European Union is exacerbated by the absence of a set of shared assumptions that exist between jurisdictions from the same juridical family. The UK can seriously wonder whether the Common Law approach will have a long term future in Europe, or whether it will be subsumed within the Civil Law culture of its European colleagues.

But, the European context is not the only operating factor. Europe itself must do business internationally and with multi-national companies. The importance of Globalisation and the United States of America in international trade and the effect this has on modes of transaction and legal culture should not be ignored. Americanisation, by its nature, involves a strengthening of the effect of the Common Law approach and practice. The nature of this effect though, may not be politically channelled through the Common Law members of the European Union, but will be felt across all countries, through transactional rather than political impetus. In the same way that the effect of the United States constitution was to be transported strongly through interstate trade rather than politics

in the early days of American federalism, the power of global commerce may still prove stronger than local commerce, or policy.¹

It might be thought that Hong Kong is in a similar position, a Common Law jurisdiction next to, and connected with, a much larger jurisdiction with very different rules and processes, but also subject to the needs of economic progress and globalisation.

So, what may be learned from the case of the Common Law in European legal education, given this background? This paper considers the following issues:

- i) The English and Welsh model of legal education, training and qualification (informed by the most recent research known as LETR²).
- ii) The impact of the Common Law/ Civil Law families divide on European law and legal education.
- iii) The impact of globalisation – the learning of Common Law in English in Europe.
- iv) Changing legal professions and professionalism and future legal education across Europe.
- v) The Welsh question and some very tentative thoughts about the applicability of such issues to Hong Kong.

Although the collection of these items ranges across a wide set of issues, each issue may be instructed in terms of the Common Law tradition and its place in European legal education.

“Il Modello Inglese”

In an essay published by the Faculty of Law at the University of Genoa in 1996 I elucidated a theoretical division between two traditional approaches to legal education, the “apprenticeship

¹ See e.g. K. Karst *Judicial Review and the Channel Tunnel* [1980] 53 So. California Law Rev. 402-785

² **Setting Standards: The future of legal services education and training regulation in England and Wales** - Legal Education and Training Review © 2013 – www.letr.org.uk/the-report/index.html

model” and the “educational model”, as two different models of professional “formation”.³ Both models are present to some extent in the English and Welsh qualification system.

Apprenticeship Model

Practice
Reality
Sitting at the feet of...
Inheriting the mantle of the Priesthood

Educational Model

Theory
Concepts and Ideas
Abstraction
A formative period

The assumptions which underlie each of the above models are fairly clear. However, the reality of legal education can turn out to be very different. Apprenticeship is supposed to provide a full understanding of what is involved in legal practice. As a full system of training the new profession it ought to give, like a set of courses in a formalised training structure, a full range of understanding of the world of practice. However, the venues in which apprenticeship takes place both for solicitors and barristers in England and Wales are now likely to be heavily specialised firms and chambers with little capacity to provide the full range of real practice, which would be a more ideal introduction to the law.⁴ Solicitors’ practices which provide apprenticeship training (the training contract) are largely orientated towards company and commercial work. Some high street firms, whose work traditionally was involved in conveyancing of property, and publicly funded legal aid work in family and crime, have also traditionally taken trainee lawyers. There is now very little crossover between these two groupings and the publicly funded work has been severely disrupted by recent changes in the Legal Aid Sentencing and Punishment of Offenders Act 2012⁵. Training contracts that were supported in legal aid provider firms by the (then) Legal Services commission have been terminated⁶. Training in practice through apprenticeship now largely means training in a very particular sort of specialised practice. The ability of lawyers to move to other areas of practice at a later date is considerably undermined by this highly specialised form of training.

³ I am indebted to Margot Horspool for the original conception of these different models in the European context. See also the range of these across Europe as set out in *International Journal for the Legal Profession*, Vol 2 No. 1 1995 *Special Issue Legal Education and Training in Europe*.

⁴ See eg. A. Sherr, *Professional and Legal Training* in 1992 *Journal of Law and Society*, 163-174. A history of apprenticeship in law may be found in ?

⁵ <http://www.legislation.gov.uk/ukpga/2012/10/contents/enacted>

⁶

The type of firms and chambers who are prepared to take on trainees are also usually quite special. They need to be large enough to support the bureaucracy of the training contract and they will also as a result, be quite involved in managing their practices as a business enterprise, with a level of standardisation of work in order to provide efficiency. The management of a business enterprise may not always go well, hand in hand, with effective training and some trainees complain of being overworked in some repetitive task areas. Some complain of long hours and a strong expectation to pull their weight as money earners from the beginning.⁷ Pupillages for barristers are now expected to be paid and this has reduced the numbers of such pupillages and also restricted them to particular areas of work⁸.

Apprenticeship is also supposed to provide reality, as compared with a more formal educational approach, dealing with clients and others directly and the vicissitudes of real life. However, trainees in large organisations are often kept at some distance from clients. Their work is devolved down to them and often deskilled. They often do not understand the nature of transactions or litigation in which they are involved, because the tasks they carry out and the role they fulfil are such a small part only of the whole process.⁹

In the traditional model of the apprenticeship relationship, the apprentice would "sit at the feet of" his or her "master" or "mistress" who would initiate the apprentice into the secrets of the profession, the "tricks of the trade". Apprentices would be imbued with the fire of experience¹⁰ and they would receive, individually, the professional tradition from an individual experienced practitioner. Now, in order to avoid the uncertainties of a poor apprenticeship, the system of training is much more formalised. There is rarely a single individual to individual relationship. Trainees move from "seat" to "seat" in different departments of a larger enterprise and they miss out on the fire of enthusiasm which could be handed from generation to generation in the old system. They would also traditionally have inherited "the mantle of the priesthood" and then moved into the position of their "master" when their master retired or died. The likelihood of job inheritance is now quite small. Although, in some firms they do intend to take on trainees who will move into partnership, this progression is much more of a corporate style of movement than an

⁷ Richard Moorhead and Fiona Boyle *Quality of Life and Trainee Solicitors: a Survey*, 1995 International Journal of the Legal Profession, 217-251

⁹ See e.g. A. Sherr *Client Care for Lawyers*, Sweet & Maxwell, London 1999 pps 138-147.

¹⁰ Ibid. Introduction.

individual right of passage. It is uncertain now that apprenticeship in any occupation can be considered to be the opening of a job for life.

The Educational model is often the exclusive model, both in parts of Europe, and in the United States. The assumptions underlying this model are that it presents a stronger, more basic, theoretical approach to the study of law. However, in England and Wales, some find our undergraduate programme to include increasingly "black letter" law, providing considerable amounts of doctrinal information to be learned and regurgitated. The subjects are often limited to a fairly narrow "core" which is partly dictated by the profession. There is little jurisprudence in the sense of "legal theory" and very little comparative law. There is very little study of the system and how it works or of any higher theory or social science doctrine. In some subjects, where the pressure of more and more material has been greatest, teachers have been forced to analyse their subject area more into concepts and ideas rather than sheer knowledge. But, often this conceptualisation has not occurred. Some courses have become so packed with cases and statutes that there is little time within the three years of the undergraduate law degree for abstract thought and reflection. In general the examination method still applies and the form of the examination tends to dictate the method of teaching and the approach and culture of the students.

The three years within formal education is intended to provide a formative period for students, during which they can develop both emotionally and intellectually. This issue is especially important in relation to their ethical and moral development.¹¹ But, our students paying as they now do, considerable sums for their education, tend not to treat this period in any idealised fashion. They consider the degree merely to be a stepping stone to take them forward to their goal. Examination results are therefore the only outcomes which matter.

Apart from changes in the social culture of education generally and legal education in particular, there have been both regulatory and bureaucratic changes in the systems for monitoring education in England, Wales and Scotland. The Higher Education Funding Councils organise a Research Assessment Exercise ("RAE"), most recently a "REF", and the Quality Assurance Agency for Higher Education organises an assessment of the quality of teaching and teaching systems. Both of

¹¹ Lord Chancellor's Advisory Committee on Legal Education and Conduct, First Report on Legal Education and Training, 1996 pps 55-72.

these have the tendency towards the formalisation and standardisation of research and teaching approaches.

The intention is that these produce an important advantage in relation to higher education establishments which previously fell below the norm. However, there are serious negative effects also possible for those establishments which did not previously need bureaucratic intervention or formalisation in order to achieve, or operate at, a high standard in relation both to research and teaching. Such interventions are aimed at a mass system of higher education. In general, law degree authorised institutions had tended to deal with faculty and staff motivated towards objectives beyond the simple label of an undergraduate degree. Disciplines such as law and medicine may benefit less from these interventions than others. But, the effect of such educational policy is felt across all sectors and disciplines.

The largest changes within legal education for the profession in the last 20 years have occurred at the later stage of professional courses, formal elements of training within apprenticeship (as mentioned above) and the Continuing Professional Development ("CPD") of lifelong learning.

In the English model, the informality and variability of learning within apprenticeship is considerably controlled within a structured and formalised system for solicitors, although less so for barristers. This may reduce some of the individuality of an apprentice system. However, it does strengthen individual areas of poor performance within that system which would otherwise have fallen below an acceptable norm. The educational model is now perceived by students and utilised by society more pragmatically than as a stage of abstraction, development and maturity. It is a product-orientated period aiming to achieve the narrower objectives of securing a qualification, and preparing students for some elements of practice. Formalisation and bureaucratisation of higher education are also beginning to standardise legal education. This may raise the standard of lower achieving institutions but limits diversity. The Common Law approach to legal education can therefore provide some interesting comparison for the rest of Europe. As we move to harmonisation of qualifications such issues are beginning to need careful attention. The Bologna Declaration, for example has demanded that professional training should be 3 years plus 2¹².

¹² The Bologna Declaration - on the European space for higher education, 1999-
<http://ec.europa.eu/education/policies/educ/bologna/bologna.pdf>

Common Law at the Suit of Civil Law or the Harmonisation of the Two

The educational aspects of handling European law may be separated from the issues relating to the distinctions between national legal systems and the new law of Europe. But, for the common law countries there is a separate and much greater problem of the harmonisation, merger, or take-over of common law jurisprudence by the civil law jurisprudence of most countries in Europe. Although this is seen as the problem of England, Wales, Scotland and Ireland it is undoubtedly a problem, in relation to harmonisation, for the other European countries to contend with, as well.

This raises a much considered but undecided set of issues about the precise distinctions between the civil and common law. It is an issue with theoretical, political, sociological and economic, as well as legal, dimensions. It is very much a "big issue" which has vexed jurists for some time. Many, including in particular Mirjan Damaska¹³, have endeavoured to explain the fundamental differences in the two systems, approaches, philosophies, cultures and histories etc. It seems clear that the overall comparisons defy any simplistic analysis. The politics of Europe are rather more obvious, but they still defy rational solutions as can be seen in the negotiation processes involved in agreeing all the major treaties of the Common Market, European Economic Community and European Union. Although the politics may be more obvious, they are less certain in their outcome.

With a complex intellectual base, and a set of unclear political results, it is difficult to know how to handle the legal educational aspects of the Common Law – Civil Law divide, except to say that somehow it seems to work¹⁴. Europe has done rather well in producing the Erasmus and Socrates programmes, providing both student and faculty exchanges across the members of the European Union. Professor Fenge's work (in this same volume) provides interesting evidence of the degree of awareness of European issues, involvement in European exchange and study of European law. This author's own intuitive research among students who have come across from mainland Europe on these programmes, or English students who have gone to other countries in Europe suggests that this method of exchange may not be sufficient by itself to produce the necessary analysis of distinctions between Common Law and Civil Law systems. Such students, and indeed staff, who have been involved in such exchanges, note only the complexity of the comparisons between the

¹³ See e.g. *The Faces of Justice and State Authority: A Comparative Approach to the Legal Process*, Mirjan R. Damaska, Yale Univ. Press. 1986

¹⁴ This is not intended to be a "political" comment for or against any party political view on Europe, merely a statement that we all seem to be working in a bimodal system which works, whether or not it is thought to work well.

different systems. Although we have therefore produced a small group of exchange students and staff who are to some extent "super Europeans" with some real understanding of both Civil and Common Law approaches, ultimate analysis of fundamental difference which intellectually will be necessary for real harmonisation still seems to defy easy achievement.

It is suggested that, like the inbreeding of the evolutionary process, more widespread integration will be achieved through continuing this dual learning approach. But integration and true harmonisation are quite different processes with a rather different outcome. The two systems may continue to live happily side by side, but European law will have a more long term effect on trying to bring them closer together.

The disciplines of comparative law and the insights they allow is somehow not sufficient for the fast moving process of Europeanisation. Comparativists are tested quite strongly by the political nature of this process and what can be achieved in unpicking differences over a short period of time.

One instance, showing the complexity of any analysis relates to the effect of the early European Money Laundering Directive on legal professions across Europe. The Law Societies of the Common Law jurisdictions of Europe, England and Wales, Scotland and Ireland signed up to the Money Laundering Directive, incorporating into their own ethical rules of conduct a total obedience to the aims of the Money Laundering Directive, which were then largely pointed at banks and other financial institutions. It would appear that these presented "a good example" of public interest in fighting crime.

The position taken by the Common Law jurisdictions contrasts strongly with the opposite position taken by most of the Civil Law countries of Europe, apart from the Netherlands. Most Civil Law countries considered the principles of lawyer client confidentiality and of privilege to be essential elements in championing liberty against the shadow of the over powerful state.

This position appeared to be a stark contrast and difficult discussions were held in Brussels on how to harmonise the total opposition of principle. However, on a closer inspection of the reality of practice it became clear that legal professionals in the Common Law countries were not in fact reporting their clients, or even potential clients to the National Criminal Investigation Service (as it

then was prior to SOCA¹⁵ and now the National Crime agency) where there was any question of money laundering, or doubts about the identity of potential clients or of the provenance of funds. In the Common Law tradition, although the rules were clearly stated in the rule book they were politely, if hypocritically, ignored and ways were found around the reporting obligations which appeared to be present. In reality therefore the differences of principle turned out to be similarities of practice, thus proving that any work in this area must consider a number of different levels, both of reality and of principle in producing a complete analysis of where differences occur and where problems arise.

Changes in the legal professions of Common Law Europe and the effect of these changes on legal education

The Common Law legal professions of Europe, with a closer eye on globalisation and what happens in the USA, have been ahead of the Civil Law jurisdictions in changes in structure, organisation, work and specialisation. These changes can be summarised as a move towards industrialisation and deprofessionalisation. These professional changes ought to change considerably the structure, nature and education and training needs of the legal professions of the future.

Elsewhere¹⁶ I have discussed the effect of these changes on current work practices. It is now necessary to consider how legal education and training should, or should not match up to the new paradigms of legal work. If legal education should react to the new legal profession and not serve its own, or separate, interests, how should legal education and training be organised for the future? Some possible changes in career paths for lawyers and in legal subject areas within the Common Law system need also to be addressed.

Among the new legal careers emerging are the “back office” drafts person, information officer/professional support lawyer, specialist technician, advocate, manager, client handler/manager/partner, strategist, risk manager.¹⁷ In addition for Common Law lawyers there may be some new legal concepts as subject classifications. These include relative need, risk, right, relationship, responsibility, remedy and quality of life. There may also be some new legal subject classifications including the State, the individual, the family, the corporate body, the trust, the

¹⁵ On 1 April 2006 it was merged into the newly created Serious Organised Crime Agency which then became part of the new NCA in 2013.

¹⁶ A. Sherr *Superheroes and Slaves – Images of the New Legal Professional, Current Legal Problems*, 1995

environment, capacity, conflict. Although many of these are similar to areas of legal work currently covered, the argument is that the new classification will overall present a rather different picture for the evolution of both legal practice and legal education. Some of these areas are already better recognisable within Civil Law jurisdictions than within the Common Law, but some other elements may need further consideration as to how the impact of the changes in the law and the legal profession will be taken up within legal education.

Perhaps the greatest changes in the world of work generally and in law in particular relate to information technology, which has changed the nature of much legal work, speeded up processes and enabled lay clients to carry out their own legal research.

Conclusion

The member countries of the European Union need a continuing, open awareness to differences in approach in legal education as well as in law of other member countries. There is a great deal we can still learn from each other. Student, teacher and practitioner exchange schemes are essential elements of this progressive development. Changes occur outside of the European Union context which will impact on the profession and legal education. These also must continue to be monitored so that we can understand and plan for the future in circumstances of growing harmonisation. The forces of globalisation may have more effect than the institutional politics. European law faculties in mainland Europe learning both "common law" and English, in the English language, may have a greater effect in the long term. Though simple learning of language without the culture of the common law and common law lawyering may not be sufficient.

¹⁷ *Beyond Superheroes and Slaves: Educating the Lawyer for 2010 – Theory in Legal Education*, Eds. Sugarman &

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**CRITIQUE, LEGAL PHILOSOPHY, AND THE ROLE OF LEGALLY TRAINED
CITIZENS IN WORKING TOWARDS JUST INSTITUTIONS**

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As law has immense potential to transform society, legally trained citizens who have had the privilege of legal education have a special responsibility to work towards just institutions in their capacities as practitioners and as empowered citizens in the public square. Being able to think critically about the law is indispensable if lawyers seek to serve the foundational ideals of a legal system and play their parts in working towards just institutions. This paper examines how the teaching of critique through legal philosophy can shape the future lawyer's role in this regard. Three aspects of such teaching of critique through legal philosophy are crucial. First, through the comparative study of schools of jurisprudence, students can assess foundational ideals to which the law is connected. Second, the Socratic elenchus and dialectic should be used to get students to think about fundamental assumptions behind their views on various theoretical issues, and whether they are coherent and stand up to rational scrutiny. Third, students should be exposed to the challenges of critical legal studies (CLS) in particular. CLS suggests that legal reasoning is not distinct from ideological reasoning, that law is not necessarily legitimate or justified, and that conflicting interests underlie legal doctrines. While CLS might not be the endpoint for every individual, having worked through its challenges and claims would enable one to hold one's opinions knowing they have been tried and tested.

Faculty of Law
The Chinese University of Hong Kong

**Critique, philosophy, and the legally-
trained citizen's role in working
towards just institutions**

Dr Tan Seow Hon
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Focus of legal education

- Legal doctrine
- Globalization
- Skills
- Client management
- Foundational ideals of legal system?

Focus of legal education

- Transformative potential of law
- Private economic arrangements
- Governmental interference
- Special responsibility of the legally trained citizens:
Working towards just institutions

**Teaching critique
through legal philosophy**

- Comparative study of schools of jurisprudence
- Philosophy in the public square
- Socratic elenchus and dialectic
- Exposure to the challenges of Critical Legal Studies
(CLS)

#1 Studying schools of jurisprudence

- Heightened sensitivity to values
- Traditional v. critical schools
- Examination of foundational assumptions and worldview
- Direct comparisons:
 - Legal positivism v. natural law theory
 - Finnis' s flourishing v. Dworkin' s true community v. Unger' s self-revisable structure
 - Theories of adjudication: American legal realism v. Dworkin v. Critical legal studies

#2 Philosophy in the public square

- Example: Legalisation of casino gambling
- Parliamentary debate: Social repercussions v. Economic benefits
- Other issues!
 - Rawls' s public reason v. Finnis' s human flourishing
 - Hart-Devlin debate

#2 Philosophy in the public square

- Contribution of readers' letters to newspapers
 - Heightened sensitivity
 - Integrity and standing up for what believe in
 - Making a difference in the real world: Civic responsibility
 - Educating the public

#3 Socratic method

- Not cross-examination or humiliation
- Elenchus and dialectic: Promotion of concern for justice
- Example:
 - "Morality is a social construct."

#4 Critical legal studies

- Cool reception:
 - Private-practice oriented legal education
 - Prevailing social attitude of conservatism
 - Factors internal to CLS
- Themes:
 - Law as politics
 - Products of context, but really with identity apart from it

#4 Critical legal studies

- Problems
 - How to successfully transcend context?
 - Context-smashing: any end point?
 - Inability to produce true attitudinal change
- Worth: Spirit of working towards just institutions

Personal level

- Clarifies vision
- Abandonment or revision of beliefs that do not stand up to rational scrutiny
- Questioning justification of existing legal practices

Public level

- Public lawyer
- Private lawyer
- Legally trained citizens

Dilemma of educators?

- Problem of postmodern pluralism
- Problem of wrong impression of value neutrality
- Critical thinking as the solution

Critique, philosophy, and the legally-trained citizen's role in working towards just institutions

Tan Seow Hon*

I. Introduction: The Special Responsibility of Legally-Trained Citizens

Much recent discussion on the future of legal education has centered on preparing law students to be lawyers in a globalised world,¹ teaching students skills necessary for legal practice, or equipping them in relation to client management.² Some law schools brand themselves as "international" or "global",³ or require students to have a measure of familiarity with systems of law or judicial principles beyond domestic law.⁴ While understanding the transnational dimension of law and being prepared to function within a legal climate that is no longer primarily local are important aims of legal education, the role of legal education in shaping the lawyer's understanding of the foundational ideals of law has received, in comparison, short shrift. A concern with the foundational ideals of law might be seen as the special province of those desire to work in areas such as transitional justice or international human rights. This state of unconcern with the foundational ideals of the legal system might have arisen from the dominant view of the amoral ethical role of lawyers. On such a view of professionalism, the lawyer is called to suspend her moral judgment of her client's case in order to facilitate the client's full access to whatever the law allows, however abhorrent the result engendered by the law might be in some cases. Such a view of professionalism stems from a contested understanding of the purpose of the legal system and the lawyer's role within it, though the question of the purpose of legal system may not be explicitly the subject of much discussion in a pluralist world where any discussion of values is likely to be contentious.⁵

Law has immense potential to transform society. By giving or refusing to give its stamp of approval on particular private economic arrangements, it changes economic relations; by denying or upholding the freedom of individuals from governmental interference in particular spheres of life, it permits governmental regulation of particular conduct or ensures that individual choices are respected. In view of the transformative potential of law, I argue that legally-trained citizens who have had the privilege of legal education have a special

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¹ Rosalie Jukier, *Transnationalizing the legal curriculum*, 56 J. LEGAL EDUC. 172 (2006); Sebastien Lebel-Grenier, *What is a transnational legal education?*, 56 J. LEGAL EDUC. 190 (2006); Jan Klabbbers, *Legal education in the balance: Accommodating flexibility*, 56 J. LEGAL EDUC. 196 (2006); Andras Jakab, *Dilemmas of legal education*, 57 J. LEGAL EDUC. 253, 256 (2007).

² David Dryden Henningsen & Ioanna Cionea, *The role of comforting skill and professional competence in the attorney-client relationship*, 57 J. LEGAL EDUC. 530 (2007); Austin Sarat, *Lawyers and clients: Putting professional service on the agenda of legal education*, 41 J. Legal Educ. 43 1991. See, also, the detailed study commissioned by the American Bar Association in 1992: REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION (also known as the MACCRATE REPORT), discussed in Jonathan Rose, *The MacCrate Report's restatement of legal education*, 44 J. LEGAL EDUC. 548 (1994).

³ See, for example, National University of Singapore, which brands itself as "Asia's Global Law School" (<http://law.nus.edu.sg/>).

⁴ See, for example, National Taiwan University's College of Law, the website of which states that "the undergraduate students of the department are required to study domestic and global judicial principles" (<http://www.ntpu.edu.tw/english/colleges.php>).

⁵ Compare this to a time when a particular tradition, such as natural law theory, held sway, when assumptions in legal education were in line with it. (Mark Warren Bailey, *Early legal education in the United States: Natural law theory and law as a moral science*, 48 J. LEGAL EDUC. 311, 353 (1998).

responsibility to work towards just institutions in their capacities as practitioners and as specially empowered citizens in the public square. The recognition of this special responsibility is seen, for example, in the mission statement of an East Asian law school which suggests that it "aims to nurture the potentials of its students in the study of the principles and practice of law, to set up a fair and just society, and to improve legal structures of the country."⁶ Even as much ink has been, and continues to be, spilt over what justice and fairness entail, law schools should not ignore such an educational mission. It is a matter of regret that such statements are not more often seen in the mission statements of law schools.

To prepare students to fulfill such a special responsibility, the inculcation of the ability to think critically about the law and question whether it has been employed in service of salutary ideals is necessary. Students must begin to build a habit of asking what the foundational ideals of the legal system in which they find themselves are or ought to be, and what it means to play their parts in working towards just institutions in the society in which they live.

This paper examines how the intentional teaching of critique through legal philosophy can shape the future lawyer's and legally-trained citizen's capacities to work towards just institutions. Four aspects of the teaching of critique through legal philosophy are significant. First, through the comparative study of schools of jurisprudence, students should be directed to examine whether law is connected to foundational ideals. Second, legal philosophical readings should be related to current issues to demonstrate the relevance of philosophy to day-to-day controversies in the public square. Third, the Socratic elenchus and dialectic should be more effectively employed to get students to think about fundamental assumptions behind their views on various theoretical issues, and whether they are coherent and stand up to rational scrutiny. Fourth, students should be exposed to the challenges that critical legal studies (CLS) makes of traditional jurisprudence. CLS suggests that legal reasoning is not distinct from ideological reasoning, that law is not necessarily legitimate or justified, and that conflicting interests underlie legal doctrines. While CLS might not be the endpoint of choice for every individual, having worked through its challenges of traditional jurisprudence and assessed its claims would enable one to hold one's opinions knowing they have been tried and tested and stand up to rational scrutiny. My approach in this paper is to provide, in the next four parts, concrete examples of how these aspects of the teaching of critique are emphasized and employed in two courses that I teach at the Singapore Management University. The first is a mandatory module called "Legal Theory & Philosophy" ("LTP"). The second is an upper year elective called "Jurisprudence: Modern and Critical Theories of Law" ("JURIS").

II. Studying Schools of Jurisprudence

Some detractors think that if the aim of law schools is to produce legal practitioners, teaching jurisprudence is not useful unless it is demonstrated to be directly practically relevant to legal practice. But the view that producing practitioners is the main aim of law schools is disputed. It may be argued that law schools should also seek to produce "cultivated lawyers"⁷ who are knowledgeable about the world they live in. Some argue that law professors should ask normative questions about the law as "they have a larger obligation, one that includes the probing of love and justice as well as the development of civic virtue and a

⁶ <http://www.ntpu.edu.tw/english/colleges.php>.

⁷ Andras Jakab, *Dilemmas of legal education*, 57 J. LEGAL EDUC. 253, 255 (2007). See, also, Thomas D. Morgan, *Teaching students for the 21st century*, 36 J. LEGAL EDUC. 285, 288 (1986).

sense of public duty.”⁸ Learning jurisprudence is valuable for its tendency to bring about the sensitivity to values and an understanding of the character and structure of law.⁹ The ability for critical thinking may also be imparted through jurisprudence. But mention critique in the context of jurisprudence and one tends to think of critical legal studies. If one had to categorize broadly the jurisprudential theories, the divide may be readily seen as being between traditional schools of jurisprudence such as legal positivism, natural law theory, and Ronald Dworkin’s theory of law, on the one hand, and critical theories such as American legal realism and critical legal studies on the other. The former set of theories does not explicitly treat law as politics, while the latter does. The teaching of critique in the context of schools of jurisprudence is not, however, limited to exploring how critical theories expose problems with traditional schools of jurisprudence. It extends to the critique of the critical theories. As it is in the elective, JURIS, that I teach the different schools of jurisprudence, I shall describe how critique features in that course.

The theories of John Austin, HLA Hart, Hans Kelsen, Ronald Dworkin, John Finnis, Karl Llewellyn, and Roberto Unger are covered in JURIS through a selection of primary materials. Each perspective of law is presented in the best light possible: this may be best done from its point of view, as what is best varies according to sometimes unspoken fundamental assumptions denied by other theories of law. Such assumptions are unpacked, and thereafter, each theory is challenged by reference to other theories not sharing the same assumptions. This provides the opportunity of critique that also sets the student thinking about her own fundamental assumptions linked to her broader worldview which inclines her to a particular theory of law. Critical schools of jurisprudence are taught in the same manner. They stem from fundamental assumptions that are contentious from the points of view of traditional theorists and may be challenged by them. The constant comparison through the unpacking of fundamental assumptions encourages students not to treat the theories as disparate, or dealing with similar questions at cross purposes, or dealing with altogether different questions. It highlights opposing positions on fundamental questions so that students in touch with the diametric opposition better understand the repercussions of each view. I shall give two illustrations to elucidate how such comparison is done.

My first illustration relates to the debate between legal positivism and natural law theory. Some view this debate as occurring at cross-purposes and regard the former as dealing with what law is while the latter as addressing the question of what law ought to be.¹⁰ Positivists assert that there is no necessary connection between laws and morals. Austin writes that “(t)he existence of law is one thing; its merit or demerit is another.”¹¹ Hart notes: “[I]t is in no sense a necessary truth that laws reproduce or satisfy certain demands of morality, though in fact they have often done so.”¹² Kelsen joins the positivists in suggesting that legal norms may have any kind of content.¹³ Some positivists acknowledge a contingent connection between law and morality; for example, morals often influence the law, and a legal system that expects to command the respect of its addressees must rest upon the addressees’ sense of obligation or a conviction of its moral value.¹⁴ Natural law theory suggests that there is a

⁸ Roger C. Cramton, *Beyond the ordinary religion*, 37 J. LEGAL EDUC. 509, 510 (1987).

⁹ Thomas Huff, *A heresy in the ordinary religion: Jurisprudence in the first curriculum*, 36 J. LEGAL EDUC. 108, 115-116 (1986).

¹⁰ See the discussion in Lloyd Weinreb, *The natural law tradition*, 36 J. LEGAL EDUC. 501 (1986).

¹¹ J. AUSTIN, *THE PROVINCE OF JURISPRUDENCE DETERMINED* 184 (H.L.A. Hart ed., Hackett Publishing rep. 1998).

¹² H.L.A. HART, *THE CONCEPT OF LAW* 185-186 (Clarendon Press, 2nd ed., 1994) (1961).

¹³ HANS KELSEN, *THE PURE THEORY OF LAW* 198-199 (The Lawbook Exchange 2002, 2009).

¹⁴ H.L.A. HART, *THE CONCEPT OF LAW* 185 and 202-203 (Clarendon Press, 2nd ed., 1994) (1961).

necessary connection between law and morality – that laws posited by human authorities must conform to universal principles which stem from an objective conception of human nature,¹⁵ God's law,¹⁶ the law of reason, or morality.¹⁷ In spite of what appears to be a clearly opposing claim, some maintain that the debate occurs at cross-purposes. They think that natural law theory's assertion of a necessary connection between law and morality does not impinge on the validity of laws. It is merely aspirational. Thus, where manifestly unjust laws are concerned, for some natural law theorists, if the law fails to be what it ought to be, it remains legally valid.¹⁸ Such a view that the legal status of unjust laws is only a subordinate concern of natural law theory,¹⁹ which serves only as a prescription for good law, has perhaps led to suggestions that it is possible to integrate²⁰ legal positivism and natural law theory. This view takes legal positivism and natural law theory to address the same question of law's connection with morality, but in different spheres – legal positivism explores the connection for legally valid laws, while natural law theory explores the connection for good or sound laws, which remain legally valid even if they fail to be good or sound. Or, as Professor Robert George puts it, legal positivism is concerned with the description of laws, while natural law theory is concerned with the justification of laws.²¹ Others, in contrast, suggest that natural law theory does not merely explicate what law *ought to be*. It is also a theory about what law *is*: law *is* what conforms to an objective law or to reason.²² This latter view reveals the cutting edge of natural law theory: Hart says that the rule of recognition *may* incorporate moral criteria, but these natural law theorists, in direct contradiction, suggest any test of law *must* incorporate such criteria.

The point of exploring such different perspectives of the age-old debate between legal positivism and natural law theory is to highlight one perspective that there is a real conflict between two primary schools of jurisprudence on a fundamental question of the nature of law (and its validity). Law students taking the alternative view that there is no real conflict might end up unthinkingly accepting, for all practical purposes in their practice of law, what is in fact the positivistic view that "law is law", and think that aspirational standards are the concern of legislators. They might not strive to make laws that are morally salutary, when

¹⁵ The Stoics, for example, had an elaborate conception of nature. See A.A. LONG, *HELLENISTIC PHILOSOPHY* 147-178 (University of California Press, 2nd ed., 1986) (1974).

¹⁶ Blackstone:

This law of nature, being co-eval with mankind and dictated by God Himself, is of course superior to any other. It is binding over all the globe, in all countries, and at all times: no human laws are of any validity, if contrary to this; and such of them as are valid derive all their force, and all their authority, mediately or immediately, from this original. (WILLIAM BLACKSTONE, *COMMENTARIES*, Book I, section 2, 41 (1765).)

There may be theories of law which lay claim to a necessary connection between laws and morals which are not, strictly speaking, "natural law theory", defined in this manner. These may refer, for example, to a system of universal principles that are neither ontological, nor linked to God's law. Whether such a system is viable is another question. This is how Alexy frames the debate in ROBERT ALEXY, *THE ARGUMENT FROM INJUSTICE: A REPLY TO LEGAL POSITIVISM* (Bonnie Litschewski Paulson & Stanley L. Paulson trans., Clarendon Press 2002) (1994).

¹⁷ *THE OXFORD HANDBOOK OF JURISPRUDENCE & PHILOSOPHY OF LAW* 5-8 (Jules Coleman & Scott Shapiro ed., OUP 2002).

¹⁸ This is Finnis's interpretation of Aquinas and natural law theory in JOHN FINNIS, *NATURAL LAW AND NATURAL RIGHTS* 351-368 (Clarendon Press 1993) (1980).

¹⁹ JOHN FINNIS, *NATURAL LAW AND NATURAL RIGHTS* 351 (Clarendon Press 1993) (1980).

²⁰ Harold Berman, *Towards an integrative jurisprudence: Politics, morality and history*, 76 *CAL L. REV.* 779-801 (1988).

²¹ ROBERT GEORGE, *IN DEFENSE OF NATURAL LAW* 228 (Oxford University Press, 2001) (1999).

²² See, for example, Radbruch's view in the Hart-Fuller debate (H.L.A. Hart, "Positivism and the separation of law and morals" (1958) 71 *HARV. L. REV.* 593 at 616-617).

they might have contributed to law's content if they had viewed law as necessarily connected to morality when litigating a case on a point of law. Or they might not resist heinous laws. Law in fact becomes the power phenomenon that positivistic theories such as Austin's view of laws as sovereign commands render them. Even while students pay lip service to natural law theory in the sphere of justification, natural law theory is given short shrift and lacks true bite where it counts – when officials of the legal system who have sworn to uphold the law have a valid legal and not just moral duty to refuse to uphold what is in fact a legally invalid law on account of its manifest injustice,²³ and when legal practitioners help officials determine their legal duties through arguments about what counts as law. Understanding whether law is a power phenomenon or is connected with morality affects other areas of legal doctrine. For example, the law student studying the law of contracts would be concerned with ethical issues such as what to do in relation to a client who wants to drive a hard bargain, what the client should be encouraged to disclose, and so on.²⁴ The answer to the ethical questions would be influenced by an understanding of the foundations of contract law, which is in turn informed by a general understanding of the foundation of law.

My second illustration concerns a fruitful way of teaching theories which do not on their face address the same questions. The questions may be reframed to highlight points of convergence in the theories or contending positions on similar topics (which compels students to the choice amongst different theories). For example, Dworkin's true community in *LAW'S EMPIRE*²⁵ can be compared with Finnis's common good, the set of conditions necessary to help individuals secure the seven basic values of human flourishing.²⁶ While Dworkin does not address the question of human flourishing, does his idea of the true community as one in which laws regard each individual with equal concern and flow from a more general sense of responsibility to all in the community result in laws with substantively similar content as Finnis's laws in the focal sense which facilitate and structure an individual's pursuit of the basic values of human flourishing in Finnis's community? In turn, how vastly different are such legal frameworks from Unger's self-revisable structure of government which increases what he terms the "negative capability" of individuals,²⁷ that in Unger's view best allows the individual to achieve true freedom and "a place ... in the world"?²⁸ Another example relates to the different views of adjudication. Dworkin suggests that the ideal judge Hercules must view law as a seamless web and endeavor to find an interpretation of law that best fits and justifies legal practice.²⁹ In contrast, American legal realists think that legal rules are under-determinative and techniques of treating precedents give judges the leeway to find a legal rule to justify a decision they prefer for reasons unrelated to the rules.³⁰ Critical legal studies scholars take the view that law is politics further than the American legal realists by suggesting that even if there is order in the legal materials, such order facilitates the

²³ ROBERT ALEXY, *THE ARGUMENT FROM INJUSTICE: A REPLY TO LEGAL POSITIVISM* (Bonnie Litschewski Paulson & Stanley L. Paulson trans., Clarendon Press 2002) (1994).

²⁴ Scott J. Burnham, *Teaching legal ethics in contracts*, 41 J. LEGAL EDUC. 105 (1991).

²⁵ RONALD DWORKIN, *LAW'S EMPIRE* 211-215 (Fontana Press, 1986).

²⁶ JOHN FINNIS, *NATURAL LAW AND NATURAL RIGHTS* 154-156 (Clarendon Press 1993) (1980).

²⁷ ROBERTO MANGABEIRA UNGER, *THE CRITICAL LEGAL STUDIES MOVEMENT* 48 and 94 (Harvard University Press, 1983, 1986).

²⁸ ROBERTO MANGABEIRA UNGER, *THE SELF-AWAKENED: PRAGMATISM UNBOUND* 13 (Harvard University Press, 2009). This article is not an appropriate forum to discuss the ideas in detail. See *ibid.* and *PASSION: AN ESSAY ON PERSONALITY* (Free Press, 1984).

²⁹ RONALD DWORKIN, *TAKING RIGHTS SERIOUSLY* 115-117 (Duckworth, 1977).

³⁰ KARL N. LLEWELLYN, *THE THEORY OF RULES* c. VII (Frederick Shauer ed., University of Chicago Press, 2011).

entrenchment of the interests of the ruling classes and should be resisted by adjudicators.³¹ Harvard Law professor Duncan Kennedy suggests that the judge should aid in re-imagining an altruistic order,³² while Unger proposes that adjudicators engage in "purposive analogical reasoning" which acknowledges no systematic closure but instead develops the disharmonies in law in a manner that facilitates the ideal of a free people.³³ While such views reflect vastly different visions of adjudication, students need the help of the teacher to be able to inter-relate the theories. In addition to directly engaging the comparison in class, examination questions may also be set to require students to explain problems with a particular view of adjudication from the perspective of another theorist's view. For example, is the view that the judge is able to determine the rights of parties even when no settled rule disposes of the case³⁴ a sham? This involves a critique of Dworkin's claims from the perspectives of American legal realists and critical legal studies, and a defense of Dworkin's view through a rebuttal of their critiques.

Throughout, students are encouraged not to see the theories as unrelated, which they might if the debates are seen to be at cross-purposes or there is no point of convergence of the theories, which are seen to address wholly different questions. The objective is for students to discover and elucidate their own theory of law, which may even involve a wholesale rejection of all the theories, or an adoption of what turns out to be a hybrid of some of these theories.

III. Philosophy in the Public Square

Getting pragmatic Asian students in a professional school to be interested in philosophical abstractions and concepts and to persevere in readings they regard as immensely difficult, last-century, and sometimes dry and boring is an uphill task. Anecdotally, it appears that a significant proportion of the students have set their minds on embarking on private legal practice. A legal philosophy course, especially if mandated by law school, can empower law students to participate in working towards just institutions and law in future. Students may be sensitized to contentious values in legal institutions which they can play a part in transforming.

In the mandatory course for third and fourth year law students, LTP, I explore jurisprudential issues thematically. We begin by asking what law is and how, as a form of monopolisation of coercive force, it is different from the arbitrary exercise of power. Must law be justified? What is the legitimate basis of law in a postmodern, pluralist society? Is the restriction of the liberty of an individual to engage in immoral conduct justifiable given that we do not share the same moral values? Are unjust laws law? Is justice always done when rules are followed? How do judges decide cases? Can a good lawyer be a good person? Taking off from a conventional view of law as a purposive enterprise regulating human conduct, we go on to consider the meaning and significance of underlying ideals such as formality, justice, morality, liberty, and rationality. We also explore critical perspectives that challenge conventional views of law. Along the way, we engage the most intractable debates in the public square as familiar contexts for them to think about philosophical issues. Each classical reading is paired with contemporary illustrations to demonstrate to the students that it is still relevant today. This is especially important as Singaporeans are not predisposed to

³¹ ROBERTO MANGABEIRA UNGER, *THE CRITICAL LEGAL STUDIES MOVEMENT* c.1 (Harvard University Press, 1983, 1986).

³² Duncan Kennedy, *Form and Substance in Private Law Adjudication*, 89 HARV.L.REV. 1685, 1778 (1976).

³³ ROBERTO MANGABEIRA UNGER, *WHAT SHOULD LEGAL ANALYSIS BECOME?* 114-116 (Verso, 1996).

³⁴ RONALD DWORKIN, *TAKING RIGHTS SERIOUSLY* 81 (Duckworth, 1977).

thinking philosophically – a state of affairs that sometimes leads to the impoverishment of debates over important legislative or public policy decisions. For instance, when the issue of legalisation of casino gambling in Singapore was hotly debated years ago in Parliament and in the public square, the debate centered on whether economic benefits outweighed social costs and whether Singaporeans could be trusted to act responsibly³⁵ or needed the government to take paternalistic measures to protect them from excessive gambling in casinos. Classic jurisprudential debates, such as the Hart-Devlin debate over the enforcement of morality³⁶ and Finnis's idea of human flourishing in the form of seven basic values,³⁷ could have informed the decision of the government but were not raised in parliamentary debates. While teaching the classic jurisprudential debates, I highlight to students what different concerns might have arisen if members of Parliament were familiar with these debates. As society at large is not accustomed to thinking beyond the narrow confines of consequentialist or utilitarian arguments, introducing other issues expands and empowers students to think about what it means for them to flourish and how law is implicated in that. As one commentator notes, "while we cannot and should not try to impose a particular view of thriving on others, we can and should at least avoid using our bully pulpit to narrow their souls."³⁸

To give students the incentive to take what they learn in class beyond the classroom, I award students marks for contribution in public square debates through readers' letters to the newspapers. In the last few years, students have been very actively contributing to letters to the local newspapers, many of which have been published. In some public debates in the newspapers, letters came solely from students in my courses. A sample of their contributions include:

- in relation to a case on whether a constitutional provision gave the prime minister the discretion not to call for a by-election when one of the seats in parliament was vacated, a student wrote to the press to discuss the manner in which rules should be interpreted, whether there should be a reference to the principles embedded in the legal institutions and materials as Dworkin proposes for interpretation;³⁹
- on the role of law, students wrote about whether laws should be made for the resolution of disputes amongst neighbors;⁴⁰
- in relation to a public series of conversations known as the Singapore Conversation which was spearheaded by the government to discern the direction for Singapore's future, a student wrote about what John Finnis's view on human flourishing suggested;⁴¹

³⁵ Sing., *Parliamentary Debates*, vol. 77, col. 2725ff. (Apr. 19, 2004) (Minister of State for Trade and Industry, Dr Vivian Balakrishnan) (Oral answers to questions, Setting up of casino); Sing., *Parliamentary Debates*, vol. 80, col. 54ff. (Apr. 18, 2005) (Ministerial statement, Proposal to develop integrated resorts).

³⁶ H.L.A. HART, *LAW, LIBERTY, AND MORALITY* (Stanford University Press, 1963); PATRICK DEVLIN, *THE ENFORCEMENT OF MORALS* (Oxford University Press, 1965).

³⁷ JOHN FINNIS, *NATURAL LAW AND NATURAL RIGHTS* (Clarendon Press 1993) (1980).

³⁸ Sherman J. Clark, *Neoclassical public virtues: Towards an aretaic theory of law-making (and law teaching)* in LAW, VIRTUE AND JUSTICE 81, 98 (Amalia Amaya and Ho Hock Lai eds., Hart Publishing, 2013).

³⁹ *Do we look beyond legal obligation?*, TODAY, March 2, 2012; RONALD DWORKIN, *TAKING RIGHTS SERIOUSLY* 101-105 (Duckworth, 1977).

⁴⁰ *Legal framework may help neighborliness*, THE STRAITS TIMES, September 14, 2012; *Law not proxy for morality but it can shape moral opinion*, TODAY, September 14, 2012; *Code of conduct for constituencies?*, TODAY, September 18, 2012; *Diversity calls for 'more facilitative laws'*, TODAY, September 18, 2012.

⁴¹ *Role of law in helping people thrive*, THE STRAITS TIMES, March 19, 2013; JOHN FINNIS, *NATURAL LAW AND NATURAL RIGHTS* (Clarendon Press 1993) (1980).

thinking philosophically – a state of affairs that sometimes leads to the impoverishment of debates over important legislative or public policy decisions. For instance, when the issue of legalisation of casino gambling in Singapore was hotly debated years ago in Parliament and in the public square, the debate centered on whether economic benefits outweighed social costs and whether Singaporeans could be trusted to act responsibly³⁵ or needed the government to take paternalistic measures to protect them from excessive gambling in casinos. Classic jurisprudential debates, such as the Hart-Devlin debate over the enforcement of morality³⁶ and Finnis's idea of human flourishing in the form of seven basic values,³⁷ could have informed the decision of the government but were not raised in parliamentary debates. While teaching the classic jurisprudential debates, I highlight to students what different concerns might have arisen if members of Parliament were familiar with these debates. As society at large is not accustomed to thinking beyond the narrow confines of consequentialist or utilitarian arguments, introducing other issues expands and empowers students to think about what it means for them to flourish and how law is implicated in that. As one commentator notes, "while we cannot and should not try to impose a particular view of thriving on others, we can and should at least avoid using our bully pulpit to narrow their souls."³⁸

To give students the incentive to take what they learn in class beyond the classroom, I award students marks for contribution in public square debates through readers' letters to the newspapers. In the last few years, students have been very actively contributing to letters to the local newspapers, many of which have been published. In some public debates in the newspapers, letters came solely from students in my courses. A sample of their contributions include:

- in relation to a case on whether a constitutional provision gave the prime minister the discretion not to call for a by-election when one of the seats in parliament was vacated, a student wrote to the press to discuss the manner in which rules should be interpreted, whether there should be a reference to the principles embedded in the legal institutions and materials as Dworkin proposes for interpretation;³⁹
- on the role of law, students wrote about whether laws should be made for the resolution of disputes amongst neighbors;⁴⁰
- in relation to a public series of conversations known as the Singapore Conversation which was spearheaded by the government to discern the direction for Singapore's future, a student wrote about what John Finnis's view on human flourishing suggested;⁴¹

³⁵ Sing., *Parliamentary Debates*, vol. 77, col. 2725ff. (Apr. 19, 2004) (Minister of State for Trade and Industry, Dr Vivian Balakrishnan) (Oral answers to questions, Setting up of casino); Sing., *Parliamentary Debates*, vol. 80, col. 54ff. (Apr. 18, 2005) (Ministerial statement, Proposal to develop integrated resorts).

³⁶ H.L.A. HART, *LAW, LIBERTY, AND MORALITY* (Stanford University Press, 1963); PATRICK DEVLIN, *THE ENFORCEMENT OF MORALS* (Oxford University Press, 1965).

³⁷ JOHN FINNIS, *NATURAL LAW AND NATURAL RIGHTS* (Clarendon Press 1993) (1980).

³⁸ Sherman J. Clark, *Neoclassical public virtues: Towards an aretaic theory of law-making (and law teaching)* in *LAW, VIRTUE AND JUSTICE* 81, 98 (Amalia Amaya and Ho Hock Lai eds., Hart Publishing, 2013).

³⁹ *Do we look beyond legal obligation?*, TODAY, March 2, 2012; RONALD DWORKIN, *TAKING RIGHTS SERIOUSLY* 101-105 (Duckworth, 1977).

⁴⁰ *Legal framework may help neighborliness*, THE STRAITS TIMES, September 14, 2012; *Law not proxy for morality but it can shape moral opinion*, TODAY, September 14, 2012; *Code of conduct for constituencies?*, TODAY, September 18, 2012; *Diversity calls for 'more facilitative laws'*, TODAY, September 18, 2012.

⁴¹ *Role of law in helping people thrive*, THE STRAITS TIMES, March 19, 2013; JOHN FINNIS, *NATURAL LAW AND NATURAL RIGHTS* (Clarendon Press 1993) (1980).

- a student applied the jurisprudential debate on the proper basis of criminal laws to laws prohibiting suicide;⁴² and
- students considered whether religion has a role in public decisions.⁴³

There are many benefits of encouraging student participation in the public square. First, students are sensitized to jurisprudential issues as they read the news. Second, they have an opportunity to apply what they learn to current issues and make a difference in the real world. Third, they are empowered as they stand up for what they believe in. Fourth, their arguments are scrutinised by their peers and the public, not just the marker of an examination, and in time, they learn what the weaknesses of their arguments are. Fifth, they make a special contribution to the education of the general public. While it might be cynically thought that students would write for the sake of grades and thereafter return to their indifferent selves, some students continued to write after they graduated from the course.

In LTP, research papers have also been set on the justifiability of the Singapore government's decision to legalise casino gambling, whether euthanasia and physician-assisted suicide should be permitted, whether there is a right to civil disobedience, and whether organ trade amongst living persons should be legalised. These assignment questions, alongside the public square participation, allow students to apply old classic jurisprudential writings such as the Hart-Devlin debate⁴⁴ and Martin Luther King Jr.'s LETTER FROM BIRMINGHAM JAIL⁴⁵ to the world they live in.

IV. The Socratic Method

Unfortunately, perhaps in part because of the movie, *Paper Chase*, featuring the inimitable Professor Kingsfield in the setting of Harvard Law School, the Socratic method has had a bad name. In real life, it has been associated with abusive teaching.⁴⁶ As one student put it, "I learned that the Socratic method of teaching meant I would be driven into a corner by my professors' endless questions in response to my black-letter answers."⁴⁷ I would like to suggest that the Socratic method means more than "an intensive interrogation of professor-selected students into the doctrinal logic of a legal case."⁴⁸ It is not synonymous with cross-examination or embarrassment of students. Though it is commonly thought that the Socratic method features dominantly⁴⁹ in the teaching of law, this is not necessarily so of the Socratic method properly understood. The infamous scene of Professor Kingsfield interrogating his student Hart about the case of *Hawkins v. McGee*⁵⁰ is hardly representative of the method.

It should be remembered that the Socratic method in its origins was used to promote a

⁴² *Don't let suicide become an offence against society*, TODAY, February 21, 2013; *Defence of moral standards not good reason for keeping suicide laws*, TODAY, February 23, 2013; *Consider the costs of suicide*, TODAY, March 1, 2013.

⁴³ *Defining the scope of religious views in public debate*, THE STRAITS TIMES, October 23, 2012; *Religiously motivated views have a place in secular space*, THE STRAITS TIMES, 22 October 22, 2012.

⁴⁴ H.L.A. HART, *LAW, LIBERTY, AND MORALITY* (Stanford University Press, 1963); PATRICK DEVLIN, *THE ENFORCEMENT OF MORALS* (Oxford University Press, 1965).

⁴⁵ http://www.africa.upenn.edu/Articles_Gen/Letter_Birmingham.html.

⁴⁶ James P. Rowles, *Towards balancing the goals of legal education*, 31 J. LEGAL EDUC. 375, 375 (1981-1982).

⁴⁷ Margaret F. Uhlig, *The making of a lawyer*, 38 J. LEGAL EDUC. 611, 612 (1988).

⁴⁸ Edward Rubin, *Curricular stress*, 60 J. LEGAL EDUC. 110, 114 (2010-2011).

⁴⁹ Nira Hativa, *Teaching large law classes well*, 50 J. LEGAL EDUC. 95, 103 (2000).

⁵⁰ 84 N.H. 114, 146 A. 641 (N.H. 1929).

concern for justice.⁵¹ It encompasses the elenchus and the dialectic which were the methods by which Socrates discoursed with his interlocutors. According to the Cambridge Encyclopaedia of Philosophy, the elenchus involves getting one's interlocutor to realise that "what he thinks he knows is inconsistent with his other opinions."⁵² The dialectic involves an "argument conducted by question and answer, resting on an opponent's concessions, and aiming at refuting the opponent by deriving contradictory consequences".⁵³ The basic idea of both is to get an interlocutor to realise that a hypothesis she puts forth contradicts with other theses she endorses, for example, in stemming from contradictory premises, such that the hypothesis must be revised. It encourages one's interlocutor to revise her views if there is no integrity in the set of assumptions or views she holds.

Each student tends to be inclined to a theory of law because of her particular worldview, which includes opinions on matters such as whether there is an objective morality. If the person is a moral skeptic, for example, the person would be more inclined to CLS and legal positivism. As an illustration of how the elenchus and the dialectic might be employed, I might find out the student's preferred theory of law, as well as her positions on unrelated legal issues that engage morally intractable debates, such as whether abortion should be allowed. If the assumptions behind two opinions – the first, on the theory of law, and the second, on the specific legal issue – are unpacked, the assumptions might turn out to be contradictory. For example, the student is a moral skeptic on the first, and a moral realist on the second. If so, one of the opinions has to be abandoned or revised. In this process, the student picks up the importance of consistency in analysis. Sometimes, too, just leading the student to unpack more specific implications of a general view that the student bandies without much critical thought helps the student revise the general view if the student realises that she does not really hold that view after all. For example, it is common to hear students speak of their belief that "morality is a social construct". Using the Socratic method, I might lead them to explain what they mean, whether, for example, they are of the view that social consensus binds everyone. In turn, what is needed to establish social consensus, and why is such significance attached to social consensus? For some students, it might come down to their belief that every person has equal dignity, and hence each person's view counts aggregatively to constitute a common morality. This belief about equal dignity might be embraced as absolute, and not as a social construct, thus suggesting that the student does not really believe in morality as a social construct, but in the absolute moral value of equal dignity.

Legal philosophy offers an especially good context to learn analytical skills because philosophical arguments, as contrasted with polemical arguments which defend particular positions, require students to develop a sustained argument and consider different positions before arriving a conclusion from "plausible premises".⁵⁴ I encourage students to treat the exercise of determining their opinions differently from a debate, and to consider arguments and counter-arguments before arriving at their opinions. This is also reflected in my marking, which rewards students for being able to recognise counter-arguments, and places far less emphasis on the actual conclusion of the students.

⁵¹ Mary Jewell, *Teaching law ethically: Is it possible?*, 8 DALHOUSIE L.J. 474, 485–486 (1984).

⁵² THE CAMBRIDGE DICTIONARY OF PHILOSOPHY 257 (Robert Audi ed., Cambridge University Press, 2nd edition, 1999).

⁵³ THE CAMBRIDGE DICTIONARY OF PHILOSOPHY 232-233 (Robert Audi ed., Cambridge University Press, 2nd edition, 1999).

⁵⁴ Claire Grant, *On writing: The essay in jurisprudence*, 58 J. LEGAL EDUC. 351, 353 (2008).

It has been observed in relation to doctrinal law courses that something as run-of-the-mill to law professors as issue spotting⁵⁵ needs to be explicitly dealt with and taught to the students through a check list, as not all students have the "academic intelligence" to pick up for themselves the skill of issue spotting. One critic defines "academic intelligence" as "a student's actual level of academic preparation, i.e., a student's readiness or ability to engage productively with an academic environment and to benefit from that interaction."⁵⁶ Someone with academic intelligence "will have strong reading comprehension, writing, and study skills, be able to take effective notes in class, outline, and manage their time-in other words, the skills that determine, ultimately, who will be successful in law school."⁵⁷ It might not be obvious to average students going through legal doctrines in class that they are expected to pick up legal reasoning skills, as their performance in examinations suggest.⁵⁸ A similar problem in my view exists in relation to philosophical issues arising in law: while it ought to have been obvious that we should ensure that our various opinions on different issues do not stem from contradictory assumptions, students are not conscious of such problems with the opinions they hold until they are forced to unpack their views in class. Thus, the use of the elenchus and the dialectic are particularly effectively in leading them to rethink incoherent or inconsistent views.

V. Critical Legal Studies

Despite what has been said to be the decline of the critical legal studies school, a shift towards market-oriented methodology, and an acceptance of the reproduction of hierarchies in the global market,⁵⁹ I argue that CLS has much to offer in terms of training critical thinking and helping law students become empowered citizens and lawyers. While Professor Roberto Unger said in his Tanner Lectures on Religion⁶⁰ that he is a sympathetic unbeliever in relation to religion, I consider myself a sympathetic unbeliever in relation to CLS. Many aims and methods of CLS are admirable and a necessary part of any thinking about law even if I do not agree with its fundamental assumptions or in treating the aims and methods as the be all and end all of legal thought.

Whether CLS has lost its gloss globally, as I anecdotally surveyed my students, I confirmed that they knew very little, if anything at all, about it (though, to be fair, they knew little about other legal theories too). I am not sure it was otherwise in the heyday of CLS. Some law students learnt of it only in their upper years in the mandatory LTP course; others heard of critical views, not in the context of law but in the context of cultural studies, where they were introduced to the idea of social constructs or society as an artefact. I suggest that three sets of factors have contributed to the cool reception towards CLS in Singapore. The first set of factors concern legal education in Singapore. Legal education is private practice-oriented, with a focus on helping students master the legal doctrines and skills essential for practice. This is an understandable aim given that the nation is small. Law schools, as

⁵⁵ Deborah Zalesne and David Nadyomey, *Why don't they get it?: Academic intelligence and the under-prepared student as "other"*, 61 J. LEGAL EDUC. 264, 278-279 (2011-2012).

⁵⁶ Deborah Zalesne and David Nadyomey, *Why don't they get it?: Academic intelligence and the under-prepared student as "other"*, 61 J. LEGAL EDUC. 264, 264 (2011-2012).

⁵⁷ Deborah Zalesne and David Nadyomey, *Why don't they get it?: Academic intelligence and the under-prepared student as "other"*, 61 J. LEGAL EDUC. 264, 266 (2011-2012).

⁵⁸ Deborah Zalesne and David Nadyomey, *Why don't they get it?: Academic intelligence and the under-prepared student as "other"*, 61 J. LEGAL EDUC. 264, 271 (2011-2012).

⁵⁹ Daria Roithmayr, *A dangerous supplement*, 55 J. LEGAL EDUC. 80, 81-82 (2005).

⁶⁰ Roberto Unger, *The Future of Religion and the Religion of the Future*, available on <http://www.law.harvard.edu/faculty/unger/philosophy.php>.

professional schools, are expected to serve the profession and the community. There is also a dearth of doctrinal teachers teaching private law who are actively researching in legal theory, let alone critical theory. Anecdotal evidence from a brief look at the law schools in Singapore suggest that teachers familiar with theory are teaching theory, international law, constitutional law, or criminal law. The second set of factors relate to Singapore as a society in which the prevailing social attitude is conservative. As an Asian society, deference towards, and respect of, authority are emphasized. The community is more important than the individual. There is a tendency to equate any questioning of established laws and institutions with a challenge (in bad faith) of governmental authority, instead of a good faith attempt to work towards fairness and justice in law. Furthermore, many Singaporeans were for a long time politically apathetic though this seems to have changed in the latest general⁶¹ and presidential⁶² elections during which the use of social media was instrumental in fostering a critical questioning atmosphere. Ordinary citizens actively turned into political commentators on blogs, Facebook, and Twitter.⁶³ The third set of factors accounting for the slow take up of CLS are perhaps internal to CLS. As a school of jurisprudence that is disruptive of whatever is established, it may be opposed by those who are most versed with it and in a privileged position to be able to harness it for transformative purposes as they want to keep the system going. It also demands too much personal engagement from people who are far too comfortable with their lives to push for change or otherwise too lazy to step out of their comfort zone, especially in a materialistic society.

There are several ways I employ CLS in LTP and Juris to help law students reflect on their special responsibility to work towards just institutions, whether as lawyers or legally-trained citizens.

The first reading I prescribe in LTP is an excerpt from Professor Duncan Kennedy's *LEGAL EDUCATION AND THE REPRODUCTION OF HIERARCHY*.⁶⁴ I use it to set the tone for the rest of the course. Students are encouraged to think about the manner in which legal education has constructed boundaries of law and whether legal reasoning is different from political or ideological reasoning. This is important given that some empirical studies by critical sociologists suggest that law schools play a part in producing students who uncritically accept the economic and political status quo, the entrenchment of which is aided by law.⁶⁵

The themes of CLS cannot be fully engaged in this essay. Three lessons, reflecting a concern with social justice that is characteristic of the American leftist tradition, are particularly important for students who "try to make a difference in the quality of our private and public lives".⁶⁶ I shall briefly mention them. The first is the idea that law is politics. More specifically, legal doctrines and the boundaries of law are not necessary or inevitable. Law as it stands may reflect the ideology of a class, and may not be legitimate or justified. When we treat the law as our first port of call, and are content to make our claims within the law, we accept its negotiation of interests without question. We should be more vigilant to ask if the

⁶¹ This took place in 2011.

⁶² This took place in 2012.

⁶³ See, for example, *Singapore PM promises 'strategic shift' to protect city state's success*, FINANCIAL TIMES, Aug 18, 2013: "Yet the government is contending with a vibrant social media where criticism of policy is aired openly. That was a big factor in the PAP's worst general election result in 2011, a performance that it will be hoping not to repeat at the next poll in 2016."

⁶⁴ NYU Press, new ed., 2007.

⁶⁵ ROBERT GRANFIELD, *MAKING ELITE LAWYERS* (Routledge 1992). Compare with J.D. Drodgy & C. Scott Peters, *The effect of law school on political attitudes*, 53 J. LEGAL EDUC. 33 (2003).

⁶⁶ Gene R. Nichol, *Law's Disengaged Left*, 50 J. LEGAL EDUC. 547, 549 (2000).

law we plead in the courts as binding on parties is fair or just. Lawyers should see each private dispute before the court as an opportunity for the law to be transformed. This is ballast against what has been critiqued as the private litigation focus of the first year curriculum where the "overwhelming message is that real law and real lawyers maintain the status quo by resolving disputes between private parties."⁶⁷ The second important lesson of CLS is its recognition that we are products of our contexts. We need to transcend our contexts. Critics are vigilant to expose conflicting interests underlying the law and reveal how law entrenches power relations and masks the protection of particular interests. Such delegitimation of the law can serve a constructive outcome of enabling us to see more possibilities for our lives regulated by the law. The third valuable lesson is Professor Unger's recognition that the individual has an identity that is not defined by social hierarchy or context.⁶⁸ Thus, he advocates context-smashing with a view to bringing about a world in which we can relate to one another as more than mere bearers of rights.

There are insurmountable problems, however, with the premises of CLS.

First, while the context-transcendent narrative is attractive, if we are products of context, how can we be sure that we have successfully transcended context, and not merely spoken from within our context? There seems to be a possibility that CLS is merely a reaction to existing philosophies as CLS is negatively defined - being a rebellion against existing structures and social conservatism. Professor Unger gives a modernist restatement of the Christian romantic image of man in one of his earlier works but rejects Christianity. He is attracted to the Christian view of man as an end in himself and as more than a product of context. The view Professor Unger rejects, while not acceptable to atheists and those of other religions, and not attractive to agnostics, does not suffer from the logical problem of every discovery being context-dependent: the personal God of Christianity is an external personal power that is capable of speaking to man from a situation outside of man's context. Moreover, man is not merely a product of context because worth is conferred upon him by a personal God who creates him.

The second problem with CLS is whether anything concrete can come out of the view that everything is contingent. In its belief in the importance of smashing one's context, is it not obliged to smash even the context that emerges out of any constructive programs it implements? If everything, including its own outcomes, must be smashed, this results in a problem that is best articulated in these words:

There are progressions in which the last step is *sui generis* - incommensurable with the others - and in which to go the whole way is to undo all the labour of your previous journey...you cannot go on 'explaining away' forever. You will have explained explanation itself away. You cannot go on 'seeing through' things forever. The whole point of seeing through something is to see something through it. It is good that the window should be transparent, because the street or garden beyond it is opaque. How if you saw through the garden too? It is no use trying to 'see through' first principles. If you see through everything, then everything is transparent. But a wholly transparent world is an invisible world. To 'see through' all things is the same as not to see.⁶⁹

⁶⁷ Edward Rubin, *Curricular stress*, 60 J. LEGAL EDUC. 110, 110 (2010-2011).

⁶⁸ ROBERTO MANGABEIRA UNGER, *THE SELF-AWAKENED: PRAGMATISM UNBOUND* 13 (Harvard University Press, 2009); ROBERTO MANGABEIRA UNGER, *PASSION: AN ESSAY ON PERSONALITY* (Free Press, 1984).

⁶⁹ CS Lewis, *THE ABOLITION OF MAN* 48 (Fount, 1978).

The third problem is the attitudinal change that CLS seems to require but cannot bring about. Professor Unger, in an earlier work, wrote:

The program of radical democracy has a more troubled relation to the strengthening and cleansing of solidarity. The fulfilment of its proposals does not ensure us of coexisting in peace. *It does not take away our hearts of stone and give us hearts of flesh.* But it does enable us to live out more fully the tense, ambiguous, ennobling connection between solidarity and empowerment, between the experience of mutual acceptance and the development of our faculties, between our longing for one another and our efforts to find particular expressions for the impulse within us that rebels against all particularity. What more could we ask of society than a better chance to be both great and sweet?⁷⁰ (*emphasis mine*)

While no attribution is made in the text, the italicised words are quoted from the prophet Ezekiel in the Bible, whose exact words, speaking on behalf of God, are: "I will give you a new heart and put a new spirit within you; and I will remove the heart of stone from your flesh and give you a heart of flesh."⁷¹ Professor Unger's reference acknowledges that the CLS effort falls short of what would be possible if a context-transcendent power was available to effect our true transformation.

In spite of these problems with CLS, its value lies in teaching us to question things we take as given or necessary or incapable of revision, and encourages us to re-imagine possibilities of law. As a commentator notes:

(E)ven though one might not find Unger's arguments persuasive in the final analysis, his signal contribution must surely be the spirit that lies behind his work, which spirit must not be underestimated – not least because, despite the apparently obvious point that things ought to be perceived as capable of being better, the fact of the matter is this: that apart from a few remarkable individuals, most labour under the illusion that they are powerless to work a greater good in society at large, not realising that that 'greater good' lies not in a final decisive victory as such but, rather, a continuous and committed effort to try to alter what we sincerely feel requires change.⁷²

It is this spirit of continually and constantly working for just institutions that the teaching of critical thinking through CLS can foster in the future lawyer and legally-trained citizen.

VI. The Special Contribution of the Lawyer and the Legally-trained Citizen

Of late, the legal community in Singapore has been encouraging more pro bono commitment. Students in the two law schools in Singapore are now required to perform 20 hours of pro bono service before graduation.⁷³ Commentators have long spoken of public service as an obligation⁷⁴ of lawyers. While doing pro bono work is salutary, it still falls short

⁷⁰ ROBERTO MANGABEIRA UNGER, *POLITICS: THE CENTRAL TEXTS* 436 (Verso 1997).

⁷¹ EZEKIEL 36:26, New American Standard Bible.

⁷² Andrew Phang, *Roberto Unger and the politics of transformation in an Asian context*, TSAR 472, 495-496 (1997).

⁷³ <http://www.sile.org.sg/pro-bono-programme>.

⁷⁴ Lucie E. White, *Pro bono or Partnership? Rethinking lawyers' public service obligations for a new millennium*, 50 J. LEGAL EDUC. 134 (2000).

of the "Jeffersonian vision of legal education", which was for lawyers, through learning broad political theory and moral philosophy, amongst others, to develop into virtuous leaders who place public interest above private interests.⁷⁵ How far law schools have moved from such a vision is seen from how we have had to critique legal education for fostering an unhealthy form of "thinking like a lawyer". Anything other than "the cognitive, rational, and analytical" is devalued, leading students to perceive that the ethical and moral values they cherish must be given up if they were to become good lawyer.⁷⁶ As one commentator notes:

Many students enter law school with a strong sense of right and wrong. Over time, however, their professors teach these students to "think like a lawyer." Many times, there is no right answer and the answer is simply "it depends." It does not depend on whether the defendant committed the crime; more often than not it depends on who the judge is, the mandatory sentencing requirements imposed, whether the police preserved the evidence, or whether the key witness was secured by the state. These students must come to conclusions not because they believe something is right or fair or just but because it is "what the law says." Law students are trained to ignore their heart and to go with their head in all situations. They are taught that there are no real "right" answers. The right answer is determined by who can make the best argument. This can lead to cognitive dissonance for law students and result in their losing the passion and purpose that originally brought them to law school.⁷⁷

On a personal level, promoting critical legal thinking through the methods identified in this article enables students to find out who they really are and work through the relation between their fundamental beliefs and legal doctrines. The constant examination of beliefs through the Socratic elenchus and dialectic forces each student to abandon those beliefs that do not stand up to rational scrutiny or which stem from contradictory assumptions that the student cannot endorse alongside other beliefs. Exposure to the challenges of critical legal studies makes each student conscious of legal doctrines which are not legitimate or justified. They are empowered to lead examined lives instead of practising law thinking it to be natural and justified and being found in the end to have served particular interest groups.

On a public level in their capacity as lawyers, students are better able to harness the transformative potential of law when they realise how it is occasionally being employed to serve factional interests, and seek a revision of what is not fair.

A public lawyer may challenge the constitutionality of legislation in good faith, with to ensure that constitutionally guaranteed rights are protected. In Singapore, such challenges⁷⁸ have been made, though none has been successful at the appellate level.⁷⁹ There is nothing

⁷⁵ Davison M, Douglas, *The Jeffersonian vision of legal education*, 51 J. LEGAL EDUC. 185 (2001).

⁷⁶ Daisy Hurst Floyd, *We can do more*, 60 J. LEGAL EDUC. 129, 131 (2010-2011).

⁷⁷ Ben Gibson, *How law students can cope: A law student's view*, 60 J. LEGAL EDUC. 140, 142 (2010-2011).

⁷⁸ See, for example, some recent cases: Nguyen Tuong Van v. PP [2004] SGCA 47 and Yong Vui Kong v. PP [2010] SGCA 20 (whether the mandatory death penalty under the Misuse of Drugs Act (Cap 185, 2001 Rev Ed) violated the constitutional guarantee of equality under Art 12 of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) (hereafter, "the Singapore Constitution") or the right not to be deprived of life or personal liberty save in accordance with law under Art 9 of the Singapore Constitution); Lim Meng Suang and another v. AG [2013] SGHC 73 (whether section 377A of the Penal Code (Cap 224, 2008 Rev Ed) violated Article 12 of the Singapore Constitution); and Ramalingam Ravinthran v. AG [2012] SGCA 2 (whether the exercise of prosecutorial discretion to charge two persons involved in the same criminal enterprise with two different offences, one capital and the other non-capital, violated Art 12 of the Singapore Constitution).

⁷⁹ The challenge of Section 37 of the Prevention of Corruption Act succeeded at the High Court level in PP v. Taw Cheng Kong [1998] SGHC 10, but was overturned by the Court of Appeal [1998] SGCA 38.

sinister about this, though, as it may be the case that all the challenges failed because the legislation in question was well thought through and constitutional. Unfortunately, a prominent lawyer frequently involved in several recent cases has been in the news for inappropriate behavior on numerous occasions.⁸⁰ This might not only fail to lend credence to such work, it could in the minds of others create a negative association between a legitimate *bona fide* attempt to uphold the constitution and inappropriate behavior. Where is the William Wilberforce of this generation?

A private lawyer might be less accepting of current legal doctrines and seek to develop less dominant counter-principles in areas of law. In contract law, Professor Unger notes that the dominant principles respect the idea of contract as promise, with its emphasis on the freedom of the parties to enter into contracts, while less dominant counter-principles value fairness and prevent the subversion of communal aspects of social life limit the enforcement of contracts that otherwise may seem to have been freely entered into.⁸¹ These counter-principles are seen as exceptional and as generating ad hoc qualifications to the dominant principles, but Professor Unger suggests they may be generative of a different body of rules.⁸² A private lawyer who endorses Professor Unger's view might push for the courts to apply existing, or create, exceptions to general rules while litigating a contract dispute on a point of law, without viewing those exceptions as applying only in the exceptional instances. This might lead, for example, to the recognition of more categories of factors which vitiate a contract, beyond the cases in which parties could be seen as not having freely entered into a contract, to cases in which the courts respect a more general idea of fair bargain. Or a more general expansive general principle (in this case, of inequality of bargaining powers) might be discovered to underlie the existing categories of factors, as Lord Denning M.R. proposed in *Lloyd's Bank Ltd. v. Bundy*.⁸³ The more recent works of some academics in contract law which emphasize the doctrine of good faith and the idea of reasonable expectations of the parties provide other examples for developments in such a direction.⁸⁴

On a public level in their capacity as legally trained citizens, students might realise they can impact public decisions and law-making with their special contribution of legal philosophical knowledge. I hope that students, having sampled the relevance of legal philosophy to current issues, continue to contribute as citizens in future debates.

In terms of educating future lawyers to these ends, what does one make of the fact that the nature of law and its purpose are contentious? Does it mean that, in a postmodern pluralist world, it would be unfair to teach any particular view about the nature of law as true? The reality is that a teacher cannot help but model some ideas, even in doctrinal classes.⁸⁵ To refuse to explicate on values underlying the law, for example, might be to create an

⁸⁰ *M Ravi fined for racist remarks against judge*, THE STRAITS TIMES, January 10, 2013; *Ravi accepts stricter conditions to practice*, THE STRAITS TIMES, November 23, 2012; *Lawyer in dock for commotion at mosque*, THE STRAITS TIMES, August 13, 2008; *Lawyer M. Ravi suspended a year for rudeness*, THE STRAITS TIMES, October 28, 2006; *Lawyer's 'publicity stunts' under fire*, THE STRAITS TIMES, May 15, 2005.

⁸¹ ROBERTO MANGABEIRA UNGER, THE CRITICAL LEGAL STUDIES MOVEMENT 60-75 (Harvard University Press, 1983, 1986).

⁸² ROBERTO MANGABEIRA UNGER, THE CRITICAL LEGAL STUDIES MOVEMENT 75 (Harvard University Press, 1983, 1986).

⁸³ [1975] Q.B. 326. The need for his proposal was doubted in *National Westminster Bank plc v. Morgan* [1985] A.C. 686.

⁸⁴ See, for example, ROGER BROWNSWORD, CONTRACT LAW: THEMES FOR THE TWENTY-FIRST CENTURY (Oxford University Press, 2nd edition, 2006).

⁸⁵ Carrie Menkel-Meadow, *Can a law teacher avoid teaching legal ethics?*, 41 J. LEGAL EDUC. 3 (1991).

impression that the law is value-neutral, or the work of a lawyer is amoral. In spite of the existence of contending viewpoints, if educators focus on fostering critical thinking in the manner that has been described in this article, I would suggest that students remain free to choose their own viewpoint. It has been suggested that a legal system represents a "society's attempt to institutionalize justice".⁸⁶ Its success hinges on its the central players – lawyers⁸⁷ – who help to shape the vision of what justice demands and refine the workings of justice in concrete ways. It is in their formative years that we as educators help to sensitize them to their future roles.

⁸⁶ Ian Johnstone and Mary Patricia Treuthart, *Doing the right thing: An overview of teaching professional responsibility*, 41 J. LEGAL EDUC. 75, 78 (1991).

⁸⁷ Ian Johnstone and Mary Patricia Treuthart, *Doing the right thing: An overview of teaching professional responsibility*, 41 J. LEGAL EDUC. 75, 78 (1991).

The Chinese University of Hong Kong 50th Anniversary
Faculty of Law's Law Deans' Summit
Legal Education in the Global Context: Opportunities and Challenges
26 October 2013

THE STRUCTURE, PURPOSES AND METHODS OF GERMAN LEGAL EDUCATION

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Faculty of Law

The Chinese University of Hong Kong

The structure, purposes and methods of German legal education

Prof. Dr. Rainer Wernsmann

1. General Structure of German legal education

German legal education consists of a wide range of compulsory subjects and an elective subject, in which the students major in. After having studied at a law faculty of a university, students then take the First State Examination, a state-wide organized set of exams that emphasizes the academic and general knowledge of the law. This is followed by a two-year practical training period, the so called "Referendariat". During this period, students must work at a civil court, a criminal court or prosecutor's office, and in a law firm. Students also attend classes taught by practitioners during this period. Students then must pass the Second State Examination, a comprehensive set of exams that emphasizes practical legal skills.

2. The purposes and methods of German legal education

German law students deal primarily with applicable law, its systematic and conceptual penetration and interpretation, as well as its relationship to other areas of life such as politics, economy and social structure. In contrast to other legal systems, the influence of case law is limited in German legal education. Goal of the legal education is to be qualified as a judge and in particular to work in the legal profession. The law students are taught to deal with the often quite abstract formal way of thinking of the German legal system as well as the constantly changing concrete life situations. In order to come to sound legal results, both always have to be taken into account and the reasons have to be balanced and evaluated in light of abstract norms.

3. Conclusion

The major goal of German legal education is to produce the so called "Einheitsjurist", which means that German law students receive a broad legal education. Although law tends to become more globalized and diversified, German law students can work on much specified legal matters without losing the overall view of the law.

The structure, purposes and methods of German legal education -

Outline of talking points

by

Professor Dr. Rainer Wernsmann,
University of Passau, Germany

1. Introduction

- The year 2013 marks the 50th anniversary of Chinese University of Hong Kong (CUHK)
- 34 years of University of Passau, Germany
- to discuss the opportunities and challenges for legal education in the 21st century; identify the set of knowledge and skills law students need to acquire in an era of globalized economy, such as the ability to analyze legal issues from a comparative perspective; and explore possible areas of collaboration in relation to research and teaching

2. General structure of German legal education

- German legal education consists of recommended four-year undergraduate studies, with two semesters long majoring in a special field of law
- **Structure of German Law Faculties**
 - Over 40 universities in Germany offer legal education
 - **Quick facts:** no admission exams for entrance to university, no tuition fees at German universities
 - As of 2011, 99134 students were studying law at German universities, with about 53 % female students
- **General Curriculum**
 - Basic studies
 - Main study period
 - Preparation Period
- **First State Examination**
- **The professional training "Referendariat"**
- **Second State Examination**

3. The purposes and methods of German legal education

- Germany has a civil law system, thus influence of case law is limited
- Purposes:
- Methods of law didactics

4. Critical view on German legal education

- Private tutor system
- Current changes, constant challenges

5. Influences of globalization

- Ideas go global, but the law stays local
- Foreign language education
- Exchange programs
- International focus areas

6. Conclusion

- Major goal of German legal education is to produce the so called "Einheitsjurist", which means that German law students receive a broad legal education.
- Although law tends to become more globalized and diversified, German law students can work on much specified legal matters without losing the overall view of the law.
- Thus, German jurists are called "experts for the general."

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THE BIFURCATION OF LEGAL EDUCATION – NATIONAL VS. TRANSNATIONAL

Prof. Hans-Wolfgang Micklitz

Head of Department of Law and Professor of Economic Law
European University Institute


I start from the premise that there is a deepening gulf between the still rather national design of legal education and the needs resulting from the ever stronger globalization of the economies and the societies in the last decades. Along this bifurcation I will discuss the consequences for a double-headed approach of legal education. The distinction, if it is correct, does not only affect our understanding of the different subject matters of the law, but also of legal methodology and even deeper of the role and function of law in the two distinct legal environments, national and transnational. Legal education in Europe may serve as a blueprint for discussing the possible future of a divided legal education.

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Faculty of Law

The Chinese University of Hong Kong




Department of Law

The Bifurcation of Legal Education – National vs. Transnational

Law Dean's Summit
Chinese University of Hongkong
Prof. Hans-W. Micklitz, EUI Italy
Saturday 26.10.2013

1



Department of Law

The Composition of the EUI Law Department

- 12 professors
- EU law (3), comparative constitutional law
- international law, transnational law, human rights
- labour and social law, economic law, competition law, information technology
- legal theory
- No criminal law, legal history, tax law, environmental law

2




Department of Law

Research Identity of the EUI Law Department

- Europeanisation of law of ever more areas, the making and the enforcement through new modes
- Impact of constitutionalisation, enlargement and diversity on EU law
- Impact of globalisation on international law, human rights and global governance
- Social, linguistic and cognitive theories of law, law and science/technology
- Theories, processes, structures of interaction between legal systems between courts and judicial systems
- Competition law and policy, state aids, public procurement

3




Department of Law

The Particular Approach to Law at the EUI

- *intradisciplinary* – public law and private law
- *interdisciplinary* – economics, social science (political science, sociology, international relations), philosophy, history
- law as practice
- law in context (beyond law as practice)
- doctrinal and theoretical
- conceptual

4




Department of Law

The EUI Doctoral and LLM program

- Legal (undergraduate) education is tied into national legal culture, national legal traditions and national language
- Few exceptions Maastricht, Tilburg, European Law School (Berlin/London/Paris/Rome/Amsterdam)
- The EUI is running a Doctoral, an LLM program and a post-doc
- Ca. 30 phd students with national grants in their major part from within the EU, 10-15 LLM self financed, 10 post-doc financed
- Increasing number of students from US, South America, Canada, China

5




Department of Law

The Uniqueness of the EUI Law Department

- The inbuilt *transnational* and European/International approach
- *Transnational* within the EU and beyond the EU (Europe in the world)
- The only law faculty constantly renewing itself
- Bottom-up approach phd researchers define their own research topics

6




Department of Law

The EUI's Treasure Trove

- More than forty years of experience in training doctoral students
- The topics of the phds (waves of scholarly research – integration through, without and beyond law)
- 70 % pursuing an academic career most of them outside their home countries
- Potential influence on national legal thinking, traditions and culture
- 40 years of experience in a transnational theoretical, methodological approach to law
- The training and formation of a truly European legal culture and European legal conscience

7



Department of Law

The EUI Shaping of Transnational Education – Past, Present and Future

- A common research identity
- A structured phd program
- Objectives: common knowledge, training writing, presentation and teaching skills
- *Interdisciplinarity* through joint seminars
- *Intradisciplinary* through joint law faculty seminars
- Development of a transnational design of and for the law (moral philosophy)
- Development of a transnational legal methodology in a supranational polity

8



Department of Law

(Re)- Connection of Transnational to National Legal Education

- National education will remain national
- Two types of legal education – national and transnational
- Keeping contact: co-operation links with leading national universities, in America, Asia, Africa, Australia and Europe
- Managing: coping with national differences through tailor-made solutions
- Risks: switching between national/transnational? Can there be a 'right to return' into the home country?
- Challenges: the differences in the labour markets, national vs. transnational

9



Department of Law

Three central challenges

- Educating researchers with a global profile that enables them to compete world-wide
- Connecting national and transnational legal education
- Making interdisciplinarity centre stage

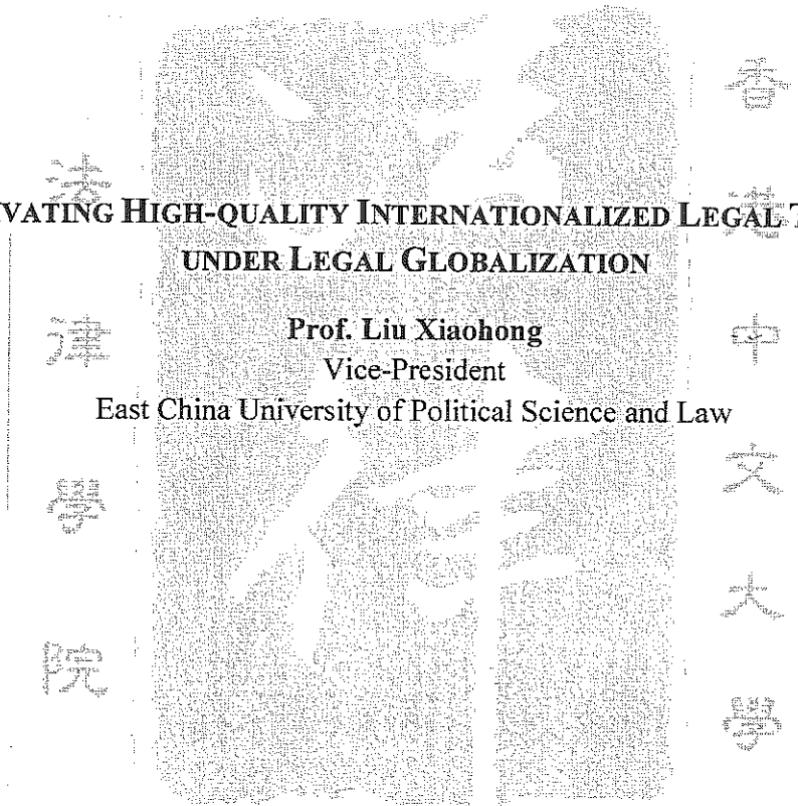
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The Chinese University of Hong Kong 50th Anniversary

Faculty of Law's Law Deans' Summit

Legal Education in the Global Context: Opportunities and Challenges

26 October 2013



**CULTIVATING HIGH-QUALITY INTERNATIONALIZED LEGAL TALENTS
UNDER LEGAL GLOBALIZATION**

Prof. Liu Xiaohong

Vice-President

East China University of Political Science and Law

Faculty of Law

The Chinese University of Hong Kong

Cultivating High-quality Internationalized Legal Talents under Legal Globalization

Vice President Liu Xiaohong
East China University of Political Science and Law

1. The Background of Cultivating High-quality Law Talents Concerning Foreign Affairs

- (1) Further development of the globalization of law
- (2) The proposed goal of the connotation construction of higher education of our country
- (3) The initiated program of cultivating brilliant law talents

2. Connotation Analysis of Cultivating High-quality Law Talents Concerning Foreign Affairs

- (1) The orientation of cultivation level
- (2) The orientation of cultivation type
- (3) The orientation of talent quality

3. Ways to Cultivate High-quality Law Talents Concerning Foreign Affairs

- (1) Improving talent cultivation mechanism
- (2) Optimizing curriculum
- (3) Strengthening quality assurance
- (4) Reforming graduate recruitment policy

4. The Conception of Cultivating High-quality Law Talents Concerning Foreign Affairs of ECUPL

- (1) The objective of cultivating high-quality law talents concerning foreign affairs of
ECUPL
- (2) The preliminary conception of implementing the program of cultivating brilliant law
talents of ECUPL

Cultivating High-quality Internationalized Legal Talents under Legal Globalization

Vice President Liu Xiaohong
East China University of Political Science and Law

With the accelerated process of economic globalization, legal globalization has become the centre of the debates among the legal academia all over the world. In August 2013, the State Council has approved the establishment of a pilot free trade zone in Shanghai; this is a big step that China has taken to adapt to global economic development which requires more high-quality internationalized legal talents. We believe that to keep pace with the legal globalization, legal educators should further update their knowledge, broaden their horizons, optimize the mode of cultivating talents, and enhance the communications and cooperation with other countries. Meanwhile, it is also necessary to strengthen the training of internationalized legal talents to meet the requirements of our time, China's social reform and systematic transformation.

Part One. The Background of the Cultivation

1. The Deepening of Legal Globalization

Due to the inexorable development of economic globalization, social changes along with collisions and development of new thoughts and theories are unavoidable, among which is the idea of legal globalization. In 1980s, legal globalization received extensive attractions worldwide; many experts in our country also began to conduct research, trying to find ways to cope with it. For example, some experts believe that legal globalization is a process through which law will be no longer restricted to nations, but to the whole world as a universal law; it is also a process through which the concepts, principals and rules within different nations are assimilated. However, some other experts argue that legal globalization doesn't necessarily mean the elimination of the legal differences. According to these experts, rather than an isolated and close system, legal globalization underlines the equal relationship between the universal legal system and other legal systems. Some other similar theories are, legal globalization will not lead to the elimination of the legal individualities or nationalities of different countries; legal globalization does not exclude diversity; legal globalization is not a mode that all legal systems have to adopt. Despite of all the different focuses in these theories, there's one thing for sure that legal globalization is inevitable as the result of economic globalization and the globalization of public affairs. According to Jiang Ping, a well-known Chinese law expert, the trend of legal globalization is irresistible. To keep pace with this trend, legal educators should "act according to circumstances", guide students with scientific outlook, optimize the training mode, mechanism, methodology and content in order to

cultivate legal professionals to adapt to the need of our society.

As Shanghai has been approved to establish the pilot free trade zone, high-quality internationalized legal talents are required to take part in setting up rules and regulations for the operation and management of the new zone, and modifying regulations and policies that are imperfect for the zone. That is to say, the urgent requirement of cultivating high-quality internationalized legal talents is triggered by the establishment of Shanghai's pilot free trade zone.

2. The Aim of Higher Education in Our Country and the Connotation Construction

Higher education has developed rapidly in China during the past few years. It has been largely expanded and has developed into the stage of popularization. In 2011, there were 2049 higher education institutions in total in China, with 23.08 million college students, among whom over 620 thousand were law majors. Meanwhile, there is a growing concern about the quality of higher education, requiring teaching assessment in higher education institutions, and the improvement of education quality.

In this context, China's Ministry of Education has announced two policies one after another in 2007 aiming at deepening the reform of higher education and enhancing the quality of education: "On the Implementation of Undergraduate Education Quality and Reform", "On Further Deepening the Reform of Undergraduate Education and Comprehensively Improving the Education Quality". In 2010, "Long-term and Medium-term Education Reform and Development Scheme" (2010-2020) further pointed out that "higher education institutions should comprehensively improve the quality of education, talents training, scientific research and overall level of social services in order to achieve the goal of establishing a group of world-class higher education institutions with features and superior education qualities." In 2012, after the Ministry of Education had released "On Comprehensively Improving the Higher Education Quality", the Ministry of Finance and Ministry of Education jointly issued "On Improving the Innovative Skills in Higher Education Institutions" and some other documents, further stressing the importance of innovative ability training and the quality of talents training. This is to say, connotation construction has played a key role in the further development of higher education in our country.

3. The Initiation of the Cultivation Plan for Outstanding Legal Talents

At present there are more than 600 law schools in China with approximately 160 thousand legal graduates in 2011 who have already become the pivotal force in promoting China's strategy of administrating the country by law enforcement. Nevertheless, there still exist some problems in China's legal education, which are mainly reflected in the structural surplus of legal students and the severe shortage of the legal talents who are competent in practicing international legal affairs with internationalized perspectives and thorough knowledge of international rules and regulations. Obviously, such situation cannot satisfy the social demand for the legal talents in the process of legal globalization. In order to deepen the reform of legal education and improve the quality of the legal talent cultivation, China's Ministry of

Education and the Central Political and Judiciary Commission jointly carried out the cultivation plan for outstanding legal talents. At the end of 2011, 58 training and educational bases for practical and interdisciplinary legal talents, 22 bases for foreign legal talents and 12 bases in the west and rural areas for grass-root legal talents have been established, altogether with the innovative training mode to meet the need of high-quality legal talents. This does not only give rise to new requirements for legal education, also bring some opportunities for the development of legal education.

Part Two. Analyzing the Connotation of Cultivating High-quality Internationalized Legal Talents

1. Defining Training Levels

China's legal education system consists of popular higher legal education, adult legal education and vocational legal education varied in different training channels, forms and levels. In terms of the training level, it can be classified into vocational education, undergraduate education and graduate education. Considering the fact that China has already entered the phase of popularization in higher education, the goals of college education in China have gradually evolved into general education, quality education and basic education. Therefore, the education of internationalized legal talents should be defined as graduate education. According to the current educational system in China, the talents on this level would be cultivated mainly by the ordinary higher education institutions.

2. Defining Education Type

There are mainly two types of targeted talents in legal cultivation: one is the talent with a career orientation of legal education and the research of legal theory and practice. Such talents need to systematically study law and related theories, master research methods and skills and acquire the abilities of logic reasoning and theory innovating. In China, the traditional graduate education is mainly aimed at the cultivating such type of talents. Another type is the practical talent with career orientation of legal application and practicing. Such talents are required to obtain a superior professional legal quality with extensive knowledge of law and other related disciplines; they should also be skilled in legal practice, familiar with legal processes and procedures and competent in practicing law and innovating. From our perspective, there is no hierarchy between the research type and the practical type. The importance lies in the understanding of core requirements of talents cultivation and the key indicators of the talent quality. The science of law itself is a discipline emphasizing on practice, the value of which is mainly reflected in its function of regulating social relationship, peoples' behaviors and social orders. Without the platform of social practice, the science of law will lose its vitality. In this case, cultivating high-quality practical legal talents is much more significant. According to what have been discussed above, the undergraduate education should be carried out on the basis of the enhancing general graduate education, with equal emphasis on professional degree and academic degree. In terms of graduate education, legal professional (practical)

training should be strengthened. For the doctoral education, legal degree system should be established as soon as possible to cultivate inter-disciplinary elite talents (practical) who are capable of coping with complicated legal affairs to meet modern society's demand for academic innovation and the complex legal practice.

3. Defining Talents' Overall Quality

We believe that high-quality internationalized legal talents should obtain good humanistic quality, solid legal expertise and practicing skills; they are also required to be proficient in related international rules, fluent in foreign languages and capable of providing legal services covering foreign affairs. In terms of standardizing talents cultivation, there are three criteria, which are basic qualities, professional accomplishment and occupational accomplishment. The basic quality refers to the possession of higher accomplishment of social sciences and humanities, the ability of processing and analyzing information, communicating ability, the ability of handling public relations and international communicative ability; professional accomplishment refers to the possession of solid legal knowledge, practicing skills, legal reasoning and research ability, as well as the competence of solving complex theoretical and practical issues with professional knowledge and practicing law in foreign languages; occupational accomplishment refers to the belief in law, the sense of social responsibility, a combined knowledge of economy management and other related subjects as well as good professional morality.

Part Three. Methods of Internationalized Legal Talents Cultivation

1. Perfecting Training Mechanism

When it comes to training sections, the training of internationalized legal talents can be divided into three stages, namely the stage of basic theoretical studying, the stage of vocational training and the stage of professional practice. In the first stage, students are required to grasp the basic knowledge of law and related theories; in the second stage, students would accept skill trainings such as defenses and trials; in the third stage, students would be required to apply knowledge to practice, focusing on practical exercise of legal affairs. It is worth noting that the three stages, particularly the latter two can be overlapping.

For training methods, "dual tutorial mechanism" would be adopted. In doing so, students would be divided into different groups according to their interests and professional backgrounds. Each group would be assigned with tutors (with certain practical experience). Meanwhile, senior legal practitioners (judges, prosecutors, lawyers, etc.) would be introduced as practical instructors to improve the one-to-one teaching mode. In order to facilitate the cooperation with foreign higher education institutions, exchange programs of teachers and students and credit transfer and accumulation system would also be established. After the completion of undergraduate courses, students are expected to go abroad for one year's study or internship which would help improve their practical skills and the ability to deal with international legal affairs. Additionally, cooperation on graduate programs and doctoral programs could

also be established.

With regard to teaching methods, priority should be given to case studies, seminars and free discussions, accompanied by moot court and arbitral court and other court practices. Legal educators should also adopt new teaching methods such as clinical legal teaching mode to strengthen students' practical ability to apply theories to work.

2. Optimizing Curriculum

First, to introduce cross-disciplinary courses. Following the principal of refining legal knowledge and basic theories, the proportion of cross-disciplinary courses that are gradually formed and shaped by economic, social and scientific-technological development should be raised adapting to the need of judicial practice; At the same time, the proportion of compulsory courses could be relatively lowered to provide students with a wider range of selective courses which would help them shape their development according to their own conditions and social needs.

Second, to increase the gravity of practical courses. In addition to core legal professional courses, more practical courses should be incorporated into the curriculum. Practical curriculum should include experimental courses of law, legal skills and technique training courses, such as forensics, negotiations science, science of evidence, the trial science, forensic science, etc. Forensic science, for instance, has great significance for cultivating well-trained practitioners. In our country's current judicial practice, 30% -40% of the cases will involve issues of scientific technologies and other specific issues, such as disability rating evaluation, death cause identification, mental illness identification, paternity test, Judicial Accounting Appraisal, Computer Forensic, etc. The legal issues mentioned above cannot be determined merely by logic reasoning or judges' intuitions; scientific technology and expertise under such circumstances are required. Although there are professional forensic institutions and personnel responsible for such issues, judges, lawyers and other legal practitioners should acquire basic skills and qualities of knowing how to identify specific issues in legal processing, what methods should be applied, how to audit and evaluate the scientific feasibility objectivity and accuracy of expert opinions, as well as how to obtain cross-examination results, attestation and admitted evidences.

Third, to introducing internationalized courses. Having topnotch curriculum introduced from other foreign universities, students can enjoy in the domestic the international educational resources with their perspectives broadened and internationalized. Meanwhile, in order to promote communications between teachers and students and optimize teaching methods, well-known legal experts from other countries will be invited to give lectures.

3. Strengthening Quality Control

Quality-control issues should be attached great importance in the process of cultivating high-quality internationalized legal talents. The participation in the international education certification and assessment process needs to be considered in

order to bring this program more in line with international practice. The assessment could start from regional institutions such as APQN (Asia-Pacific Quality Network). The third-party evaluation agencies could be established during the progress of improving the overall quality of higher education and thus enhancing the effectiveness of social media. The lately published "Undergraduate Teaching Quality Report", which has responded to the social needs of the higher education quality, may further require a specified assessment for different disciplines and majors. By strengthening quality control, social intermediary agencies will perform their researching, consultative, evaluative and directive functions to build connections between universities, government and society, thus the required information from the government as well as all levels of society could be delivered effectively. In the mean time, feedbacks and requests from higher education institutions will also be delivered to the government. News media, as the most popular media, is low in cost and highly accepted by society, schools, parents and students. Therefore, it is necessary to fully avail the importance of news media among the comprehensive improvement of higher education.

4. Reforming Graduate Admission Policy

The process of cultivating internationalized legal talents should be closely connected with economic and social development requirements and focus on those students with economic, financial, science & engineering, medical and foreign language knowledge background. For students, they are required to obtain bachelor's degrees or higher with certain work experience to guarantee the quality of talent training; For entrance examinations, proportions of comprehensive capability test should be increased. For admission policy, higher education institutions should adopt their independent recruitment and admission principles and criteria, carry out experimental training programs and gradually improve them in the future. For colleges which are authorized to carry out bachelor-master combined programs and bachelor-master-doctor combined programs, they can take advantage of the resources to forms its own features in achieving the talent training goals; or cooperate closely with the governmental organizations, enterprises and institutions and adopt the "order mode" to meet the social urgent needs of internationalized legal talents.

Part Four. Experience of Cultivating High-quality Internationalized Legal Talents

1. Target of Cultivating High-quality Internationalized Legal Talents

Our university aims to cultivate high-quality and cross-disciplinary internationalized legal talents with special proficiency in international economics, management, international finance and trade, admiralty & maritime, international investment and other areas for relevant international organizations and our legislative, judicial, law enforcement, legal services, and financial institutions and foreign trade agencies. The training will focus on the international financial law, international shipping law, international economic law and the international commercial law.

2. Features of Cultivating High-quality Internationalized Legal Talents

a. trial implementation of bachelor-master combined program

Although it is easier to carry out the training at graduate level, in order to achieve the goal of training internationalized legal talents, our school has initiated the program at undergraduate level and has given absolute priority to it. The bachelor-master combined program enables the effective implementation of training philosophy and scheme, aiming at accomplishing the expected objectives with concentrated resources.

b. joint degree programs

Based on the different training goals and mechanisms of different talents, our school carries out training programs of different types. After three and a half years' undergraduate study, students with outstanding performance would be selected to participate in overseas education and practice. After graduation, students can also apply to study abroad for about one year pursuing advanced legal education or a foreign LLM degree.

c. strengthen students' ability of cross-cultural communication

We believe that internationalized legal talents should obtain cross-cultural communication skills, therefore students would be sent abroad for at least one semester's study or internship after finishing the main law courses. With a better proficiency in Legal English, and familiarity with foreign legal environment, students are thus fully prepared for foreign legal affairs in the future.

In addition, students with outstanding performance in English would also attend language courses of Japanese, German and French to hone their linguistic skills, which will play an important role in breaking language obstacles and increasing communications with these countries.

d. introducing featured course modules

Setting up "Perspective of Law" course to create a "foreign-related International Law module, foreign-related legal affairs, finance and trade module, finance and legal practice, the shipping trade module, shipping law practice" crossed-training module teaching mode. International course modules include those courses taught in English, partner-school's programs, bilingual courses, etc. Practice Course modules include lawyers' practice, trial practice, prosecutors-cases and legal clinic courses. The live broadcasting of introduced international modules will give students direct in-class perception.

e. carrying out elite talent management model

Relevant institutions will be established to cultivate elites in teaching management mode. A Dual Tutorial Mechanism would be applied to give students academic and practical guidance and training instructions provided by both professional and practical teachers. These tutors will also counsel students in course study, essay writing and research training; give instructions on academic planning and study planning and assist them in achieving high-level accomplishment in the training program. Strict quality control mechanism and elimination system would also be established with specific policies according to the different characteristics of foreign

classes.

Legal Globalization makes it necessary to boost the international communications and will ultimately affect the conduct of legal education. The cultivation of high-quality internationalized legal talents is not only inseparable from national and regional inter-institutional cooperation and support, but also inseparable from the reform and exploration of law schools. We hope that we could learn experience from other foreign law schools through this meeting, which will play a positive role in promoting the quality of legal education of our university.

Thank you!

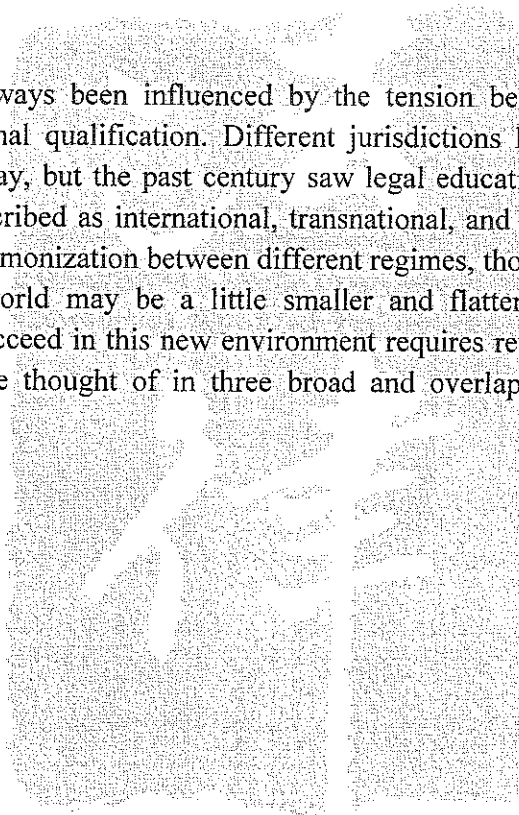
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DOCTRINE, PERSPECTIVES, AND SKILLS FOR GLOBAL PRACTICE

Prof. Simon Chesterman
Dean, Faculty of Law
National University of Singapore

Legal education has always been influenced by the tension between being an academic pursuit and a professional qualification. Different jurisdictions historically resolved these tensions in their own way, but the past century saw legal education evolve through phases that can be broadly described as international, transnational, and now global. Globalization has seen the need for harmonization between different regimes, though this is not the same as homogenization. The world may be a little smaller and flatter, but it is still complex. Preparing students to succeed in this new environment requires rethinking the goals of legal education, which can be thought of in three broad and overlapping categories: doctrine, perspectives, and skills.

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Faculty of Law

The Chinese University of Hong Kong

The Chinese University of Hong Kong 50th Anniversary
Faculty of Law's Law Deans' Summit
Legal Education in the Global Context: Opportunities and Challenges
26 October 2013

LOOKING BEYOND: TAIWAN TOWARDS THE LEGAL EDUCATION REFORM

Prof. Ming-Yan Shieh

Professor of Law and Dean, College of Law
National Taiwan University

Faculty of Law

The Chinese University of Hong Kong

Looking Beyond: Taiwan towards the Legal Education Reform

Ming-Yan Shieh
Professor of Law & Dean
College of Law
National Taiwan University

Abstract

Modern Taiwanese Legal Education started back in the Japanese Colonial era when Taihouku Imperial University was first established in Taipei and subsequently succeeded in the name of National Taiwan University or NTU in short as globally recognized at the present time. In Taiwan, legal education was traditionally reserved for undergraduates. As when the trend of legal study in post-graduate became increasingly popular in 1991, in response to the change and in order to promote diversity among law students, NTU had initiated to launch a Graduate Institute of Interdisciplinary Legal Studies program (GIILS) began in 2004 where non-law students were then capable to expertise in a Master's level of legal trainings. The program runs annually by selecting a certain number of students from various fields of studies including but not limited to Accounting, Engineering and Medicine, thus causing Taiwan's legal education system today a dual-system that runs in parallel and provides flexibility that allows students to experience legal education and training at both academic levels. In addition to these, benefits of the dual-system are seen to include i) making judicial system more dynamic, ii) enhancing professionalism as different aspects of law can be now practiced, and iii) providing judges with diverse professional backgrounds to the legal system. In 2011, it is reported that there were a total number of approximately 154 students who have joined and enrolled for this program.

So far, Taiwanese legal education had likely focused more on academic training than practical expertise. The fact had been remarked by legal professionals by predicting that in the future, Taiwanese students will be less familiar with legal practices and hence becomes today's major concern. The incongruence between dated legal education and modern legal practice then calls students for integration of theoretical knowledge and fieldwork. In response to this, NTU College of Law has undertaken initiatives to spearhead the reformation of legal studies in Taiwan by incorporating practicing lawyers and judges to our faculties, emphasizing more on legal practice via our conduct of U.S. styled legal clinic and enhancing more legal writings in our curriculum. Furthermore, the university also spent a lot of effort on encouraging legal practitioners to advance their legal education where students and instructors can share and benefit from their insight knowledge as well as experiences of Taiwanese legal system in practice, despite of the international conference, recruitment of foreign faculty members and students, and legal courses taught in English that have been continuously conducted. These are accordingly operated with hope to provide law students practical vision both on domestic and international that shall benefit themselves and the community in final.

In this report, the history and trends of legal education in Taiwan will be first introduced and followed by the dual-system approach of Taiwanese legal education as well as its relevance and the crucial role of NTU College of Law in the Taiwanese legal education reform that is worth to mention. In the end, the importance of NTU College of Law in international legal education will also be discussed. Our effort, in overall, is in pursuit to ensure that a solid foundation shall be provided for our students where academics and practice can be both balanced and well-trained for students' promising career soon in the future.

REFORMING TAIWAN'S LEGAL EDUCATION IN THE GLOBALIZATION ERA¹

Ming-Yan Shieh
Dean and Professor of Law
National Taiwan University College of Law

I. SUMMARY

- Legal education in Taiwan
- Challenges
- Bridging the Gap - NTU Law Initiatives
- Conclusion

II. LEGAL EDUCATION IN TAIWAN

A. OVERVIEW

- 36K KM²
- 23 MM people
- 120 universities²
- 27 law schools (undergraduate law departments plus graduate institutes of legal studies)³
- 3000 law graduates (class of 2012)⁴
- 1 KEY QUESTION

B. A "TWO-TRACK" MODEL OF LEGAL EDUCATION

1. *Mainstream*

- Undergraduate program: 4 years, Bachelor of Laws
- Graduate program: Master of Laws + Ph.D. in Law

2. *Graduate institutes for non-law graduates*

- E.g., National Taiwan University College of Law Graduate Institute of Interdisciplinary Legal Studies
- Diversity: a more diversified legal profession

¹ Outline of talking points for presentation at the Chinese University of Hong Kong 50th Anniversary Faculty of Law's Law Dean's Summit "Legal Education in the Global Context: Opportunities and Challenges".

² Please refer to "Chart 1: Increase in Number of Universities in Taiwan (1994 - 2013)" in the Appendix.

³ Please refer to "Chart 3: Law Schools in Taiwan (2013)" in the Appendix.

⁴ Please refer to "Chart 2: Increase in Number of Law Graduates in Past Twenty Years (Undergraduate Only)" in the Appendix.

C. TEACHING METHOD

- Lecture
- Socratic method
- Interaction

D. PRACTICE ELEMENTS

- Moot Court, Legal Aid Society, . . . etc.
- Effectiveness

E. BAR EXAMINATION⁵

- Examination driven system
- Double school phenomenon

III. CHALLENGES

- Taiwan
 - Changing society
 - Advancing technology
 - Fierce competition
- International
 - Globalization
 - Cross-border Interaction
 - International Cooperation
- The Need for Reform: the gap between current legal education and the Ideal
- Goals of legal education reform:
 - Skilled professionals capable of meeting society's changing needs
 - Problem solvers with independent thinking
 - Open-minded leaders with far-sighted vision

IV. BRIDGING THE GAP - NTU LAW INITIATIVES

- 3 aspects, 6 components

A. DIVERSITY

1. *Diversified faculty*

- Experienced and leading legal professionals
- Doctorates earned in various countries
- Diversified curriculum

⁵ Please refer to "Chart 4: Statistics of Bar and Judicial Examinations Applicants and Passage Rates" in the Appendix.

2. *Diversified student body*

- Graduate Institute of Interdisciplinary Legal Studies:
 - http://www.law.ntu.edu.tw/giilslaw/english/versec/index_english.htm
 - Non-law graduates
- International Students
 - 20 countries & 4 regions

B. PRACTICE

1. *Legal Clinic*

- Core idea: hands-on experience
- Low student-teacher ratio: lower than 5:1
- Large counselor group: diversified & experienced legal experts
 - Lawyers from Biglaw, prosecutors, legal experts from NGOs

2. *Other Skill Training Courses*

- Experienced & leading legal professionals.
 - Lawyers from Biglaw, Judges, . . . etc.
- Diversified curriculum
 - Criminal Trial Practice
 - Commercial Dispute Resolution
 - Mergers & Acquisitions Practice
 - Commercial Legal Practice
 - IP Litigation Practice
 - Civil Trial Practice
 - Labor and Employment Practice
 - Litigation Documents Drafting

C. INTERNATIONAL

1. *International Collaboration*

- 3 continents, 4 regions, 16 countries, and 42 law schools

2. *Summer Program*

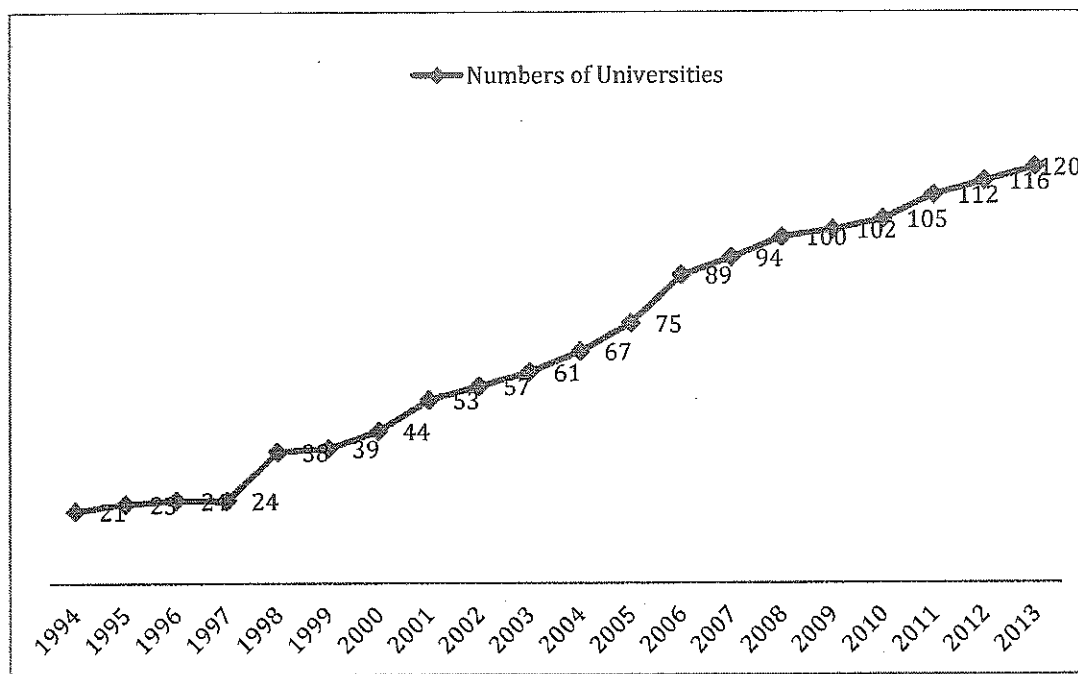
- Inauguration: 2013 summer
- Eligibility: graduate students (Taiwan and international)
- Intensive courses taught only in English

V. CONCLUSION

- Forging a new future for the next generation

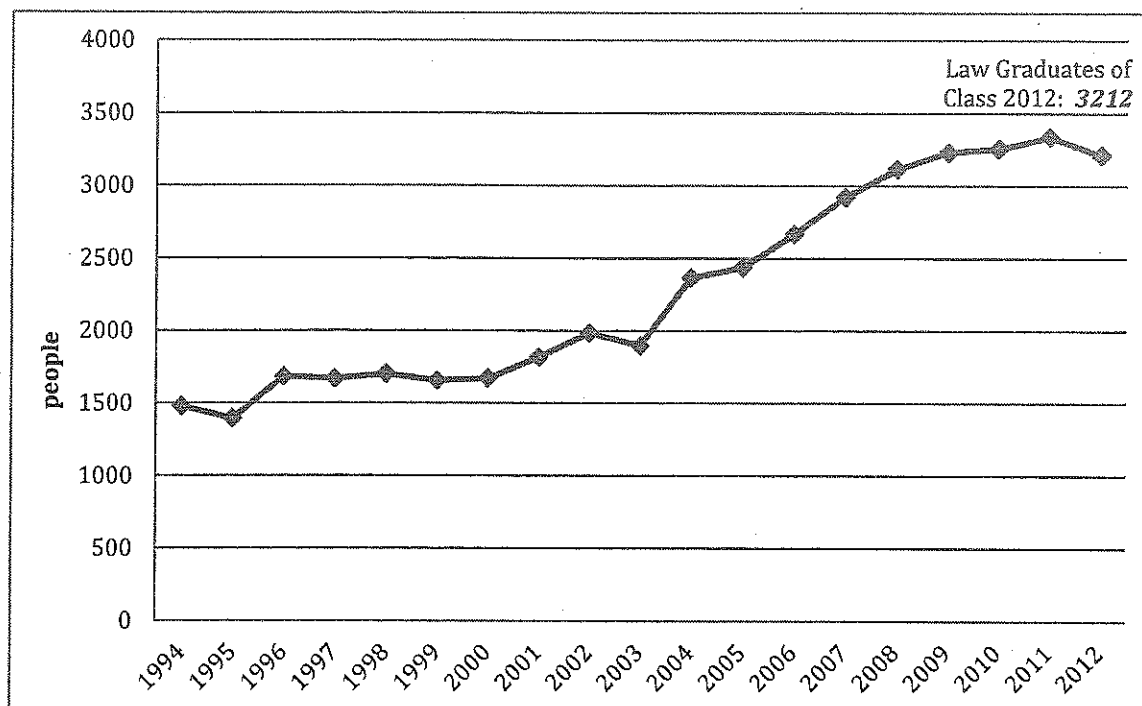
VI. APPENDIX

A. CHART 1: INCREASE IN NUMBER OF UNIVERSITIES IN TAIWAN (1994 – 2013)⁶



⁶ Ms. Chiang Hsin-Yu (江心瑜), the author's assistant, created this chart based on the information provided in a statistics report "Dazhuanxiaoyuan Gaikuangbiao (80-101 Xueniandu)" (大專校院概況表 (80~101 學年度)) [General Statistics of Colleges and Universities (Academic Years 1991 – 2012)], which was published by the Department of Statistics, Ministry of Education in Taiwan. An excel file of this statistics report is available on the website of the Department of Statistics via following link: https://stats.moe.gov.tw/files/main_statistics/u.xls.

**B. CHART 2: INCREASE IN NUMBER OF LAW GRADUATES IN TAIWAN (1994 – 2012)
(UNDERGRADUATE ONLY)⁷**



⁷ This chart was created by the author's assistant, Ms. Chiang Hsin-Yu (江心瑜), based on the information provided in a statistics report "Dazhuanxiaoyuan Gaikuangbiao (80-101 Xueniandu)" (大專校院概況表 (80~101 學年度)) [General Statistics of Colleges and Universities (Academic Years 1991 – 2012)], which was published by the Department of Statistics, Ministry of Education in Taiwan. An excel file of this statistics report is available on the website of the Department of Statistics via following link: https://stats.moe.gov.tw/files/main_statistics/u.xls.

C. CHART 3: LAW SCHOOLS IN TAIWAN (2013)⁸

	Undergraduate Law Programs plus Graduate Programs in Legal Studies	Graduate Programs in Legal Studies Only
Public Schools	<ul style="list-style-type: none"> (1) National Taiwan University College of Law (2) National Chengchi University College of Law (3) National Taipei University College of Law (4) National Cheng Kung University Department of Law and Graduate Institute for Legal Sciences (5) National Chung Cheng University Department of Law and Graduate Institute of Law (6) National University of Kaohsiung Department of Law and Graduate Institute of Law (7) National Chung Hsing University Department of Law and Graduate Program of Law (8) National Dong Hwa University Undergraduate Program of Law and Graduate Institute of Financial and Economic Law (9) National Defense University Department of Law and Graduate Institute of Law (10) Central Police University Department of Law and Graduate Institute of Law 	<ul style="list-style-type: none"> (1) National Chiao Tung University Institute of Technology Law (2) National Tsing Hua University Institute of Law for Science and Technology (3) National Taiwan Ocean University Institute of the Law of the Sea
Private Schools	<ul style="list-style-type: none"> (1) Soochow University School of Law (2) Fu Jen University Department of Law (3) Chung Yuan Christian University School of Law (4) Chinese Culture University Department of Law (5) Shih Hsin University School of Law (6) Ming Chuan University Department of Law and Graduate Institute of Law (7) Tunghai University College of Law (8) Hsuan Chuang University Department of Law and Graduate Institute of Law (9) Providence University Department of Law and Graduate Institute of Law (10) Kainan University Department of Law and Graduate Program of Law (11) Asia University Department of Financial and Economic Law (12) Aletheia University Department of Law (13) Toko University Department of Financial and Economic Law 	<ul style="list-style-type: none"> (1) Feng Chia University Graduate Institute of Financial and Economic Law

⁸ This information was compiled by the author's assistant, Ms. Chiang Hsin-Yu (江心瑜).

D. CHART 4: STATISTICS OF BAR AND JUDICIAL EXAMINATIONS APPLICANTS AND PASSAGE RATES⁹


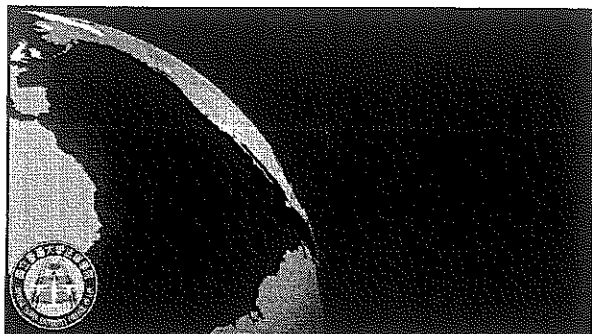
1. Bar Examinations

Years	Number of Applicants	Actual Takers of the Examinations	Number of Applicants Passed	Passage Rates
2005	7502	5300	427	8.06
2006	7942	5546	448	8.08
2007	8266	5677	455	8.01
2008	8469	6128	494	8.06
2009	8947	6644	536	8.07
2010	9822	7482	600	8.02
2011	10545	9055	963	10.64
2012	10249	8619	915	10.62

2. Judicial Examinations


Years	Number of Applicants	Actual Takers of the Examinations	Number of Applicants Passed	Passage Rates
2005	5602	3819	165	4.32
2006	6305	4603	140	3.04
2007	6384	4660	141	3.03
2008	5980	4519	190	4.20
2009	6558	5150	121	2.35
2010	7961	6245	146	2.34
2011	7982	7144	71	0.99
2012	7488	6501	75	1.15

⁹ The author's assistant, Ms. Chiang Hsin-Yu (江心瑜), created these two tables based on the information provided in the Ministry of Examination's Statistical Yearbooks (2005-2012), which were published by the Ministry of Examination on its website. Electronic files of these statistics are available on the website of the Ministry of Examination via following link: http://wwwc.moex.gov.tw/main/content/wfrmContentLink.aspx?menu_id=268 (last visited Sept. 28).



- 1 Legal Education in Taiwan
- 2 Challenges
- 3 Bridging the Gap - NTU Law Initiatives
- 4 Conclusion

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1 KEY Q.

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- 
- A "Two-track" Model of Legal Education
 - Mainstream
 - Undergraduate program: 4 yrs, Bachelor of Laws
 - Graduate program: Master of Laws & Ph.D. in Law
 - Graduate institutes for non-law graduates
 - E.g., NTU Law Grad. Inst. of Interdisciplinary Legal Studies
 - ✓ Diversity
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■ Teaching Method

- Socratic Method ?
- ✓ Interaction ?


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■ Practice Elements

- Moot Court, Legal Aid Society, ...etc.
- ✓ Effectiveness


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■ Bar Examination

- Examination Driven System
- ✓ Double School Phenomenon

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Bar Exam. App. & Passage Rate

Year	Applicants	Passed	Rate
2005	7502	427	5.69
2006	7942	448	5.63
2007	8066	455	5.64
2008	8469	494	5.83
2009	8947	536	5.99
2010	9822	600	6.11
2011	10545	643	6.10
2012	10249	615	5.99

Jul. Exam. App. & Passage Rate

Year	Applicants	Passed	Rate
2005	3602	355	9.86
2006	6308	140	2.22
2007	6384	141	2.21
2008	5980	130	2.17
2009	6558	121	1.85
2010	7961	146	1.83
2011	7901	71	0.89
2012	7468	75	1.01


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Changing Society

Advancing Technology

Fierce Competition




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Globalization

Cross-border Interaction

International Cooperation




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Need for Reform

Gap between Current Legal Education and the Ideal




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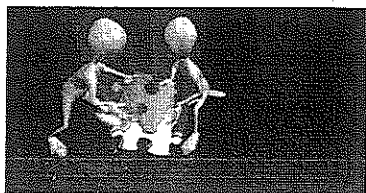


Goals

- Skilled professionals capable of meeting society's changing needs
- Problem solvers with independent *thinking*
- Open-minded leaders with far-sighted vision

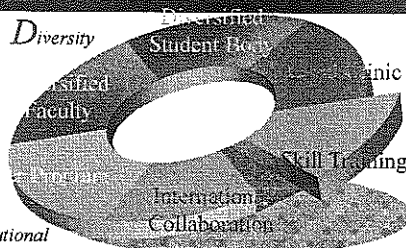


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TU Law Initiatives

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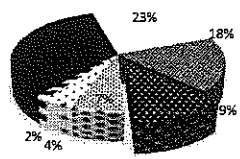


Diversity Student Body

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Diversity DIVERSIFIED FACULTY

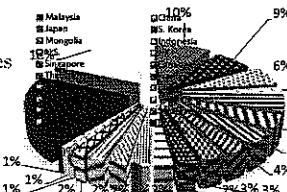
- Experienced & leading legal professionals
- Doctorates earned in various countries
- Diversified curriculum



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Diversity DIVERSIFIED STUDENT BODY

- Graduate Institute of Interdisciplinary Legal Studies
 - Non-law graduates
- International Students
 - > 20 countries, 4 regions



10/26/2013

Practice | **LEGAL CLINIC** |

- *Core Idea*: hands-on experience
- Low student-teacher ratio : $\leq 5:1$
- Large counselor group: diversified & experienced legal experts
 - Lawyers from Biglaw, prosecutors, legal experts from NGOs

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Practice | **SKILL TRAINING COURSES** |

- Experienced & leading legal professionals
 - Lawyers from Biglaw, Judges . . . etc.
- Diversified curriculum

Criminal Trial Practice	Commercial Dispute Resolution	Mergers & Acquisitions Practice	Commercial Legal Practice
IP Litigation Practice	Civil Trial Practice	Labor and Employment Practice	Litigation Documents Drafting

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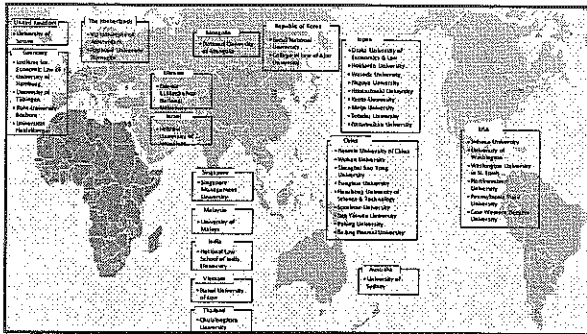
International | **INTERNATIONAL COLLABORATION** |


3 CONTINENTS 16 COUNTRIES

4 REGIONS 42 LAW SCHOOLS

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<p>ASIA (5)</p>	<p>EU (4)</p>
<p>AFRICA (3)</p>	<p>AMER (4)</p>
<p>EUROPE (4)</p>	<p>ASIA (5)</p>
<p>AFRICA (3)</p>	<p>AMER (4)</p>
<p>EUROPE (4)</p>	<p>ASIA (5)</p>
<p>AFRICA (3)</p>	<p>AMER (4)</p>







International INTERNATIONAL COLLABORATION

- Summer Program
 - Inauguration: **2013** Summer
 - Eligibility: *graduate* students (TW & International)
 - *Intensive* courses taught only in *English*

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Forging a *New Future* for the Next Generation



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The Chinese University of Hong Kong 50th Anniversary
Faculty of Law's Law Deans' Summit
Legal Education in the Global Context: Opportunities and Challenges
26 October 2013

LEGAL EDUCATION IN CHINA: PROBLEMS AND SOLUTIONS

Prof. Wang Zhenmin
Dean, School of Law
Tsinghua University

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Faculty of Law

The Chinese University of Hong Kong

The Chinese University of Hong Kong 50th Anniversary
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Legal Education in the Global Context: Opportunities and Challenges
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TO INTEGRATE THE IDEA OF GLOBAL GOVERNANCE AND
INTERNATIONAL COLLABORATION INTO LAW SCHOOL EDUCATION

Prof. Shi Yanan
Vice Dean
Renmin University of China Law School

Globalization is one part of this world and our lives, and the problems in this process must be faced and resolved. It is one of the dreams of lawyers to settle the disputes, control the public power and manage the society by law. Today, at the domestic level, in most jurisdictions law is the main way to settle disputes and supply the basic behavior norms. However, at the global level, lots of problems can't be dealt with law, and some super power intends to disregard the international law. We all have such feelings that one problem happened in a country may influence other country's interest, for example, nuclear leakage in Japan after a serious earthquake. The causes of such problems can be searched in several countries, and the control and management of such problems can only be done by the cooperation of relevant countries. Facing this challenge, more lawyers with good sense of global governance is needed.

One of the most important missions of law school education is to cultivate qualified professionals for social governance, and it should integrate the idea of global governance and international collaboration into such law education to make the students to have global views, think about all kinds of problems by considering different cultures, and try to find a better way to resolve the global and international problems with universal values. The students of law schools should be liberal, tolerate and peaceful, and law school education should convince them that the rule of law is the highest belief, and the best way to resolve all kinds of international and global problems is by law.

To realize such a goal, regular law school education should promote the student exchange among different countries and regions, and create more opportunities for students from different cultures to study legal issues of global governance, and teach them laws with international knowledge.

The Chinese University of Hong Kong

To Integrate the Idea of Global Governance and International Collaboration into Law School Education

Shi Yanan

Law School of Renmin University of China

We all have such feeling that we are now living in an age of globalization and network, in which the scope of our activities and the ways of advocating our interests and rights are becoming more internationalized, no matter individually or collectively. Meantime, the conflicts and disputes coming alongside are more complicated and severe. Many of them are transnational legal issues that need to be resolved by multinational negotiation and coordination. In the past decades, international community has set up some legal mechanisms on global governance, yet up to now, these mechanisms are still in its primary stage in managing and resolving international disputes and cannot keep pace with current trend of globalization, leading to that many international disputes are resorted to violence instead of legal procedures. It's a shared dream of all lawyers to establish a reasonable legal order under which all disputes are resolved by the rule of law. To realize this dream, we, legal educators, are required to advocate the spirit of internationalism, to bring in the idea of global governance and international cooperation into daily education, to cultivate an intense awareness of global concerns and to encourage them to analyze and resolve these problems with legal thinking.

Legal education in law schools, featured by systematically teaching, academically dominating and ideologically guiding, and students being evaluated by degree system, is the main force of legal education. As a part of modern college education, education in law schools certainly assumes all of its obligations of creating knowledge, leading culture and constructing the future. What the society will be depends on what kind of talents we are now training. We are indeed constructing the social governance structure by qualifying our students with a broad view, a spirit of the humanity and the sense of social responsibility. These young pioneers will dominate global governance in years to come, with their global vision, their persistent pursuit of rule of law and their deep love to others and the world. We can expect that the next generation will embrace a bright future.

However, unfortunately, the spirit of humanism is waning in current law school

education. Law schools have somewhat transformed into a factory-line that will take working-hours, cost and market into consideration, which inevitably generating many "law craftsmen", most of whom only regard their knowledge of law as a means of making a living while putting social responsibilities and obligations behind. It is not the law students to blame, but the existing education mode under which teachers are merely passing on the techniques of law, barely touch on the enlightenment of humanistic spirit. With the law schools transforming into such icy processing workshops isolated from humanistic concern, what can we expect from them?

View and philosophy determine goal and objective. Legal educations need to firstly open their minds to include global governance into law school education, that is, to extend their sight from mainly focused domestically to abroad and internationally, to bring in the latest legal ideas and practices overseas as well as world-wide focused issues into everyday-teaching. It will inspire the students to learn on their own to meet the needs of globalization and to devote themselves into global governance practice. Secondly, legal educators shall transform teaching approaches and methods by integrating the idea of global governance into legal education. We shall impart students the approaches and patterns of global governance and possible ways to get involved other than simply tell them what the international community has done and what it is about to do. To live up to that, an indispensable part is to recruit both domestic and abroad theorists and practitioners into law school faculty.

It's true that nowadays law school education emphasizes more on internationalization, and the proportion of international law courses has been increased. However, even so, global concerns still have not become main part of classrooms teaching as well as law students' thinking. Law school education, as a whole, is more interested in developed areas and industries, while lack of enthusiasm about under-developed regions. Although in some sense, courses on human rights law can help students to pay attention to the welfare of ethnic minorities, vulnerable groups, and people living in the bottom of society as well as those from the under-developed countries and regions, these courses are still dominated by the values oriented from some particular culture, which inevitable ignores the gaps on human rights recognition due to cultural differences. Hence such courses can do nothing more than just stuffing the students with some illusory theories and concepts, other than providing students with sufficient and

awarding approaches to practice human rights law. As a result, law students know little about the real world and they can only discuss the problems of human rights and development based on their imagination.

One of the essential links in integrating the idea of global governance into law schools' daily education is to acquaint the students with the global issues, such as famine, environment problems, war, human trafficking, smuggling, transnational corruption, distribution of water resources, anti-disaster, epidemic prevention, food safety, economic crisis, multinational corporations, human rights, etc. and to include them into regular teaching. These problems affect the interests of millions of people, and apparently cannot be resolved by the legal system of one or two states, nor controlled by any superpower. Currently, in the process of resolving these issues, there is no concept of "global interest", while national interest, especially the interest of superpowers has always been placed in priority, without taking the interest of small nations and groups into full consideration. Wars launched in the name of human rights and democracy by some countries actually caused tremendous damages to civilians in turn, which in fact is the result of ignoring the interest of vulnerable groups. From this perspective, many measures that are used to deal with global disputes are problems themselves, or create more problems.

To resolve global issues, cross-cultural, multicultural and even beyond-cultural studies are required. In this sense, we shall treat different civilization, traditional values and social governance experiences as backgrounds and realities with multi-cultural perspective when integrating the idea of global governance into law school education. We all acknowledge the importance of respecting different social traditions and values. However, in legal practice, groups that are stick to certain traditions in a particular society are often forced into a disadvantaged position because of cultural difference. As for law students who are trained for the future social governance, it is of great significance for them to acknowledge the concept of multi-culture and to seek universal values out of different civilizations. Idioms like "to seek common ground while reserving differences", "agreeing to disagree" which reflect the wisdom of ancient sages of China still worth sticking to and practicing. To act is harder than to know. It is difficult to qualify our students with the ability to truly face with, experience and respect cultures and traditions they are not familiar with. Acquainting students with an abstract concept is easy, while making it as their acting guideline is difficult. The latter requires integrating

more international communications and cooperation into law school education, both among the students and the professors.

We believe that international communication and academic cooperation will help students to have a better understanding of different cultures as well as the diversified doctrine and practice of law. For future global governance, how to know about, get along with, accept and even integrate with others is the critical part. An essential keyword of the traditional Chinese culture is "benevolence". Confucius said: "Benevolence means to love people". The word "love", as a verb, is a kind of behavior, a kind of practice, starting with respecting others and all leading up to a harmonious world. Today, "loving people" means to treat others as the same free human as we ourselves out of our rationality and the desire for harmony, other than to put them above ourselves just out of fear or humbleness or to love them out of sympathy as someone inferior. "Loving people" means to combine self-freedom with the respect for others, and to view all social disputes as well as legal issues caused by it with an inclination to goodness. It's true that, in some cases, loving others does not always reward you the same love from them, however, sincere love does bring hearts closer, and gradually eliminate the estrangement caused by prejudice and historical reasons. Law schools educate social governors and the hearts of benevolence is the internal power that encourages them to lead the future society to peace and prosperity.

It seems quite necessary for us to reconsider the orientation of "students training" in law school education. Is it being transformed into a processing machine that only out-put law craftsmen for the legal service market? This doubt does not come out of nowhere, as we can see, in the legal service market, disputes and conflicts are regarded by lawyers as resources of which they can make good use for their own benefits, and for some of them, to create disputes is far more profitable than to resolve them. Can it contribute to social harmony or the other way? It's now necessary for us to rethink whether the current legal service market is functioning as the "positive energy" in society, what is the relationship between law school education and the gloomy legal practice, and how many law students have given away or are giving away their doctrine as a lawyer? If the answer is negative or pessimistic, we really ought to reexamine whether law school education has deviated from the course it is supposed to take.

No matter viewing current law school education optimistically or pessimistically,

we all need to reflect with longing. As the economic crisis going on, some law schools are worried about enrollment, and some are anxious about the employment of their graduates. While, when looking into the future, what we should worry about or reflect upon is how to face the challenges that are coming along. If the aim of law school education is social and even global governance, all we need now is to have a clear outline of what to do in the future by reflecting what we have done in the past. Certainly, we all look forward to the future of law school education, which contains the scenario of the future society (actually in 10 or 20years' time), in which we can design or plan what lawyers should do and could do. We can say the burden of law schools is huge if we mean to establish the rule of law in the whole world, to set up a dispute resolution mechanism based on law and to stop using violence. Our horizon must be converted from domestic-oriented to global based, or in other words, to integrate our local and domestic vision with a global one.

We all know what "future" means to law school education in China and the challenges imposed on it by globalization. Since its renaissance from 1978, legal education in China has experienced a dramatic development in the past 35 years, yet is confronted with various developing issues as well as the risk of hard-landing and current crisis, but it still benefit from globalization, just like Chinese economy. Nowadays, those who graduated from the well-known law schools all over the world or those who have been there as visiting scholars have become the backbone of the law schools in China. The increasing exchange programs enable students to know better about the legal system and culture of other nations or regions, and to communicate with their peers. However, the same as Chinese economy, law school education in China is still confronted with various increasingly conspicuous issues. In the aspect of globalization, law school education in China is still in its early stage, and hasn't come up with any influential resolutions to the global legal concerns yet.

In the past decades, Renmin University of China Law School has been committed to getting internationalized and it is no exaggeration to say that our law school has played a leading role in the internationalization of law schools in mainland China. So far we have 9 foreign faculty members in our law school, and we have signed bilateral agreements on students exchange programs, double degree education and cooperation in academic research with more than 50 well-known law schools worldwide. We provide diverse opportunities for our students to go

abroad to open their minds. Every year, there are more than 60 students who will have the chance to go abroad to be exchange students for a semester or a year, or to obtain a degree from famous universities. Also, each year, a number of students will take a 3-6 month's internship in Europe Court of Human Rights, World Intellectual Property Organization, the United Nations Headquarters, the United Nations Office on Drugs and Crime, foreign law firms as well as other institutions. Every year during summer, nearly 80 law school students go overseas to participate in various summer programs. Student delegations of our law school participated in various international moot court competitions overseas, and have won an impressive array of awards. Besides, through holding top forums, such as International Forum for Law School Deans and Jurists, China-US Law School Deans' Forum, China-Australia Forum for Law School Deans, China-Africa Forum for Law School Deans, the cooperation and communication on law education with foreign law schools is greatly enhanced. Meanwhile, in the academic field, the "Geneva-Harvard-RUC-Sydney" Symposium, the UK-China Conference on Public Law, as well as other academic seminars, co-held by our law school and top law schools overseas also helped to deepen the exchange and cooperation between Chinese and foreign law schools. As for self-construction of our law school, we have set up an affiliate Asia-Pacific Institute of Law to promote the legal education and communication in Asia-Pacific regions. In spite of the above efforts and achievements, the internationalization of our law school is still in its very early stage due to its low start, limited time, lack of talents, experience, and funds, and is confronted with various problems, which in turn warn us to review the current pattern and mechanism of internationalization. One basic objective of law schools is to cultivate talents that adapt to the trend of globalization, have a global vision and could contribute to the common welfare of the world. To achieve it, Renmin University of China Law School sincerely wish to establish good relations of cooperation with other law schools, so as to cultivate legal talents needed by the future.

The Chinese University of Hong Kong 50th Anniversary
Faculty of Law's Law Deans' Summit
Legal Education in the Global Context: Opportunities and Challenges
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LEGAL EDUCATION IN GLOBAL CONTEXT: OPPORTUNITIES AND CHALLENGES

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I. Overview: The Impact of Globalization

Partly as a result of globalization, a few recent trends in legal education are noticeable. Firstly, the pace of changes in modern era is unprecedented. On the one hand, knowledge has a much shorter life-span these days and factual knowledge becomes outdated much more quickly than before. On the other hand, many new problems have emerged that require innovative solutions within a very short period of time. The advance of modern technology and means of communication which present a new virtual world with novel and complex legal relationship is a prime example. Secondly, advance in technology means that a huge amount of information is available on any topic. It also greatly shortens the distance between different legal systems and legal cultures. Very few legal systems can be insulated from external influences these days, and there is an increasing need for knowledge and familiarity of legal systems outside that of our own. Thirdly, legal issues have become increasingly multi-disciplinary in nature. Climate change, town planning, trade relations etc are just some obvious examples. Fourthly, it is rare these days that graduates will stay in one career throughout their life. Instead, we have seen university graduates, and not just law graduates, have become or have to become increasingly versatile. It is also an increasingly popular phenomenon that law graduates, by their own choice, decide not to enter into the legal field or decide to work in the legal field only for a few years and move on and excel in another discipline or field.

As legal education has become increasingly globalized and competitive, more and more legal education institutions are adopting an outward looking attitude and this has enhanced academic collaboration and exchange, to the benefit of both students and teachers. The other side of the coin is that tertiary institutions are increasingly concerned about international ranking. Education is to be quantified so that they can be compared and ranked. Factors that are more difficult to measure such as quality of teaching or impact on students tend to be ignored, or worst, twisted for the sake of quantification. In the process

there is a danger that we have forgotten what the mission of a university or a law school should be, or in the words of a former Dean of Harvard University, tertiary institutions are pursuing excellence sometimes at the expense of a soul. What is the place of teaching as opposed to research in legal education that is offered by tertiary institution? What is the role of teaching of ethics, and how should it be done? Increasing globalization in legal practice also results in some cases the domination of corporate, commercial or financial work. The demand for knowledge in these rapidly developing areas of practice in turn exerts pressure on the law school curricula, which brings to the forefront the aim of legal education and what should be expected of a fresh graduate from the law school. The problem is only to be aggravated by the dictation of a law curriculum through the requirements of a national bar examination, which is a common phenomenon in Asia such as Japan, Taiwan or Korea. In many jurisdictions, the bar examination is said to set minimum entry standard in core competences. In practice, the minimum standard becomes the maximum amount of knowledge, as anything that is not within the syllabus of the bar examination curriculum attracts little interest among students. Inadvertently, the national bar examination reduces diversity and creativity in the teaching and learning of the law. The purpose of a law curriculum is to help students pass the bar examination. Should this be the case? And does it produce better lawyers? And more fundamentally, who should pay for the cost of legal education?

All these changes prompt us to review what legal education is about, and what a modern law curriculum should look like in light of these changes. Many law schools have undergone major curriculum reforms in recent years. Hong Kong is no exception. A major review of legal education took place at the turn of the century, and a decade since then, another major legal education review is on its way.

II. The Hong Kong Scene

The legal profession in Hong Kong is a relatively small and separate profession comprising barristers and solicitors. As of July 2013, there were about 1,100 practising barristers, among them 92 were Senior Counsel (80 male; 12 female). As at 31 December 2012, there were 7,483 solicitors with a current practising certificate, among them 5,828

were in private practice working in 806 firms,¹ including 70 foreign law firms. Of the local law firms, 364 or 45% were sole practitioners. Of all the sole practitioners, 42% have no assistant solicitor. Foreign lawyers are allowed to practice in foreign law in Hong Kong. A total of 1,244 foreign lawyers were employed by both local and foreign law firms.² Their number has doubled in the last seven years. Solicitors and barristers are governed respectively by the Law Society and the Bar Association.

As at mid-2013, the population in Hong Kong stands at just over 7 million. While Hong Kong has a per capita income comparable to many developed countries, it has also one of the largest income differential ratios between the rich and the poor in the world. Tertiary education has traditionally been and remains one of the key means of upward social mobility. Admission to tertiary institutions is basically determined by academic merits. Tertiary undergraduate education is mainly funded by public revenue and is provided at a substantially subsidized rate. It is due to the meritorious admission system and through the publicly funded tertiary education that some of the most talented students have been able to enter into the legal profession and become distinguished legal practitioners and prominent leaders of the community today. Although the community has in general become more affluent these days, it remains an important feature of our legal education system that no one is denied an opportunity to enter the law school and the legal profession for want of financial means.

In general, until recently, legal education is an undergraduate curriculum. However, a unique feature of legal education in Hong Kong is that, for historical reasons, the professional qualification, namely Postgraduate Certificate in Laws (PCLL), which is a common qualification for entry to both the Barristers and the Solicitors branches of the legal

¹ Among the solicitors in private practice, 2,369 of them were partners or sole practitioners, 3,459 were employed as assistants or working as consultants. The remaining 1,655 solicitors holding valid practicing certificates were employed by private business or the Government. Of all 7,483 practising solicitors, 54% were men and 46% were women; 82% of practising solicitors were ethnic Chinese. Among 806 local law firms, 195 firms employed a total of 940 trainee solicitors, among whom 39% were male and 61% were female.

² There were 70 foreign law firms employing 322 foreign lawyers. Another 922 foreign lawyers were employed in local law firms. There were a total of 1,375 registered foreign lawyers.

profession, is conferred by the university. The PCLL is a one year full time course of study.³ PCLL graduates who wish to join the Bar will have to undertake one-year pupillage with a practicing barrister, and those who wish to become solicitors will have to serve two years of traineeship with a solicitors' firm. There is no further qualification examination after the PCLL. Apart from the PCLL, the only other route of entry to the legal profession is through the Overseas Lawyers Qualification Examination ('OLQE') for admission to be a solicitor and the Barristers Qualification Examination for admission to the Bar. Only overseas lawyers with at least 3 years' post-qualification experience are eligible to take these examinations, which are conducted by the legal profession and have a much lower passing rate than that of the PCLL. Thus, the bulk of lawyers admitted to the legal profession each year come largely from the PCLL graduates. In other words, the university becomes the primary gate-keeper of the quality and the number of new entrants to the profession. In recent years, this situation has become a thorny issue between the universities and the professional bodies, and sets the context for recent reform in the legal education curriculum at the university in the last decade. At the same time, there is a sharp increase in recent years in the number of overseas lawyers who are admitted through the OLQE.⁴ In 2012-13, there were a total of about 650 PCLL graduates from the three law schools. In 2012, 256 candidates sat for the OLQE; 168 of them passed the examination and were admitted as registered foreign lawyers.

The first law school in Hong Kong was set up at the University of Hong Kong (HKU) in 1969.⁵ The second law school was established at City University of Hong Kong (City U) in 1988, almost twenty years later. The third law school was set up at the Chinese University of Hong Kong (CUHK) in 2006. Apart from the undergraduate LLB programme, each of the three law schools offers its own PCLL programme. They also introduced, at various points of time, a graduate JD programme.

Apart from the three universities, a number of overseas universities, such as the University of London and Manchester Metropolitan University, offered overseas law degrees

³ HKU offered a part-time PCLL programme in 2006-07.

⁴ There were 777 registered foreign lawyers in 2005. The number rose to 1,041 in 2007; 1,203 in 2009; 1,431 in 2012: *South China Morning Post*, 15 Aug 2012. On average, about 200 candidates sat for the OLQE each year in the past 6 years since 2008 and the overall pass rate was about 70% during these periods.

⁵ It was first established as a Department of Law within the Faculty of Social Sciences.

(eg. LLB) or professional programmes (eg. CPE, GDL) in conjunction with a local partner in Hong Kong. Their graduates still have to take and pass the PCLL course in order to be eligible for admission to Hong Kong's legal profession. As from 2008-09, overseas law students are required to demonstrate competence in some conversion subjects before they are eligible for admission to the PCLL. These conversion course requirements were introduced to ensure that overseas students are equipped with adequate knowledge of substantive law that is required for a skills-based PCLL course.

IV. A Response to Global Challenges: a 21st Century Curriculum

With globalization comes an increasing expectation and demand on the qualities of law graduates, which in turn pose challenges on the mission of the law school. On the one hand, the legal profession increasingly expects law graduates to be competent, not just in general skills and knowledge, but also in specialized areas like securities, listing and other commercial practices. Global legal practice may also require students to be familiar with international law and different cultures and legal systems. At the same time, the competition and the pressure on passing the bar examination result in students not interested in anything other than those subjects required by the bar examination. This phenomenon is most obvious when law is pursued as a graduate programme where students enroll in the programme with full knowledge of the opportunity cost that they would want to recover in pursuing a legal career. At the other end, with rapidly changing career path and in some jurisdictions, the lack of opportunities in the legal profession, the law curriculum may have to increasingly prepare law graduates for a career other than law. At the same time, law schools, as an academic institution, would like to offer an educational experience that is intellectually interesting, challenging and rigorous. A 21st century law curriculum will have to address and balance all these conflicting demands, taking into account the history and characteristics of each institution. Thus, in a recent review, Oxford has decided to retain its century-old curriculum with in-depth teaching on a small number of subjects with little choice of electives, whereas others may decide to go for a broad liberal curriculum, and some others find themselves constrained by the bar examination.

At the University of Hong Kong, it has always taken the view that 'the study of law is not only meaningful and useful as a preparation for a career in the legal profession, but also as a

vehicle for cultivating general intellectual and linguistic skills, learning about how society, politics, and the economy work, and being nourished by the moral and ethical values that form the foundation of a civilized and humane society.⁶ The aim of liberal education is to develop intellectual curiosity and a critical analytical mind through the legal context, and to appreciate law and legal values in a wider community through broad based knowledge and education. There is no reason to believe that a legal career is the only form of employment for law graduates, and with its intellectual rigour, legal education should be able to prepare law graduates to embark on other careers.⁷

A comprehensive review of legal education and training in Hong Kong was carried out in 2001. The *Roper-Redmond Report*, as it was generally known,⁸ basically adopted the three stages of legal education outlined in the *Ormrod Report*, and reaffirmed that the undergraduate law degree is a valuable preparation not only for the practice of law but also

⁶ Prof Albert Chen, Message of the Dean, *Faculty of Law Prospectus 2001-02*. See also *Roper-Redmond Report*, below, at pp 119-126, para 73.

⁷ Ibid. Until recently, legal education in Hong Kong follows largely the recommendations of the *Ormrod Report*, which emphasized that proper legal education at university level is an indispensable component of legal education. It recommended that there be three distinct stages of legal education, namely:

- (1) An academic stage taken at university or its equivalent;
- (2) A professional stage comprising
 - (i) organized vocational training in an institution; and
 - (ii) apprenticeship involving practical experience in a professional setting under supervision; and
- (3) A continuing legal education stage.

As to the aims of legal education, it states:

'The professional lawyer requires a sufficiently general and broad based education to enable him [sic] to adapt himself successfully to new and different situations as his career develops; an adequate knowledge of the more important branches of the law and its principles; the ability to handle fact, both analytically and synthetically, and to apply the law to situations of fact; and the capacity to work, not only with clients, but also with experts in different disciplines. He must acquire the professional skills and techniques which are essential to practice, and a grasp of the ethos of the profession; he must also generate a critical approach to existing law, an appreciation of its social consequences, and an interest in, and a positive attitude to, appropriate development and change. To achieve these aims, a combination of education at university level and apprenticeship in its widest sense is necessary.' (*Report of the Committee on Legal Education* (Cmnd 4595, HMSO, London, 1971))

⁸ *Legal Education and Training in Hong Kong: Preliminary Review*, a Report of the Consultants to The Steering Committee on the Review of the Legal Education and Training in Hong Kong (Aug 2001) (hereafter referred to as the *Roper-Redmond Report*).

for a variety of other careers.⁹ It noted that there was no necessary conflict between law as liberal arts education and law as legal education, as the generic or generally transferable intellectual skills and competencies common to most university education in the humanities and social sciences are essential to legal education.¹⁰ Hence the goals of the academic stage should include the development of intellectual skills and competencies specific to the discipline of law. They should draw upon general transferable skills of analysis and problem solving but take on a cast of thought and intellectual method that is specific to the discipline of law. The Report also emphasized the importance of the English language proficiency in the common law system, and advocated engaging the students in the teaching and learning of law so that the learning experience is one of active and not passive learning.¹¹ It further recommended extending the then 3-year LLB curriculum to 4 years during which law and non-law subjects are taken concurrently.¹² It, however, did not advocate turning the undergraduate LLB programme into a graduate programme, but highlighted the needs for part-time law degree and a graduate programme of a shorter duration than the 4-year LLB.¹³

These recommendations on the aims, content and teaching methods at the academic stage and the proposal to extend the LLB study to 4 years were generally well received. Indeed, HKU has long advocated for a 4-year programme which would provide the much needed space for liberal education. The only constraint has been budgetary. The University Grants Committee ('UGC') has eventually agreed to fund the 4-year programme and the new 4-year LLB programme was introduced in September 2004.

As far as HKU is concerned, the new 4-year LLB is not merely an extension of the existing programme. Instead, the curriculum was restructured to reflect the emphasis on core legal competencies and transferable skills, broad-based education and the nurturing of a global perspective. The curriculum is conceived as a two-tier structure: the first two years

⁹ At pp 13-15, para 2.1.1.

¹⁰ At p 119, para 7.3.1.

¹¹ At p 162, para 7.6.3.

¹² At p 136, para 7.4.3.

¹³ In 2012-13, the Hong Kong Government introduced a further major change in university curriculum. All undergraduate programmes are extended by one year, with the exception of law, which will remain as a 4-year programme.

being foundation years with mostly compulsory subjects, and the last two years being senior consolidation years with mostly electives. In the first two years, the focus is on teaching of core legal competencies and transferable skills in the legal context (eg, case reading, analytical, research, writing, oral communication skills, problem solving skills etc). Different subjects are assigned, as far as possible, to focus on different aspects of these skills. An intensive legal research and writing programme, which lasts for two years, is introduced. The 5-module course is designed in such a way that it builds upon one another, and culminated in a major piece of research work with oral presentation.

At the same time, compulsory broadening courses on law and society, legal theory, and critical thinking are introduced. These courses are in addition to the University general requirement of language and information technology proficiency courses and general broadening courses in sciences and technologies for arts and humanities students. These broadening courses were further revamped and formed a rigorous common core curriculum since 2009-2010 where all undergraduate students were required to do, initially 4, and since 2012-13, 6 one-semester common core courses in four areas of inquiries (Global Studies, China Studies, Arts and Humanities, Science and Technology). These courses are aimed to provide students with a broad knowledge basis and are taught primarily with an interdisciplinary approach. All common core courses have to satisfy certain criteria and are vetted in terms of content and standard by a university committee to ensure their intellectual rigour. In 2012-13, about 150 common core courses were offered.

The final two years are designed to provide a diverse range of experience and options. We offer a wide range of law electives, as well as non-law subjects up to a maximum of 20% of the curriculum. For law electives, we emphasize inter-disciplinary studies (eg, Law and Literary Studies) and comparative law approach so as to enrich our students' understanding of the strengths or weaknesses of our legal system and to have a good appreciation of different legal traditions and approaches. Cross-subject advanced seminars are also offered to break down artificial barriers arising from traditional subject classifications by adopting an integrated approach to problem solving – the so-called capstone experience. Those who take law electives in one of the specialized streams (eg Chinese Law; Commercial, Corporate and Financial Law; International Trade and Economic Law) may obtain specialization in that

stream. Those who have taken all non-law subjects in a specific discipline may obtain a minor degree in that discipline (eg. psychology, global studies). A particular challenge is where and how to teach ethics. This includes not only the professional code of conduct, which we teach in the PCLL year, but also general ethical issues in legal practice. While selected ethical issues are raised in different subjects such as criminal law or law and society, we also run a series of informal dialogues with practitioners and judges who share with our students the day to day ethical issues that they encounter in their daily practice.

Another characteristic of our teaching is the importance we place on experiential learning. This is done through mooting, alternative dispute resolution, exchange programmes, clinical experience and internship. Mooting is used pervasively as a form of teaching. Apart from a compulsory moot for all students, we also participate in various international and regional mooting competitions each year. This provides students with invaluable opportunities to compete and share experience with students from some of the best law schools in the world. In response to the challenges of globalization, we have engaged ourselves in an extensive exchange programme. The University has exchange arrangements with over 200 universities in the world. Each year about 20-30% of law students go abroad on exchange for one semester or one academic year. In return, the Faculty receives a substantial number of exchange students from overseas and the Mainland each year, and these help to provide a truly international learning environment at home for the students.

As far as teaching is concerned, we emphasize interaction and participation through small group teaching (group size of about 10-12) for each subject in the first two years of foundation studies. It is all too often that curriculum changes at the university are not accompanied by a corresponding change in teaching methods and assessment. A curriculum is only as good as how it is delivered. Hence, alongside our curriculum reform, the methods of teaching and assessment have been reviewed to ensure that they are consistent with the overall objectives of the curriculum. Teaching and learning seminars are organized to facilitate teachers to move towards a more engaging approach. There is also a shift from the traditional in-hall examination to a great variety of assessment methods, such as research projects, mooting, stimulation exercises and so on. Teaching and assessment have been

kept under regular review, which forms part of a continuous process of teaching enhancement.¹⁴

Apart from the LLB programme, we have introduced four double degree programmes since 1999 which have proved to be very competitive and have attracted the best group of students. These are 5-year programmes, covering business and law, government and law, civil engineering and law, and law and literary studies. Students are equipped with training in two different disciplines which give them a stronger competitive edge and a more flexible career choice in the highly globalized economy. Another impact of globalization is the recent trend of international collaboration. A number of leading law schools are offering joint or collaborative programmes which can leverage on the strengths of the respective partners. For instance, NUS used to offer a JD programme in collaboration with NYU in Singapore. London School of Economics and Political Science (LSE) is offering a joint JD/LLM degree with Columbia University Law School (so is King's College London and University College London). Cambridge is also offering with Harvard Law School a joint JD/LLM programme. HKU runs various double degree programmes with UBC, KCL, U Penn and Zurich University. These are exciting developments and will no doubt reflect a modern trend that no law school could afford to be isolated in the global village. At the same time, a successful joint programme depends on a whole range of factors, not least that the joint programme has to be able to leverage on the strengths of the partners and is not just a combination of two parallel programmes.

Another major challenge comes from technological advancement. Distant learning or real time collaboration through internet becomes a real possibility. In the early days, there were various ambitious attempts of offering joint or collaborative degrees through distance learning. Yet so far very few of these ideas fly, let alone sustainable. One difficulty is that many law schools have under-estimated the amount of resources and investment required to deliver a really successful programme, let alone a coherent joint academic programme. Even cross-border collaborative teaching of a single individual course through internet or video-conferencing has not been very popular, partly because they depend on

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Indeed, the Department of Law of HKU was awarded Excellence in Teaching Quality Work in 2002 in the Teaching and Learning Quality Process Review conducted by the UGC.

the initiatives of the teachers involved who may not have the incentive or support to do this, and partly that despite technological advancement, distance learning can at best be a supplement rather than a replacement for traditional face-to-face teaching. Having said that, law schools have in general been slow in taking advantage of technological advancement in facilitating teaching, and the potential of collaboration through technology has not been fully explored. In recent years, the introduction of a standard open platform such as MOOC poses a promising breakthrough. The success of the MOOC model lies in the fact that these courses are offered by leading universities in the world for reputational rather than financial purposes. While these courses invariably attract tens of thousands of students, how this mode of education would change the global scene of legal education remains to be seen.

Graduate or Undergraduate Programme?

Whether law should be taught at an undergraduate level or at the graduate level is a matter of policy choice. Britain and many common law jurisdictions opt for the former whereas North American jurisdictions opt for the latter. In recent years, a graduate law programme has been gaining popularity in Asian jurisdictions such as Japan, Korea, Australia, the PRC, and Hong Kong. This phenomenon is to some extent a reflection of the North American experience that law may be best taught at a postgraduate level to students with some degree of maturity and a good sense of the world. In Hong Kong, a JD programme was first introduced in 2004-5 by the City University, followed by the Chinese University of Hong Kong in 2006-07, and the University of Hong Kong in 2010-11. In all three universities, the graduate JD programme runs alongside an undergraduate LLB programme. In contrast, Melbourne Law School has decided to move to a graduate JD programme by giving up its LLB offering.

As a JD programme is targeted at people who intend to join the legal profession and in view of its relatively short duration (typically 2-3 years), it inevitably covers mainly the core courses that are necessary for admission to the legal profession. Thus, a JD programme could have a fairly narrow scope and offer a relatively narrow perspective of law. This limitation is compounded by the existence of a part-time programme. Because of its

professional orientation, a JD programme will likely lean towards preparing students for the bar examination. This seems to be the experience in Japan and Korea, and to some extent, Taiwan. In contrast, the common law jurisdictions are able to maintain a JD programme that could still offer sufficient intellectual rigour and diversity.

Another potential weakness is that academic research is unlikely to be emphasized in a practice oriented course. The response of Melbourne University is to maintain a parallel stream of LLM to sustain academic research and excellence, whereas a dissertation is retained as a compulsory requirement of the HKU JD programme.

A further issue is that in many jurisdictions, undergraduate study is state-funded. Thus, an advantage of providing legal education as an undergraduate programme is that it will better guarantee equal access to legal education. Legal education is expensive, and the cost is borne by the students in a typical graduate programme. While scholarships and bursaries may be available to alleviate financial difficulties of law students in a graduate programme, the North American experience is that many law students are heavily indebted by the time they graduate.

Thus, in short, for any law school that wishes to embark on a graduate law programme, it is essential to ask why it wants to do it, what kind of graduate programme it wishes to launch, and how it would fit into the mission and vision of the law school.

Bridging the Gap: From Academic Study to Legal Practice

Law Schools are traditionally good in providing intellectual academic training. Law students may learn all the legal principles governing contract law or banking law, but they may never come across a real commercial contract or a banking document in their academic study and may be at a complete loss when they are asked to advise on or draft a commercial contract. Yet when they graduate from the law schools, the law firms may expect them to be able to complete commercial transactions, to be effective in engaging clients, and to be competent in conducting negotiations. In a recent discussion with leading practitioners,

they were amazed that law graduates did not understand financial documents such as 'paid through notes', 'equity linked notes', and so on. The gap between the expectations of the profession and that of the law schools are getting wider. This in turn raises the questions of what should be realistically expected of the law schools, how to bridge the ever widening gap between academic study and legal practice, and who is responsible for doing what.

It is obvious that there is a big gap between academic study of law and legal practice. It is equally obvious that it would be unrealistic to expect a law graduate to be able to function as a fully qualified lawyer on the day of his or her graduation. Practical training is best done in practice. While the law schools could strengthen its practical training, it could only realistically and fairly be required to produce law graduates who are competent trainees rather than fully operated qualified lawyers upon graduation. There are various models to bridge the gap. A national examination is unlikely to be able to provide effective practical training. Indeed, many law firms in North America lament that the national bar examination has not been able to provide good quality trainees, and the cost of training falls onto the law firms. In times of economic downturn, more and more clients are unwilling to finance the training of trainees. In Singapore, some corporate clients even refuse to pay the bill for work done by a trainee. The alternative model is to introduce vocational course providers. This has been the case in the UK where the teaching for the Bar examination or the Law Society Qualifying Examination is provided by a number of accredited professional schools. They provide well-structured skills and professional training that prepare a law graduate for legal practice. In Hong Kong, such practice training is provided by the three law schools in the form of a one-year programme, the PCLL, which has the benefit of having substantial professional input and is subject to rigorous scrutiny to ensure its relevance to practice. The PCLL programme has undergone many changes in recent years and is designed to help students to transit smoothly from the academic stage to the practice stage of their legal career. It is a successful model of collaboration between the profession and the universities, as professional input is sought at every stage of the planning and delivery of the curriculum. The professional bodies also set out the benchmarks to be met by the programme. This model has an advantage of providing a buffer between legal practice and academic study of law, thereby shielding the law schools from the pressure of a bar examination in designing their undergraduate law curriculum which in turn encourages intellectual rigour and academic diversity. It does not completely resolve the problem of a

widening gap of expectation from the legal profession and what can be realistically achieved within a one-year training programme. There is probably no quick solution apart from a regular dialogue between the programme providers and the legal profession. Recently, the Law Society has advocated for the introduction of a single Solicitor Qualifying Examination, primarily on the ground that it needs to maintain consistency in standard when the PCLL programme is offered by multiple providers. This is not a novel issue and there are various ways to achieve consistency other than a single unifying examination. As pointed out above, a single examination may provide apparent consistency, but it may also result in a more narrowly-focused professional training programme. The real question is whether a unified entry examination will result in better lawyers, or whether it will only introduce a further hurdle to entering the profession. Experience elsewhere suggests that a unified examination is unlikely to produce better lawyers than a sustained structured training programme.

Access to Legal Profession

This gives rise to another set of issues, namely whether there should be multiple entry points to the legal profession. In most jurisdictions, a law degree is a necessary prerequisite to the entry to the legal profession, though this is not invariably the case. In Hong Kong, the Roper-Redmond study emphasized the importance of providing an alternative entry route other than an undergraduate law degree. This recommendation has prompted the introduction of JD programmes in Hong Kong, which is intended to provide graduates who do not study law an alternative route of entry to the legal profession. In contrast, in the PRC, anyone who has a university degree can take part in the national bar examination. In the UK, there are multiple entries to the legal profession and a law degree is not required.

It has never been doubted that one can become a doctor only by following the medical curriculum in a medical school, or an architect or an engineer only by doing the prescribed curriculum in the respective disciplines. As law has become an increasingly sophisticated profession which shoulders a heavy public responsibility of handling their clients' life, liberty or property, let alone a high calling to defend justice and the rule of law, it would be startling if a lawyer is not required to undergo the most stringent professional and academic training. The responsibility of academic education is squarely and rightly placed in the university, which training is to be supplemented by a period of training in

practice. This is not about equal access, but about ensuring quality and competence in the public interest. Equal access is guaranteed by equal access to admissions to universities on merits. It is not granted by giving any person who aspires to be a lawyer to take a professional examination without going through any proper training or education.

VII. Conclusion

A 21st century law curriculum has to meet many conflicting expectations. As an academic programme, the study of law should provide an intellectually challenging experience and a broad education, and equip students not just with knowledge of the black letter law but also its broader context and the role of law in the wider local and international communities. While this may be shared by the profession at a general level, the increasingly sophisticated legal practice prompts them to expect more specialized and focused training for legal practice in the law curriculum. As a professional programme, it is fair to expect law graduates to be competent to provide a high standard of legal services to the community. There are tensions between the provision of solid general legal knowledge and nurturing specialized legal expertise, and between offering rigorous intellectual and academic training and honing practical legal skills. While these are not novel issues, the gap between the expectations of the law school and the legal profession is getting ever wider as a result of globalization. The increasingly consumer-oriented approach in universities may drive the content of the law curriculum towards meeting the market demands for admission to the legal profession and, inevitably, the requirements of the professional examination. In this regard, it is ironic that in some Asian jurisdictions such as Korea, Japan or Taiwan where the passing rate of the bar examination is dismally low, the law curriculum is not designed to prepare students for a career other than law, whereas in some other Asian jurisdictions such as Singapore and Hong Kong where the focus of legal education is to provide a broad liberal education, most of the graduates end up in the legal profession. Advancement in technology offers a new dimension to internationalization, and may facilitate international collaboration in a manner that has not been possible before. Yet the potential, as well as the necessary infra-structural and resources support, has not been fully explored. Despite these possibilities, some law schools may decide to focus on their traditional strengths; others may decide to expand and capitalize on their international exposure. There are new challenges, and come with them, new opportunities. There is no single ideal model, and each law school will have to take into account its own history, culture, characteristics,

strengths as well as wider issues such as the cost of legal education and national legal environment, in developing its own responses. If anything, globalization should lead to greater diversity rather than greater convergence.

Prof. Timothy Endicott

Dean and Professor of Legal Philosophy, The University of Oxford, Faculty of Law



Timothy Endicott has been Dean of the Faculty of Law, the University of Oxford, since October 2007. He is a Fellow in Law at Balliol College, and has been a Professor of Legal Philosophy since 2006. Prof. Endicott writes on Jurisprudence and Constitutional and Administrative Law, with special interests in law and language and interpretation.

He is the author of *Vagueness in Law* (OUP 2000), and *Administrative Law* (OUP 2009). After graduating with the AB in Classics and English, *summa cum laude*, from Harvard, he completed the MPhil in Comparative Philology in Oxford, studied Law at the University of Toronto, and practised as a litigation lawyer in Toronto. He completed the DPhil in legal philosophy in Oxford in 1998.

Prof. Carolyn Evans

Dean and Harrison Moore Professor of Law, The University of Melbourne, Faculty of Law



Prof. Carolyn Evans is Dean of Melbourne Law School. Carolyn has degrees in Arts and Law from Melbourne University and a doctorate from Oxford University where she studied as a Rhodes Scholar and where she held a stipendiary lectureship for two years before returning to Melbourne in 2000. She worked for a period as a lawyer at Blake Dawson Waldron after graduating from Melbourne. In 2010, Carolyn was awarded a Fulbright Senior Scholarship to allow her to travel as a Visiting Fellow at American and Emory Universities to examine questions of comparative religious freedom.

Carolyn is the author of *Religious Freedom under the European Court of Human Rights* (OUP 2001) and *The Legal Protection of Religious Freedom in Australia* (Federation Press 2012) and co-author of *Australian Bills of Rights: The Law of the Victorian Charter and the ACT Human Rights Act* (LexisNexis 2008). She is co-editor of *Religion and International Law* (1999, Kluwer); *Mixed Blessings: Laws, Religions and Women's Rights in the Asia-Pacific Region* (2006 Martinus Nijhoff) and *Law and Religion in Historical and Theoretical Perspective* (CUP 2008). She is an internationally recognised expert on religious freedom and the relationship between law and religion and has spoken on these topics in the United States, United Kingdom, Russia, China, Greece, Vietnam, India, Hong Kong, Switzerland, Malaysia, Nepal and Australia.

Prof. John A. Flood

Professor of Law & Sociology, University of Westminster



Prof. John Flood studied law and sociolegal studies at the LSE, Warwick, and Yale Law School. He took his PhD in sociology at Northwestern University in Chicago under the supervision of Howard Becker, Jack Heinz and Art Stinchcombe. He worked at the American Bar Foundation as a research associate and Indiana University-Bloomington before joining the University of Westminster. He has been an Exxon Fellow in Ethics in the Poynter Center at Indiana University, an Academic Visitor in the Sociology Department at LSE, a Jean Monnet Fellow at the European University Institute in Florence, a Visiting Fellow at the Institute of Advanced Legal Studies, and TranState Adjunct Professor at the University of Bremen. He is currently a Visiting Professor in the School of Law at the University of Miami. Since 2010 He has been a member of the Legal Services Board's Research Strategy Group. In 2012 he was awarded a Leverhulme Research Fellowship to study the new legal services market.

Kate Galloway

Senior Lecturer, James Cook University, School of Law



After completing her articles and her admission as a solicitor in 1992, Kate Galloway practised as a solicitor between 1992 and 2004 in private practice in both Brisbane and Cairns, in property and commercial law. After leaving private practice, Kate practised for two years in a native title representative body before joining JCU in the School of Law.

While Kate has taught in a variety of subjects in the law degree, her primary teaching area since 2004 has been in land law, legal institutions and processes and in law society and change. She has been a regular contributor to the JCU Uniprep, Freshstart and law related O-Week sessions for students.

In 2009 Kate was appointed the Director of Teaching and Learning for the School of Law. She is winner of a 2009 Australian Learning and Teaching Council citation for outstanding contribution to student learning and in 2009 and 2010 and 2011 was also awarded a JCU Inclusive Practice Acknowledgement Award.

Since arriving in Cairns in 1992, Kate has been involved in community legal centres and other community-based organisations. Since 2010 Kate has been a member of the Queensland Law Society Equalising Opportunity in the Law Committee and has also co-convened the Australian Law Associate Deans (Teaching and Learning) Network since its inception in 2010. She presently sits on the editorial committee for the Legal Education Review and the Queensland committee of the Alternative Law Journal.

Prof. Donna Greschner

Professor of Law, University of Victoria, Faculty of Law



Donna Greschner is Professor of Law at the University of Victoria, Canada, where she served as Dean from 2008 to 2013, and is Scholar-in-Residence at the University of California, Irvine School of Law, 2013-14. She is a member of the Board of Governors of the National Judicial Institute of Canada, and has just completed a two-year term on the National Committee on Accreditation, Federation of Law Societies of Canada.

Prof. Greschner's scholarship has focused primarily on constitutional law, human rights and, more recently, health-care law. Her publications have been cited frequently by Canadian courts, including the Supreme Court of Canada. She has taught a broad array of courses in constitutional law, international law, health law, and legal theory; she also has extensive experience in supervising and examining graduate students. As a law professor at the University of Saskatchewan from 1982-2003, she taught its first course in feminist legal theory and was founding co-director of its Women's Studies Research Unit. In 2002 she received the University of Saskatchewan's Master Teacher Award for teaching excellence.

From 1992-96, Prof. Greschner was Chief Commissioner of the Saskatchewan Human Rights Commission, leading the Commission during the successful legislative campaign to prohibit discrimination on the basis of sexual orientation. Other government appointments have included serving as the prairie representative on the federal Canadian Women's Studies Advisory Committee (1984-87) and as the Western Canadian representative on the Canadian Human Rights Commission (1987-90). Her academic service includes positions on the executive of the Canadian branch of the International Association of Constitutional Law, the Canadian Association of Law Teachers, the Saskatchewan branch of the Women's Legal Education and Action Fund, and the Africa section of AALS.

A member of the Saskatchewan and California Bars, Greschner has advised many governments, Aboriginal peoples and non-profit organizations on constitutional questions. Amongst other work, she was one of the Government of Saskatchewan's negotiators for the Charlottetown Accord in 1992, and a consultant to the Royal Commission on Aboriginal Peoples (1990-91) and the Royal Commission on the Future of Health Care in Canada (2003). Her international work includes advising the African National Congress on constitutional issues (1991) and consulting on anti-discrimination policies for the Commission on Labor Co-operation (2004-2005).

Prof. Rick Glofcheski

Professor, Department of Law, The University of Hong Kong



Rick Glofcheski obtained his BA at Wilfrid Laurier University, his LLB at University of Windsor, and his LLM at Cambridge University, England. After practising law in Canada, mainly in civil litigation, he joined the University of Hong Kong. His primary areas of teaching and research are in tort law, labour and employment law, and teaching and learning in higher education. He has also taught criminal law, contract law, legal system, and medical law. Rick is the Editor-in-Chief of Hong Kong Law Journal. He is a Panel Member of the Bar Association Qualification Committee. He was Head of the Department of Law from 1996-99. He is the author of *Tort Law in Hong Kong* (Hong Kong: Sweet and Maxwell Asia, 3rd edn, 2012, 920 pp). He is author and co-editor of *Employment Law and Practice in Hong Kong* (Sweet & Maxwell Asia, October 2010, 900 pp), for which he was awarded (jointly with Farzana Aslam) the University Research Output Prize 2011. Rick was selected for the award of University Teaching Fellow (2004), the inaugural University Outstanding Teaching Award (2009), the inaugural University Distinguished Teaching Award (2010), and the inaugural Hong Kong-wide University Grants Committee Teaching Excellence Award, in recognition of outstanding teaching and his leadership and contributions to the advancement of teaching and learning.

Prof. Ji Weidong

Dean, Shanghai Jiao Tong University, KoGuan Law School



Prof. Ji Weidong is the Dean of the Shanghai Jiao Tong University KoGuan Law School since 2008. He holds an LL. B at Peking University (1984), an LL.M. (1987) and a Dr. Jur. (1993) at Kyoto University.

Prior to his deanship, he was an Associate Professor of the Faculty of Law, Kobe University, Japan, (1990-96) and a Professor of the Graduate School of Law, Kobe University, Japan, (1996-2008). He has been a Professor Emeritus, Kobe University, Japan, since 2009.

Prof. Ji was a Visiting Scholar at Stanford Law School, U.S.A. (1991-1992). He was a Board Member Co-opted of Research Committee on Sociology of Law, The International Sociological Association, EU, (1994-2002); Member of Council of the Japanese Association of Sociology of Law, Japan, (1999-2011), Researcher and Member of Planning Committee, International Institute of Advanced Studies, Japan (2006-2009). He is currently a Fellow of the Virtual Center for Advanced Studies in Institution, the Tokyo Foundation, Japan since 2007; a Guest Professor of School of Law, Tsinghua University, China since 2007; a Senior Research Fellow of the Department of Public Policy, China's Research Committee Economic System Reform, China since 2008; the Director of the Law and Society Center of SJTU, China since 2009 and Vice Chairman of the Guiding Committee of Legal Education, the Ministry of Education, China since 2013.

His research interests are sociology of law, comparative law, constitutional law, judicial system, etc.

He is an author of a wide publication, including a number of European language articles. His major books are *A Hypermodern Law* (Kyoto: Minerva Press, 1999); *Constructing Rule of Law* (Beijing: China University of Law and Political Sciences Press, 1999); *Legal Change in Modern China* (Tokyo: Japan Review Press, 2001); *New Views on Constitutionalism* (Beijing: Peking University Press, 2002, enlarged edition, 2005); *The Composition of Chinese Judicial System* (Tokyo: Yuhikaku Press, 2004); *The Significance of Legal Procedures* (Beijing: China Legal Publishing House, 2004); *Orbit of Thinking Justice* (Beijing: Law Press, 2007); *At Critical Point of Order and Chaos* (Beijing: Law Press, 2008); *Switching the Institutions* (Hangzhou: Zhejiang University Press, 2009); *Rule of Law in Perspective* (Beijing: Law Press, 2012); *The Great Transformation and Rule of Law in China* (Beijing: Peking University Press, 2013), etc.



Prof. Lin is the law faculty at NCTU (National Chiao Tung University) School of Law, Taiwan. Prof. Lin's fields of specialty include white-collar and corporate crime, criminal law, and gender study. She published more than 30 papers regarding above issues. Her research is highly recognized by local and international legal society, and has been cited on many occasions by Taiwan's courts and prosecutors. In 2011, Prof. Lin was selected as the Fulbright Senior Research Grants Fellow.

Prof. Lin has been active in the Law and Society Association in the US. She is the member of Collaborative Research Network 33 in East Asian Law and Society, which is now the largest Collaborative Research Network in the Law and Society Association. She has also served the planning committee member of East Asian Law and Society Conference.

Prof. Lin has also been active in legal and education reform. Since she was appointed by Ministry of Justice, she has served as the adversary committee of Criminal Law Reform and Human Right Protection. Prof. Lin has devoted herself in women's right movement, too. She is the legal counselor of many Taiwan's non-government organizations, such as Awakening Foundation, White Rose Association, and Crime Victim Protection Foundation. Prof. Lin has a great passion in education. Her devotion to students and teaching makes her awarded as Distinguished Teacher and Best Teaching Professor from NCTU and Ministry of Education for several times.

Prof. Lin obtained her S.J.D and also LL.M. Degree from Duke University School of Law, North Carolina, USA. Her Taiwan's bachelor and master law degrees are both from National Taiwan University. Before being the law faculty in NCTU, Prof. Lin had been an adjunct instructor in Duke University School of Law for a year from 2004 to 2005, the associate editor-in-chief of Taiwan's Law Review from 1998 to 2005, and the attorney of law in Yuan Dao Law Firm from 1996 to 2000.



Prof. Liu is a professor of law and technology management, the Founding Chairperson of the Law School and the Graduate Institute of Technology Law, and a former Dean of International Affairs of National Chiao Tung University (NCTU 台灣交通大學), Taiwan.

Prof. Liu is very active both in academia and industry. He has an Engineering Ph.D. from the US and a law degree from National Taiwan University. He is the pioneer and leader in Intellectual Property (IP) education and service. He has trained more than 7000 IP professionals, both in Taiwan and Singapore, who in turn contribute to the competitiveness of industry. Prof. Liu creates an innovative paradigm of legal education in Taiwan, whereas the NCTU Law School has focused on emerging laws, practical legal operations, and the integration of law and other disciplines. In addition, NCTU has hosted the largest and most influential technology law conference annually ever since 1997, as well as initiates the empirical method to legal research in Taiwan. Prof. Liu is also the Editor-in-Chief of Technology Law Review, an international arbitrator, an advisor of high-tech companies, judicial court and government agencies; since 2006, he has been a visiting prof. of National University of Singapore.

Prof. Liu Xiaohong

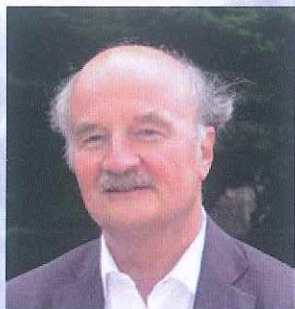
Vice-President, East China University of Political Science and Law



Dr. Liu Xiaohong is a Professor of Law at the East China University of Political Science & Law (ECUPL). She is now the Vice President of ECUPL. She is an Arbitrator of China International Economic and Trade Arbitration Commission (CIETAC) and Shanghai Arbitration Commission. She is the Vice Chairman of Chinese Private International Law Society and Vice Secretary-General of China Academy of Arbitration Law. Prof. Liu has written extensively in many fields, she was the author and co-author of 10 books and the author of more than 60 articles in reputable law journals at home and abroad. Prof. Liu had been doing her research as a visiting scholar at Law School of Ghent University of Belgium, T.M.C. Asser Institute of International Law of the Netherlands. She has lectured as a visiting professor in the Law School of University of Wisconsin, University of San Francisco and Temple University in the United States. She won the Award of Excellent University Young Teacher of Shanghai Municipality and the Annual Excellent University Young Teacher Scholarship of Huo Yingdong Education Fund by the Ministry of Education Of China. In 2009, She was elected as one of the "Top Ten Excellent Young Lawyers in Shanghai" by Shanghai Law Society.

Prof. Hans-Wolfgang Micklitz

Head of Department of Law, Professor of Economic Law, European University Institute



Since 2007, Prof. Hans-Wolfgang Micklitz is a Professor for Economic Law at the European University Institute, Jean Monnet Chair of Private Law and European Economic Law at the University of Bamberg, Germany and is now on leave. He is the Head of the Institute of European and Consumer Law (VIEW) in Bamberg. He studied law and sociology in Mainz, Lausanne/Geneva (Switzerland), Giessen and Hamburg. Micklitz is a consultant for OECD in Paris, UNEP Geneva Switzerland/Nairobi Kenya and CI (Consumers International) Den Haag Netherlands/Penang Malaysia. Study visits at the University of Michigan, Ann Arbor, Jean Monnet Fellow at the European University Institute Florence, Italy, he is a visiting professor at the Somerville College at the University of Oxford, and a co-founder of the Centre of Excellence at the University of Helsinki. He is a holder of an ERC Grant 2011-2016 on European Regulatory Private Law. He is a consultant for ministries in Austria, Germany, the UK, the European Commission, OECD, UNEP, GIZ, non-governmental organisations.

Prof. Pan Jianfeng

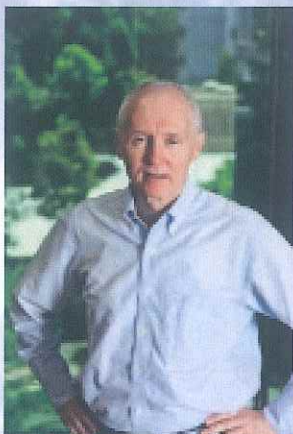
Vice Dean and Professor of Law, Peking University Law School



Prof. Pan is the Vice Dean and professor of Law of the Peking University Law School and has been in the faculty of PKU Law School since 1983. He has gained both his bachelor and master's degree in PKU Law School. He is a leading expert in civil procedure law in China. He also has great academic achievements in study of evidence science, legal system, and arbitration laws. He has published *the Nature of Civil Procedure Law* by Peking University Press, and more than 50 academic papers in periodicals such as *Legal Study*. He has edited more than 10 text books in the field of law.

Prof. Paul Redmond

Emeritus Professor, The University of New South Wales, Faculty of Law



Prof. Paul Redmond was made an Emeritus Professor of the University of New South Wales in 2006 after serial appointments as lecturer, senior lecturer, associate dean, associate professor and professor in the Faculty of Law. He also served as Dean of the Faculty from 1996 to 2002. In 2006 he was appointed the inaugural Sir Gerard Brennan Professor in the Faculty of Law at the University of Technology, Sydney.

Prof. Redmond has been a member of a number of professional bodies concerned with corporate law reform and development, including the Corporations Committee of the Business Law Section of the Law Council of Australia. Prof. Redmond is a member of the Editorial Committee of the Australian Journal of Corporate Law.

While his principal research interests are in corporate and securities law, Prof. Redmond also has a research and professional interest in legal education, professional responsibility, and in the application of human rights standards to business. He is Chair of the Diplomacy Training Program a regional human rights training body, was a founding member of National Pro Bono Resource Centre and has participated in a number of national and international initiatives in legal education. He was Chair of the Council of Australian Law Deans from 1997-1999 and is a foundation member of the Australian Law Schools Standards Committee established by the Council in 2011.

In 2001, Prof. Redmond co-authored a significant report on the reform of legal education and training in Hong Kong. He has been an Honorary Visiting Professor in the School of Law at the Chinese University of Hong Kong.

He was appointed a Member of the Order of Australia in 2013 for significant service to the law through contributions to legal education and professional bodies, and to the community.

Prof. Joellen Riley

Dean and Professor of Labour Law, The University of Sydney, Faculty of Law



Prof. Joellen Riley, Dean at the faculty of law holds degrees in law from the Universities of Sydney and Oxford, and has been teaching and researching in the field of employment and labour law since 1998. She studied law after a number of years as a financial journalist, and spent some time in commercial legal practice before joining the University of Sydney. Her academic career includes some years on the staff of the Law Faculty of the University of New South Wales, where she taught principally in corporate and commercial law. Joellen is a Fellow of the Commercial Law Association. She was a co-editor of the Australian Journal of Labour Law from 2008 till 2012.

Dr. Rita Shackel

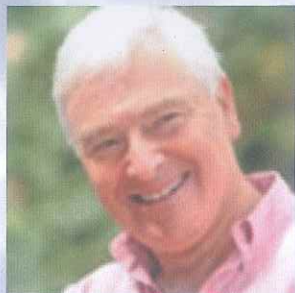
Associate Dean (Learning and Teaching), Senior Lecturer, The University of Sydney, Faculty of Law



Dr. Rita Shackel is a graduate of the University of Sydney holding undergraduate and postgraduate qualifications in law, science (pure mathematics), psychology and education. Rita's academic awards include the *Jones Memorial University Medal* for most outstanding academic and professional record. Rita has worked as a lawyer, legal policy officer and academic in a range of settings including the NSW Cabinet Office, The NSW Office of Youth Affairs and The Australian Law Reform Commission. She has participated on a number of government, institutional and professional committees and working groups and has delivered professional training and CLE programs to legal practitioners and judicial officers in Australia and overseas. Rita's PhD thesis examined the use of expert evidence in child sexual assault cases. Rita has worked and published widely in the field of sexual victimisation. She has a particular interest in the dynamics of child sexual assault and how victims and survivors disclose abuse. Rita also has a strong interest in professional ethics and is an active researcher in the field of legal education. She is currently a TEQSA expert and a member of the NSW Law Society, Children's Specialist Accreditation Advisory Committee. Rita is committed to public interest and community work and has worked as a volunteer in community legal centres both in Australia and overseas. Rita is currently based at the UNICEF Office of Research as an Innocenti Senior Fellow and will be visiting the Faculty of Law at the Chinese University of Hong Kong in the USyd-CUHK Faculty Exchange Programme in 2013.

Prof. Avrom Sherr

Director and Woolf Professor of Legal Education, Institute of Advanced Legal Studies, University of London



Prof. Sherr graduated in Law from the London School of Economics in 1971 and qualified as a solicitor in commercial litigation with the then firm of Coward (now Clifford) Chance. From 1974 to 1990 he taught at Warwick University where he was a pioneer of clinical legal education. His PhD from Warwick University was on "The Value of Experience in Legal Competence".

In 1990 he became the first Alsop Wilkinson Professor of Law at the University of Liverpool and subsequently Director of the Centre for Business and Professional Law. In 1995 he moved to the Institute of Advanced Legal Studies to become the founding Woolf Professor of Legal Education, a research chair at the Institute. From 2004 to 2012 Professor Sherr was Director of the Institute of Advanced Legal Studies. His main areas of research have been in legal education, professional competence and human rights.

Prof. Shi Yan'an

Vice Dean, Renmin University of China Law School



Dr. Shi Yan'an is currently professor in law and Vice Dean of Renmin University of China (RUC) Law School, and the Director of the Institute of the Inter-Regional Criminal Law of RUC, which studies the legal relationship and co-operation in criminal matters between mainland and Hongkong, Macao and Taiwan of China. He is also a senior fellow of the Research Center for Criminal Jurisprudence of RUC, one of the key national research institutes of humanistic and social sciences in universities of China.

Dr. Shi also has some social positions. He is now the part-time Deputy Chief Prosecutor of Huairou Procuratorate in Beijing. For he has a great interest in the relationship between criminal justice and media, he is now a consultant to China News Agency since August, 2010. He is also the legal consultant to RUC.

He received his Master Degree in criminal law in July of 2000, and the Doctor Degree in criminal law in July of 2003 from RUC. From August of 1994 to August of 1997, he worked in Mudanjiang Procuratorate of Heilongjiang Province, China, and he got the position of Associate Procurator in May of 1996.

From August, 2006 to May, 2007, he was a Hauser Global and Center for Research in Crime and Justice and Justice Research Fellow of Law School of New York University. From February to April, 2011, he was a visiting scholar to the Center for Criminology of Oxford University.

His research field is criminal law, criminal justice and international cooperation in criminal matters. He has published one book on the Inter-regional Concurrent Criminal Jurisdiction in China, one book on jurisdiction and another book on offences of violating decency. Since 2000, he has published dozens of papers on criminal law and criminal justice, and translated *Gotham Unbound* (by Prof. James Jacobs, NYU) and several English papers into Chinese. He and other two professors just finished the translation of a book-*Public Criminology*?-written by Prof. Ian Loader and Prof. Sparks. He is ready to write a textbook on American-British criminal law.

Prof. Ming-Yan Shieh

Professor of Law and Dean, National Taiwan University, College of Law



Prof. Ming-Yan Shieh is a leading expert who has devoted substantial scholarly effort in the field of intellectual property law in Taiwan. He received his Bachelor of Laws degree and Master of Laws degree from National Taiwan University College of Law before earning his Doctor of Laws (Dr. jur.) degree at the Ludwig Maximilian University of Munich (German: Ludwig-Maximilians-Universität München) in 1990. In the same year Prof. Shieh joined the law faculty of his alma mater in Taiwan and has served as a Professor of Law since then. In August, 2012, he began serving as the Dean of National Taiwan University College of Law.

Prof. Shieh's research interests include intellectual property law, fair trade law, internet law and civil law. So far Prof. Shieh has published ten books. More than a hundred of his articles have appeared in numerous leading law journals. As a legal activist committed to the development of Taiwan's intellectual property law, Prof. Shieh has actively engaged in the formulation of policy and legislation of intellectual property law in Taiwan. Over the past few years several intellectual property law amendments in Taiwan were taken place under Prof. Shieh's initiatives.

Prof. John O. Sonsteng

Professor of Law, William Mitchell College of Law



Prof. John O. Sonsteng holds a B.A. at University of Minnesota (1964) and a Juris Doctorate (1967). He is a Professor of Law of William Mitchell College of Law. He is the Regional Director of National Institute (NITA) for Trial Advocacy, the Director of Expert Witness Training Academy, and the member of Warren E. Burger American Inn of Court – St. Paul, MN and Fulbright Association from 1991 to Present.

Prof. Sonsteng is an International Presenter. He was a Fulbright Lecturer, Aberdeen, Scotland in 2008 and has been giving lectures and teaching in Turkey, Czech Republic, England, Wales, Scotland, Canada, Singapore, Ireland.

He has been awarded a number of Professional Honors, including Martin Lueck and Mallory Mullins Professorship in Advocacy, John J. McAulay Legal Educator Award, Hon. Prentice H. Marshall Faculty Award – NITA, City Solicitor's Education Trust Visiting Professor in Litigation and Advocacy, Nottingham Law School, England, Minnesota State Bar, the "Advocate Award" for outstanding achievement and contribution to the Bar, and National College of Trial Lawyer Emil Gumpert Award for Excellence in Teaching Trial Advocacy .

He is an author of a wide publication. Some selected publications are: Legal Education Training Exercises and Materials - law school courses, firm training programs and Expert Witness Training Academy, *TrialBook*, Legal Education Renaissance: A Practical Approach for the Twenty-First Century, *Juvenile Law and Practice*, *Minnesota Practice*, *Trial (Theories, Tactics, Techniques)*, Minnesota Lawyers Evaluate Law Schools, Training and Job Satisfaction, and Learning By Doing: Preparing Law Students for the Practice of Law, The Legal Practicum.

Prof. Tan Seow Hon

Associate Professor, Singapore Management University, School of Law



Dr Tan Seow Hon is an associate professor with the School of Law, Singapore Management University (SMU), where she teaches Jurisprudence as an upper year elective as well as a mandatory upper year course. She is the winner of the SMU Innovative Teacher Award 2012-2013 and the SMU School of Law Most Outstanding Teacher Award 2012-2013, and has won several other teaching awards from the school and from the National University of Singapore where she was previously tenured. She completed her doctoral studies at Harvard Law School in 2004, specialising in Jurisprudence. She has done several empirical projects which examined the impact of legal education and of internships on the moral transformation and formation of the professional identity of lawyers and written numerous articles on pedagogy.

Prof. Wang Jianwen

Deputy Dean, Hohai University Law School, Nanjing



Prof. Wang Jianwen, Ph.D of Law, is the Deputy Dean and supervisor for Ph.D students of Hohai University Law School. He is the Director of the Institute of Commercial Law at Hohai University and currently holds other positions including Director of Commercial Law Society of China Law Society, Vice chairman of Bankruptcy Law Specialty Committee of China Law Society, Director of Securities Law Society of China Law Society, Invited expert consultant of the Nanjing Intermediate People's Court and Invited member of Expert Research Group of Prosecutorial Committee of Jiangsu Province People's Procuratorate.

He is an author of a wide range publication of more than twenty books and textbooks, some of the major ones are: "Study on the Civil Liability of Material Miscarriage of Senior Manager's Business Decision of Enterprise", published in 2012 as the 1st author, "Legislative System of Chinese Commercial Law: Criticism and Construction", published in 2009, "Course of Commercial Law", published in 2013 and "Corporation Law", published in 2006, 2008, 2011, as a co-author. He has also published over sixty article in core journals including "On the Legal Regulation of Prepayment Consumption in China: Actual Basis and Institutional Construction" in Science of Law, No. 5(2012), "On the Reconstruction of Judgment Standard of Apparent Agency: the Definition of Civil and Commercial Codes and Its system construction" in Law Review, No. 5(2011), "Dilemma and Way-out: the Application of Commercial Law in China's Judicial Practice" in Modern Law Science, No. 5(2010) and "From Merchant to Enterprise: the Basis and Orientation of the Reform of Merchant System" in Science of Law, No. 5(2009).



Prof. Wang is Dean and professor of Tsinghua University School of Law. He received his LL.B. in Zhengzhou University (1989), LL.M. and PhD in Law from Renmin (People's) University of China (1992 and 1995). He also studied in the Law Faculty of Hong Kong University from 1993 to 1995.

After completing his study in HKU, Prof. Wang joined Tsinghua University law faculty in July 1995. In 2008 he was appointed Dean of School of Law at Tsinghua University.

In 2004 he was appointed member of the Committee for the Macao Basic Law under the Standing Committee of the Chinese National People's Congress, and concurrently a member of the paralleling Committee for Hong Kong Basic Law in 2006. He is also a Senior Research Fellow of the Hong Kong and Macao Institute under the Development Research Center of the State Council (since 2003). In 2007 he was elected Deputy to the 13th Beijing City People's Congress. In January 2013, he was reelected to the Beijing City Congress and appointed Deputy Chairman of the Law Committee of Beijing City Congress.

Prof. Wang serves an executive director of the China Law Society and an executive director of the National Taiwan Society. He is Vice President of China Association of Constitutional Law. In his teaching and research areas, focus is on constitutional and administrative law, the Basic Laws of HK and Macao, and Taiwan issues, and legal education. He is the author of *Central-Special Administrative Region Relationship in China—from a Legal Perspective* (Beijing, 2002) and *Constitutional Review in China* (Beijing, 2004). He has published over 70 articles and presented papers at many regional and international conferences on Chinese constitutional law, legal reform and Hong Kong / Macao Basic Law. He is a Member of the Forum of Young Global Leaders of World Economic Forum.

He was a Fulbright Visiting Scholar at Harvard Law School in 2000-2001. In May 2013 he was elected member of the American Law Society.

Honors and Awards:

Outstanding Teaching & Research Award, Tsinghua University, 1996
First Honor, Outstanding Young Staff Award, Tsinghua University, 1997
First Honor, Outstanding Young Staff Award, Tsinghua University, 1998
Outstanding Young Jurist Prize, Beijing Law Society, 1999
China Top 10 Young Talents (Pioneer) Award, 2005
Tsinghua University Outstanding Scholarship Award, Tsinghua University, 2006
Beijing May Fourth Award, 2007
May 1st Service Award, Beijing City Government, 2009
Top 10 Outstanding Young Jurist Prize, China Law Society, 2010



Born in Münster, in the state of North-Rhine Westphalia, Professor Dr. Wernsmann took his First Legal State Examination in 1993 and his Second Legal State Examination in 1996 after law studies in Münster and Paris. From 1993 until 2004 he worked as an academic assistant and lecturer at the University of Münster. In 1999 Wernsmann was conferred the degree Dr. iur., whereupon he habilitated in 2003 and hence received the *venia legendi* for Public Law, Tax Law and European Law. After one and a half years at the Helmut-Schmidt-University in Hamburg, Wernsmann accepted an offer for the Chair for Public Law, particularly Finance and Tax Law at the University of Passau, where he has been subsequently. He rejected two other offers for Chairs for Public, Finance and Tax Law. After having served as Vice-Dean for two years, he now has been Dean of the Faculty of Law in Passau since April 2012.

Professor Dr. Wernsmann's scientific and practical focus is concentrated on Constitutional Law, European Law, Tax Law and Finance Law. He is co-author of numerous commentaries on various laws and has published a number of other papers. Furthermore, he has been litigating in several constitutional and administrative cases, e.g. on behalf of the Federal Government of Germany and different states at the Federal Constitutional Court of Germany.

Dean Mark D. West

Dean, University of Michigan Law School



Mark West is the Nippon Life Professor of Law and the 17th dean of the University of Michigan Law School. He teaches Japanese Law, Criminal Law, and Enterprise Organization.

Dean West's research focuses primarily on Japanese law. He is the author or coauthor of five books, including *Law in Everyday Japan* and the casebook *The Japanese Legal System*. He has published dozens of articles and essays in *Michigan Law Review*, the *University of Chicago Law Review*, the *University of Pennsylvania Law Review*, the *American Journal of Comparative Law*, the *Journal of Legal Studies*, *Law and Society Review*, and (in Japanese) *Jurisuto*, *Horitsu Jibo*, and *Leviathan*, among others. His publications explore such diverse topics as shareholder derivative suits, the evolution of corporate law, the education and career development of Japanese lawyers, and the ways in which Japanese court opinions frame love, sex, and marriage.

Dean West joined the Michigan Law faculty in 1998. He served as director of the University's Center for Japanese Studies from 2003 to 2007, and as the Law School's associate dean for academic affairs from 2008 to 2013. He has been an Abe Fellow at the University of Tokyo and a Fulbright Scholar and Fellow of the Japan Society for the Promotion of Science at Kyoto University.

Before entering academia, Dean West practiced law at the firm Paul, Weiss, Rifkind, Wharton & Garrison LLP in New York and Tokyo. He clerked for the Hon. Eugene H. Nickerson of the U.S. District Court for the Eastern District of New York. He has a BA from Rhodes College and a JD from Columbia Law School.

Prof. Xiao Yongping

Dean, Wuhan University, School of Law



XIAO Yongping is Cheung Kong Scholars Distinguished Professor and Dean of Law School of Wuhan University, China. He obtained L.B. from Southwest Institute of Political Science and Law, China (1988), and PhD from Wuhan University Institute of International Law, China (1993). He has worked as a visiting scholar, at Groningen University Faculty of Law, Netherlands (2013), at Birmingham University School of Law, UK (2006), at Temple University School of Law, USA (2005), at Max-Planck Institute of Foreign Private and Private International Law, Germany (2000), and at Harvard-Yenching Institute, Harvard University, USA (1998).

He has been working as Executive Vice President of Chinese Society of Private International Law, Vice President, of Law Society of Hubei Province, China, Standing Member of Council of Chinese Society of Law, Council of Information Law Society, and Council of Sports Law Society. He is also the Member of Leader Group on Studying Basic Law, Standing Committee of National People's Congress of P.R. China, Advisory Board of the Supreme People's Procuratorate of P.R. China, Appraisal Group of National Social Science Foundation of P.R. China, and Editorial Advisory Board, *Journal of Private International Law* (Hart); and Editor-in-Chief of *Chinese Yearbook of Private International Law and Comparative Law*, and *Law Review*.

His teaching and research achievements have been awarded as First Class Award for Legal Textbook and Academic Achievement by Ministry of Justice of P.R. China in 2009, 2006 and 2003, First Class Award for National Outstanding Teaching Achievement by Ministry of Education of P. R. China in 2009. He has been awarded as the "Top-ten Outstanding Young Jurists of China" by Chinese Society of Law in 2010, and Special Allowance by State Department of P.R. China in 2001.



Prof. Zhu Xinli, PhD, professor of Law and Supervisor of Ph.D. Students, is the Executive Dean at Guanghua Law School in Zhejiang University. He has served as Vice Dean at Chu KoChen Honors College in Zhejiang University, Vice District Mayor of Longwan District, Wenzhou and Vice Dean of Humanities & Social Sciences of Zhejiang University and was also a visiting scholar in Valparaiso University, the United States, and a senior visiting Scholar in Université D' Aix-Marseille III, France. He has visited the U.S., France, Germany, Russia, the Netherland, Australia, Singapore, Japan and many other countries.

With research fields covering administrative law, government regulation, administrative procedure and state compensation law, he has directed many national and provincial grant projects (e.g. the national social science key grant project *Legal Path and Its Realization of Innovation in Social Management* and etc.) since 1996. Numerous of his works have been awarded by provincial governments and national ministries.

Besides excellent researches, Prof. Zhu also published more than ten books in law independently or with other scholars and tens of articles on major law journals, such as *CASS Journal of Law*, *China Legal Science* etc.

Not only excels in academic research, he also has rich experience in teaching and also has devoted himself to numerous social services as well as the legal development to the PRC China. He is entitled by The Chinese Ministry of Education the New Century Excellent Talent and is the most popular teacher in Zhejiang University while he is also the executive member of the council in Administrative Law Research Institute of China Law Society, council member in Chinese Educational Law Research Institute, council member in Comparative Law Research Institute of China Law Society, council member in Police Law Research Institute of China Law Society, adjunct research fellow in Comparative Law Research Institute, Chinese Academy of Governance, adjunct research fellow in Soft Law Research Institute, Peking University, Committee member of Postgraduate Education Steering Committee, Ministry of Education, Council member in Sports Law Research Institute of China Law Society, Committee member of 11th People's Congress Legal Committee of Zhejiang Province, committee member of 11th People's Congress Standing Committee of Zhejiang Province, Zhejiang Provincial Committee of 9th CPPCC members, The second session of the Zhejiang Provincial People's Government Emergency Management Expert Group, Vice president of Administrative Law Research Institute, Zhejiang Province, Consulting experts of Zhejiang Higher People's Court, Consulting experts of Zhejiang Provincial Public Security, Director of 12th Hangzhou Standing Advisory Committee on Legislation, Director of Zhejiang Legal Research Institute, Director of Zhejiang University Center for Oceans Law and Governance and Lawyer at Zhejiang Zeda Law Firm.

DRAFT – WORKING PAPER

Conclusion

This paper has argued that the time is ripe for law schools and law teachers to strategically review and redevelop curricula and adopt teaching and learning strategies that will fulfil the fundamental purpose of legal education – the training of future lawyers - but at the same time will continue to provide an academic education for its students that is rigorous and which instils the foundations for life long professional learning and development, reflexive thinking and ethical decision-making and practice. Law schools must recognise and respond to the needs of a modern legal profession and to the realities of legal practice and a legal services marketplace that has been transformed and which continues to be shaped by e-spaces and new information technologies. Law schools must redevelop and deliver curricula that provides students with a legal education that recognises that many of its graduates will not only be the lawyers of the future but will be pioneers in navigating new terrain in e-lawyering. As legal academics we have a duty to rise to this challenge and meet the needs of our students and our profession.

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The Chinese University of Hong Kong 50th Anniversary
Faculty of Law's Law Deans' Summit
Legal Education in the Global Context: Opportunities and Challenges
26 October 2013

CURRICULUM DESIGN FOR LAW GRADUATE ATTRIBUTES

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Law schools and law teachers have been conventional in their thinking about teaching and learning. Law teachers are prone to replicating their experience as students. The Carnegie Foundation Report Educating Lawyers (2007) observed, in relation to law teaching in North America, that "law schools rely heavily on one way of teaching...". The Report was referring to the "case-dialogue" method. Across the common law world, beyond North America, a similar charge can be made. Law teachers tend to use a broadly uniform teaching strategy in which students are expected to read cases and apply their understanding of case law principles to hypothetical fact patterns invented by the teacher. In many courses this process is repeated week after week, culminating in a final examination testing the same activity. This process fails to take into account the multiplicity of attributes expected of law graduates. Although there are signs of change, there is still very little engagement with the scholarship of teaching and learning in the legal academy, and limited awareness of how strategically designed learning and assessment activities can positively affect the achievement of graduate attributes. This paper will identify some examples of desirable graduate attributes, and some unconventional teaching and learning and assessment practices that can help achieve them.

Faculty of Law

The Chinese University of Hong Kong

The Conventions of Law Teaching: Time to Re-think?

Rick Glofcheski, Faculty of Law, University of Hong Kong

There is little in life that is more regular and more certain than calls for reform of legal education. A major study has just been completed in the UK (LETR), and two mammoth studies (Carnegie; and Stuckey et al) were recently completed in the US. There is talk of yet another review in Hong Kong, the 2001 Redmond-Roper Report already becoming a distant memory. Yet the 21st century undergraduate law curriculum looks rather similar to what it did fifty years ago, in particular, the form of assessment. Why has so little changed? The presentation will try to offer some modest suggestions on how the practice of law teaching and learning can be improved through the use of more authentic learning and assessment activities, at little or no additional cost, to better achieve desired graduate attributes.

For much of the past decade legal education as provided by university law schools has been under review and criticism in many places in the common law world. Major studies were recently completed in the UK (LETR 2013)¹ and Australia (ALTC 2009)². Only a few years ago two large scale studies in the US (Carnegie 2007, and Stuckey et al 2007)³ were published, detailing the shortcomings of legal education. Criticizing legal education is nothing new.⁴ And we should not overlook the 2001 Redmond-Roper Report, reviewing all aspects of legal education here in Hong Kong.

¹ *The Legal Education and Training Review (LETR) 2013* – a joint project of the Solicitors Regulation Authority (SRA), the Bar Standards Board (BSB) and ILEX Professional Standards (IPS), available at <http://letr.org.uk/>

² *Learning and Teaching in the Discipline of Law: Achieving and Sustaining Excellence in a Changed and Changing Environment*, Australian Learning and Teaching Council, at <http://www.olt.gov.au/project-learning-teaching-law-flinders-2006>

³ *Educating Lawyers: Preparation for the Profession of Law*, 2007, Carnegie Foundation, San Francisco, Jossey-Bass; Stuckey et al, *Best Practices for Legal Education*, Clinical Legal Education Association, 2007.

⁴ Karl Llewellyn, "On What is Wrong with so-called Legal Education", 35 *Columb L Rev*, 651 (1935); Duncan Kennedy, "Legal Education and the Reproduction of Hierarchy", [1982] 32 *J Legal Educ* 591: "Law teachers teach lawyering skills in a way that 'almost completely mystifies them for almost all students'" (at 596).

It is not the present intention to attempt a review or even a summary of the various studies, but rather, to observe that they have and are still taking place, which begs some questions: why are they taking place and what becomes of them?

It is healthy for education systems to be subject to evaluation and criticism. Evaluation and criticism is very much in the spirit of education itself. On the other hand, has legal education responded to those criticisms in any significant way?

- “I suspect that if Professor Langdell walked into a contemporary law school in the US or Australia...he would feel right at home. Although the elective programs at modern law schools have expanded enormously and become ever more specialized, and clinical electives are now available, the nature of the core curriculum, the dominance of doctrine, and the basic approach to pedagogy have changed very little.” S Klift, “First Year Renewal to Engage Learners in Law”, 7th Pacific Rim First Year in Higher Education Conference (2003)
- “The profession seems to repeat the same question in response to every crisis: How can we stay even more the same than we already are?” J Moliterno, *The Future of Legal Education Reform*, 5 *Pepperdine LR* (2013) p 423

Law schools seem resistant to change. Obstacles in overcoming resistance are many, among them: large classes inhibiting in-class engagement; lack of human resources inhibiting teacher supervision and assessment of activity-based learning; student resistance; student expectations for teacher-centered learning; student preference for predictable final examination format; cultural reticence; student preference for surface and passive learning.⁵

Beginning in the second half of the 20th century a vast body of literature began to develop, on learning theory and instructional design, which contributed greatly to an understanding of how learning takes place for adult learners. Emphasis is now

⁵ A survey conducted of HKU law students in 2006 revealed a preference for passive and surface learning activities, because they more closely reflected the assessment process. Moots, debates, presentations, do not feature on the summative assessment, normally a heavily weighted final examination.

placed on student-centered learning. Learning should be outcomes-based, requiring the formulation and articulation of learning outcomes suitable to that discipline. Generic outcomes have been identified: life-long learning skills, independent learning skills, and the ability to solve ill-defined problems. Learning should be constructively aligned, meaning that the learning activities and assessment should be aligned with the learning outcomes in a way that ensures the learner who engages in the learning activities and is assessed on them will achieve the learning outcomes.⁶ Learning should be authentic, as close as possible to real-world scenarios. Learning should allow students to transit to post-graduation life and work. Hence, learning should not be reproductive, suitable for satisfying the examiners and little more. Multiple modes of learning should be employed not only to reflect and anticipate real-world experiences but to ensure that all students can learn in ways that take account of differences in learners (constructivism). For the same reason, multiple modes of assessment should be used. It is now widely acknowledged that the forms of assessment have the greatest influence on learning behavior.⁷ Assessment should be carefully designed to ensure that students learn the right kinds of things in the right kinds of ways and that the learning is sustainable, available to students after graduation. Leaving aside isolated pockets of classroom innovators and the minority of teachers interested in improving the learning opportunities of their students,⁸ there is little evidence that law schools have taken notice of much of this, leaving the impression that learning law is separate and somehow different from learning other disciplines in higher education. The world has changed but legal education has not changed much. And the continuation of the main forms of law teaching and assessment have never been

⁶ Constructive alignment as an educational imperative was embraced by the recent *Legal Education and Training Review* (note 1 above) at 4.122 – see <http://letr.org.uk/the-report/chapter-4/robust-learning-and-assessment-approaches/index.html>

⁷ Assessment has been identified as possibly the single most important influence on student learning, directing students' to organize their learning on topics likely to be examined and the modes of examination to be used (P Ramsden, *Learning to teach in higher education*. London: Routledge.1992; C Rust, "The impact of assessment on student learning" in *Active Learning in Higher Education*, 3, 145-158, 2002; K Scouller & M Prosser, "Students' experiences in studying for multiple choice question examinations", *Higher Education*, 19, 267-279. 1994; see also G Joughin, *Assessment, Learning and Judgment in Higher Education: a Critical Review*, Springer, 2009).

⁸ See for instance the papers in the UK-based journal *The Law Teacher*, and the Australia-based *Legal Education Review*, and the annual conferences of bodies such as ALT and ALTA.

explained or justified according to accepted theories of learning or instructional design.

Can law schools benefit from this learning?

● Three conceptions of legal education:⁹

1. Law as a liberal education
2. Law as a training course for lawyers
3. A mixed model that adopts an approach of intellectual training in the context of a university with the expectation that most students will practise law.

It is the 3rd of these that most undergraduate law programmes would aspire to.

Today, a law course typically consists of a course syllabus, a case reading list, lectures, and in the UK model, small group tutorials. Law is learned through the reading of cases/case extracts, and reading other teacher-assigned materials such as journal articles/extracts. Students learn legal principles as derived from case law and legislation. Undergraduate learning of law is knowledge-based – only to a very limited extent is it skills-based.

The expected learning outcome is the ability to solve legal problems through legal reasoning. That is, on reading/hearing the narrative, the ability to identify the legal issues that arise, and the applicable legal principles/legal reasoning that would be applied by a judge hearing the case. There can be no doubt that it is vital that law graduates master the skill of legal reasoning, but it is arguably the sole learning outcome, and therefore may not justify three years of study.¹⁰

Not surprisingly, with such a modest learning outcome, learning in law school is measured largely according to a single instrument.¹¹ Some might describe it as a

⁹ L Taylor, "Skills, Skills - Kind Inclusion and Learning in Law School", [2001] *UTS Law Review* 8.

¹⁰ One commentator summed up law school education thus: "University law studies have traditionally involved lectures, tutorials and examinations and passive student formats. This is contrasted with learner-centered and social and situational approaches used for transformative learning, challenging student ideas and futures-oriented approaches."

¹¹ Of the Five "Observations" in the Carnegie Report, the two of immediate relevance are: Law Schools Rely Heavily on One Way of Teaching to Accomplish the Socialization Process; and Assessment of Student Learning Remains Underdeveloped.

blunt instrument. In the foundational courses, it is measured through time-limited unseen in-hall examinations. Examination questions consist of teacher-designed, course coverage-oriented fictional narratives as learning and assessment problems. The teacher has a pre-conceived solution in mind, against which student analysis is assessed. The student is aware of this format from an early stage, and naturally, works toward developing a mastery of this format.¹²

Certainly, a possible shortfall in such learning and assessment is that it may encourage short-term reproductive learning habits over more sustainable learning. There is little in such a format that would encourage the development of independent and life-long learning skills.

- “Karl Llewellyn... recognized over sixty years ago that the traditional method of assessing student performance in law school was an ineffective means of measuring student learning. More specifically, there was and still is a gap between the professed learning objectives of many law school classes—teaching students to think like lawyers and to master certain legal doctrines—and the dominant method of measuring students’ attainment of that learning—the final essay exam, which tests more so what a student knows rather than what a student can do.” (A Benjamin Spencer, *The Law School Critique in Historical Perspective*, 69 Wash & Lee Law Rev 1949 (2012))

The shortfall can be addressed through a more learner-centered approach to curriculum design that engages students in learning activities that aim for a multiplicity of learning outcomes - specifically, the sorts of attributes that law graduates are expected to possess. Although the learning of law should not be dictated by the profession, it should nonetheless bear a closer resemblance to what lawyers are required to do on entering the profession.

¹² A survey conducted by the author in 2011 and sent to a list of tort law teachers in five common law countries revealed that for almost all of them (18/22) the final examination consisted mainly if not exclusively of fictional problems designed by the teacher in a way to achieve coverage of the issues taught on the course. On average the assessment weight of the final examinations was 70% of the course. 13 of 21 respondents reported that there was limited or no choice of question in the examination. 12 of 21 respondents who answered the question acknowledged that their examination questions consisted of exaggerated fact patterns not likely to happen.

The shortfall can also be addressed through adoption of more authentic learning and assessment strategies and materials.

The author proposes that the most effective measure to improve the learning of law is through re-design of the assessment. That is because assessment is the main driver of student learning behavior.

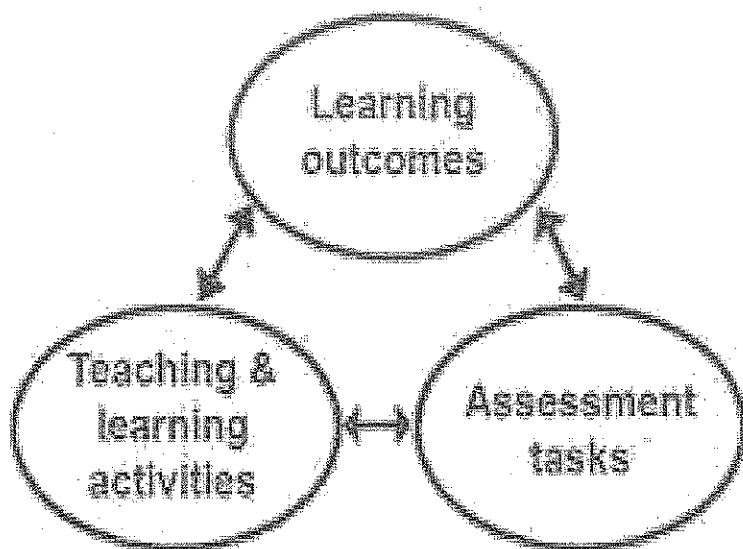


Figure 1: Constructive alignment between learning outcomes, learning and teaching activities and assessment (adapted from Biggs 1999: 27)

- “Students learn what they think they will be tested on” (Biggs, 2003)
- “From our students’ point of view, assessment defines the actual curriculum” (Ramsden, 2003)
- “If we wish to discover the truth about an educational system, we must look into its assessment procedures” (Rowntree, 1977)

If assessment does not change, student learning will not change. The first step is to do away with the conventional assessment model of in-hall examinations consisting of the fictional and often improbable narratives designed by the teacher. This is already done in seminar-style courses in the senior years, where take-home essays are the norm. However, it is important that the right assessment be used in the foundational years, to avoid creating the wrong sorts of learning habits, or to

put it more positively, to use the assessment strategically, to encourage more desirable learning habits and ensure the achievement of the desired learning outcomes.

What is the value of authentic learning and assessment?

Assessment is often thought of by law professors as a means of evaluating what a student has learned, and providing a ranking, and little more. It would be worrying if that was the only function because most law teachers will admit to doubts about the validity and reliability of grading law examination questions in the form of open-ended fictional narratives. A little reflection on how students are motivated in learning soon leads to some alternative approaches to assessment that can transform assessment into an education moment.¹³

There is a rich abundance of scholarship on authentic learning and assessment,¹⁴ far too much to do justice to, but the some of the salient features can be summarized.

- “Instructors are encouraged to design activities for their students that match as nearly as possible the real-world tasks of professionals in the field.
- The challenges students are asked to undertake should be complex, ambiguous, and multifaceted in nature, requiring sustained investigation.”¹⁵
- Authentic tasks are those that have clear goals and real world relevance, requiring production of knowledge rather than reproduction, tasks that are complex and ill-defined and completed over a longer period of time (Herrington).
- Authentic tasks generally involve learning by doing. Authentic learning typically focuses on real-world, complex problems and their solutions¹⁶

¹³ Implicitly acknowledged in the recent The Legal Education and Training Review (2013) at 4.122 – see <http://letr.org.uk/the-report/chapter-4/robust-learning-and-assessment-approaches/index.html>

¹⁴ For a discussion of authentic assessment in the teaching of undergraduate law, see C Hart et al, “The Real Deal: Using Authentic Assessment to Promote Student Engagement in the First and Second Years of a Regional Law Program”, [2011] 21 *Legal Educ Rev* 97.

¹⁵ “Approaches that Work: How Authentic Learning is Transforming Higher Education”, Marilyn Lombardi, Educause Learning Initiative Paper No 5, 2007, available at <http://net.educause.edu/ir/library/pdf/eli3013.pdf>.

- Authentic assessment has been described as one in which the cognitive demands (the thinking required) is similar to that which starting professionals might be confronted with in their working life.¹⁷

There are obvious advantages in this type of assessment for learners of law.

Authentic assessment should of course be aligned to authentic learning environments and activities.¹⁸

It will occur to the reader that some forms of authentic learning (and possibly assessment) already exist on some undergraduate law curricula, in particular, clinical legal education. Perhaps also court visits and other field trips.

It can be observed that the creation of authentic learning environments is bound to be expensive, and labour-intensive. Authentic learning environment requires “doing” rather than merely reading. Activity-based learning activities are required. They should, in so far as feasible, be introduced, to give students the opportunity to engage with law as it happens in the community.

Authentic learning also involves instructional design, and a re-thinking of current teaching and learning materials. Knowledge of doctrinal law is crucial so we cannot do without case reading and problem-solving exercises. But can this be done more authentically?

A modest suggestion

In order to create a more authentic learning activity for students,

Replace problem hypothetical with real-world occurrences

¹⁶ Lombardi, “Authentic Learning for the 21st Century”, available at <http://net.educause.edu/ir/library/pdf/ELI3009.pdf>.

¹⁷ J Savery and T Duffy, “Problem Based Learning: An Instructional Model and its Constructivist Framework” in BG Wilson (ed) *Constructivist Learning Environments* (Englewood Cliffs NJ; Educational Technology Publications, 1995).

¹⁸ J Gulikers, T Bastiaens and P Kirschner, “Defining Authentic Assessment: Five Dimensions of Authenticity”, in Anton Havnes and Liz McDowell, *Balancing Dilemmas in Assessment and Learning in Contemporary Education*, (Routledge Research in Education (2008)).

The local newspaper may provide all the material needed

- The material is realistic, authentic and relevant to the community.
- It is generally complex, requiring multiple perspectives in analysis, including social policy
- The material is often factually incomplete, thereby mimicking a realistic professional scenario
- Its authenticity and relevance fosters a serious approach to analysis and develops the habit of spotting issues in unflagged situations
- It fosters good reading habits
- It fosters an awareness of the community and social policy issues

Compare these problem questions. The first is an example of the familiar and commonly used hypothetical narrative, and the second is an unedited verbatim news item.

1. FE1 Solutions | October 2009

Tort Law XXX Law School (UK/Ireland)

Question 4, October 2009

Bill is retired and lives in a large house on a lightly populated country road. In the past, only people living along this road would use it, however as a result of a new toll road, many people now used it as a method of avoiding payment of the toll by exiting the motorway, driving up Bill's road and then rejoining the motorway on the other side of the toll plaza. At the beginning of Autumn, Bill noticed that there was a leak from his main water connection that resulted in water running onto the road. He meant to fix it before winter set in but had not gotten around to it.

Last week, Sue was driving home very late at night. It was a dry night but temperatures had fallen to -5C, unusually cold for that time of year. Sue decided to

avoid the toll and began to drive on Bill's road. Soon she found herself driving behind Mary, who lived along the road. As Mary approached Bill's house, she knew that the water would likely have frozen on the road and so slowed down from 50kph to 30kph. Sue was exasperated, so she swung past Mary and accelerated sharply. Just then Rusty the dog ran across the road having got loose from Laura's house. Sue braked sharply and found herself in an uncontrollable skid.

As Sue skidded all over the road, she impacted with Mary's car and as a result was hurled onto the other side of the road where some County Council workers had left a trailer parked contrary to approved procedures, Sue is a paraplegic as a result of this sequence of events.

Q. Critically discuss the cause of the injuries suffered by Sue in any potential tort action.

2. The following is a verbatim news item published in the South China Morning Post newspaper on October 17, 2012.

Inmate at Stanley Prison hangs himself

17 October 2012

Simpson Cheung simpson.cheung@scmp.com

An inmate yesterday hanged himself in Stanley Prison, where administrators had been warned a year earlier by a coroner's court to install windows without bars after a spate of suicides.

A jury at an inquest into five jail suicides in eight months - four of them at Stanley - in May last year recommended the Correctional Services Department to get rid of cell windows with bars, and other measures, to prevent further hanging attempts.

Cheng Ho-yin, 39, who was jailed for 58 months for burglary, hanged himself with a bed sheet from a window frame with bars in his cell yesterday. He was certified dead after being rushed to hospital in Chai Wan.

Democratic Party lawmaker James To Kun-sun, who is vice-chairman of Legco's security panel, slammed the department for its slow action, saying that it should be held responsible for Cheng's death.

"It is a death trap, as found by the coroner's court. The department was warned but failed fundamentally. It has been more than one year but they are still studying possible ways. It is really horrible," he said.

A department spokeswoman expressed regret over the death of the prisoner and said it had set up a committee to follow up the incident. The case had been passed to police and an inquest would be called later to examine the cause of death.

The spokeswoman said the department had started a trial of using windows without bars at the 75-year-old maximum-security prison last year, but the ventilation of the cells was affected, and the trial was ceased.

"The department will continue to explore other possible ways to find the best solution," she said.

Q. What do you see as the major tort liability issues? In considering the tort liability issues, and with reference to relevant case authorities, advise the victim's family on what must be proved for a successful negligence action against the Correctional Services Department (CSD) and the difficulties that might be encountered. Be sure to take account of any relevant policy issues.

This paper/presentation is open for comments.

☐ Law related work experience in summers or during academic year

☐ Your own experience

☐ Continuing legal education courses

☐ Training by another school

☐ Legal practice simulations in law school

Other (please specify)

☐ Observation of other lawyers

☐ Advice from other lawyers

☐ Observation of nonlawyers

☐ Advice from nonlawyers

☐ Training by product or service vendors

19. Negotiation

☐ General law school curriculum

☐ Moot court/other competitions

☐ Law related work experience in summers or during academic year

☐ Your own experience

☐ Continuing legal education courses

☐ Training by another school

☐ Legal practice simulations in law school

Other (please specify)

☐ Law review experience

☐ Client contacts through law school clinics

☐ Observation of other lawyers

☐ Advice from other lawyers

☐ Observation of nonlawyers

☐ Advice from nonlawyers

☐ Training by product or service vendors

20. Knowledge of procedural law

☐ General law school curriculum

☐ Moot court/other competitions

☐ Law related work experience in summers or during academic year

☐ Your own experience

☐ Continuing legal education courses

☐ Training by another school

☐ Legal practice simulations in law school

Other (please specify)

☐ Law review experience

☐ Client contacts through law school clinics

☐ Observation of other lawyers

☐ Advice from other lawyers

☐ Observation of nonlawyers

☐ Advice from nonlawyers

☐ Training by product or service vendors

21. Understanding and conducting litigation

☐ General law school curriculum

☐ Moot court/other competitions

☐ Law related work experience in summers or during academic year

☐ Your own experience

☐ Continuing legal education courses

☐ Training by another school

☐ Legal practice simulations in law school

Other (please specify)

☐ Law review experience

☐ Client contacts through law school clinics

☐ Observation of other lawyers

☐ Advice from other lawyers

☐ Observation of nonlawyers

☐ Advice from nonlawyers

☐ Training by product or service vendors

22. Organization and management of legal work

- | | |
|-----------------------------------------------------------------------------------------|---------------------------------------------------------------------|
| <input type="checkbox"/> General law school curriculum | <input type="checkbox"/> Law review experience |
| <input type="checkbox"/> Moot court/other competitions | <input type="checkbox"/> Client contacts through law school clinics |
| <input type="checkbox"/> Law related work experience in summers or during academic year | <input type="checkbox"/> Observation of other lawyers |
| <input type="checkbox"/> Your own experience | <input type="checkbox"/> Advice from other lawyers |
| <input type="checkbox"/> Continuing legal education courses | <input type="checkbox"/> Observation of nonlawyers |
| <input type="checkbox"/> Training by another school | <input type="checkbox"/> Advice from nonlawyers |
| <input type="checkbox"/> Legal practice simulations in law school | <input type="checkbox"/> Training by product or service vendors |
- Other (please specify) _____
-

23. Obtaining and keeping clients

- | | |
|-----------------------------------------------------------------------------------------|---------------------------------------------------------------------|
| <input type="checkbox"/> General law school curriculum | <input type="checkbox"/> Law review experience |
| <input type="checkbox"/> Moot court/other competitions | <input type="checkbox"/> Client contacts through law school clinics |
| <input type="checkbox"/> Law related work experience in summers or during academic year | <input type="checkbox"/> Observation of other lawyers |
| <input type="checkbox"/> Your own experience | <input type="checkbox"/> Advice from other lawyers |
| <input type="checkbox"/> Continuing legal education courses | <input type="checkbox"/> Observation of nonlawyers |
| <input type="checkbox"/> Training by another school | <input type="checkbox"/> Advice from nonlawyers |
| <input type="checkbox"/> Legal practice simulations in law school | <input type="checkbox"/> Training by product or service vendors |
- Other (please specify) _____
-

24. Sensitivity to professional ethical concerns

- | | |
|-----------------------------------------------------------------------------------------|---------------------------------------------------------------------|
| <input type="checkbox"/> Sensitivity to professional ethical concerns | <input type="checkbox"/> Law review experience |
| <input type="checkbox"/> General law school curriculum | <input type="checkbox"/> Client contacts through law school clinics |
| <input type="checkbox"/> Moot court/other competitions | <input type="checkbox"/> Observation of other lawyers |
| <input type="checkbox"/> Law related work experience in summers or during academic year | <input type="checkbox"/> Advice from other lawyers |
| <input type="checkbox"/> Your own experience | <input type="checkbox"/> Observation of nonlawyers |
| <input type="checkbox"/> Continuing legal education courses | <input type="checkbox"/> Advice from nonlawyers |
| <input type="checkbox"/> Training by another school | <input type="checkbox"/> Training by product or service vendors |
| <input type="checkbox"/> Legal practice simulations in law school | |
- Other (please specify) _____
-

25. The following is a partial list of management skills. On a scale of 1 to 7, with "1" being "not important" and "7" being "very important," how would you rate the importance to your practice of

each of the listed management skills? Choose one response for each item.

	1 Not Important	2	3	4	5	6	7 Very Important
Fee arrangements, pricing, billing	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Human resources, hiring, support staff	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Capitalization, investment	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Project and time management, efficiency	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Planning, resource allocation, budgeting	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Marketing, client development	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Technology, computers, communications	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Governance, decision-making, long-range strategic planning	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Interpersonal communications, staff relations	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

26. How well prepared were you in the following management skills immediately after law school? Choose one response for each item.

	1 Not Prepared	2	3	4	5	6	7 Very Prepared
Fee arrangements, pricing, billing	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Human resources, hiring, support staff	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Capitalization, investment	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Project and time management, efficiency	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Planning, resource allocation, budgeting	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Marketing, client development	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Technology, computers, communications	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Governance, decision-making, long-range strategic planning	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Interpersonal communications, staff relations	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

27. Do you believe the following management skills can be learned in law school? Choose one response for each item.

	Yes	No
Fee arrangements, pricing, billing	<input type="radio"/>	<input type="radio"/>
Human resources, hiring, support staff	<input type="radio"/>	<input type="radio"/>

	Yes	No
Capitalization, investment	<input checked="" type="radio"/>	<input checked="" type="radio"/>
Project and time management, efficiency	<input checked="" type="radio"/>	<input checked="" type="radio"/>
Planning, resource allocation, budgeting	<input checked="" type="radio"/>	<input checked="" type="radio"/>
Marketing, client development	<input checked="" type="radio"/>	<input checked="" type="radio"/>
Technology, computers, communications	<input checked="" type="radio"/>	<input checked="" type="radio"/>
Governance, decision-making, long-range strategic planning	<input checked="" type="radio"/>	<input checked="" type="radio"/>
Interpersonal communications, staff relations	<input checked="" type="radio"/>	<input checked="" type="radio"/>

For each of the following management skills, please choose up to THREE SOURCES where you acquired the skill from the list. Please enter the information in "other" if a source is not listed.

28. Fee arrangements, pricing, billing

- | | |
|-----------------------------------------------------------------------------------------|---------------------------------------------------------------------|
| <input type="checkbox"/> General law school curriculum | <input type="checkbox"/> Law review experience |
| <input type="checkbox"/> Moot court/other competitions | <input type="checkbox"/> Client contacts through law school clinics |
| <input type="checkbox"/> Law related work experience in summers or during academic year | <input type="checkbox"/> Observation of other lawyers |
| <input type="checkbox"/> Your own experience | <input type="checkbox"/> Advice from other lawyers |
| <input type="checkbox"/> Continuing legal education courses | <input type="checkbox"/> Observation of nonlawyers |
| <input type="checkbox"/> Training by another school | <input type="checkbox"/> Advice from nonlawyers |
| <input type="checkbox"/> Legal practice simulations in law school | <input type="checkbox"/> Training by product or service vendors |
| Other (please specify) _____ | |

29. Human resources, hiring support staff

- | | |
|-----------------------------------------------------------------------------------------|---------------------------------------------------------------------|
| <input type="checkbox"/> General law school curriculum | <input type="checkbox"/> Law review experience |
| <input type="checkbox"/> Moot court/other competitions | <input type="checkbox"/> Client contacts through law school clinics |
| <input type="checkbox"/> Law related work experience in summers or during academic year | <input type="checkbox"/> Observation of other lawyers |
| <input type="checkbox"/> Your own experience | <input type="checkbox"/> Advice from other lawyers |
| <input type="checkbox"/> Continuing legal education courses | <input type="checkbox"/> Observation of nonlawyers |
| <input type="checkbox"/> Training by another school | <input type="checkbox"/> Advice from nonlawyers |
| <input type="checkbox"/> Legal practice simulations in law school | <input type="checkbox"/> Training by product or service vendors |
| Other (please specify) _____ | |

30. Capitalization, investment, budgeting

- | | |
|--------------------------------------------------------|------------------------------------------------|
| <input type="checkbox"/> General law school curriculum | <input type="checkbox"/> Law review experience |
|--------------------------------------------------------|------------------------------------------------|

- ☐ Moot court/other competitions
- ☐ Law related work experience in summers or during academic year
- ☐ Your own experience
- ☐ Continuing legal education courses
- ☐ Training by another school
- ☐ Legal practice simulations in law school
- ☐ Other (please specify)

- ☐ Client contacts through law school clinics
- ☐ Observation of other lawyers
- ☐ Advice from other lawyers
- ☐ Observation of nonlawyers
- ☐ Advice from nonlawyers
- ☐ Training by product or service vendors

31. Project and time management, efficiency

- ☐ Project and time management, efficiency
- ☐ General law school curriculum
- ☐ Moot court/other competitions
- ☐ Law related work experience in summers or during academic year
- ☐ Your own experience
- ☐ Continuing legal education courses
- ☐ Training by another school
- ☐ Legal practice simulations in law school
- ☐ Other (please specify)

- ☐ Law review experience
- ☐ Client contacts through law school clinics
- ☐ Observation of other lawyers
- ☐ Advice from other lawyers
- ☐ Observation of nonlawyers
- ☐ Advice from nonlawyers
- ☐ Training by product or service vendors

32. Planning, resource allocation

- ☐ General law school curriculum
- ☐ Moot court/other competitions
- ☐ Law related work experience in summers or during academic year
- ☐ Your own experience
- ☐ Continuing legal education courses
- ☐ Training by another school
- ☐ Legal practice simulations in law school
- ☐ Other (please specify)

- ☐ Law review experience
- ☐ Client contacts through law school clinics
- ☐ Observation of other lawyers
- ☐ Advice from other lawyers
- ☐ Observation of nonlawyers
- ☐ Advice from nonlawyers
- ☐ Training by product or service vendors

33. Marketing, client development

- ☐ General law school curriculum
- ☐ Moot court/other competitions
- ☐ Law related work experience in summers or during academic year
- ☐ Your own experience
- ☐ Continuing legal education courses
- ☐ Training by another school

- ☐ Law review experience
- ☐ Client contacts through law school clinics
- ☐ Observation of other lawyers
- ☐ Advice from other lawyers
- ☐ Observation of nonlawyers
- ☐ Advice from nonlawyers
- ☐ Training by product or service vendors

- ☐ Legal practice simulations in law school
Other (please specify) _____

34. Technology, computers, communications

- | | |
|-----------------------------------------------------------------------------------------|---------------------------------------------------------------------|
| <input type="checkbox"/> General law school curriculum | <input type="checkbox"/> Law review experience |
| <input type="checkbox"/> Moot court/other competitions | <input type="checkbox"/> Client contacts through law school clinics |
| <input type="checkbox"/> Law related work experience in summers or during academic year | <input type="checkbox"/> Observation of other lawyers |
| <input type="checkbox"/> Your own experience | <input type="checkbox"/> Advice from other lawyers |
| <input type="checkbox"/> Continuing legal education courses | <input type="checkbox"/> Observation of nonlawyers |
| <input type="checkbox"/> Training by another school | <input type="checkbox"/> Advice from nonlawyers |
| <input type="checkbox"/> Legal practice simulations in law school | <input type="checkbox"/> Training by product or service vendors |
- Other (please specify) _____

35. Governance, decision-making, strategic or long-range planning.

- | | |
|-----------------------------------------------------------------------------------------|---------------------------------------------------------------------|
| <input type="checkbox"/> General law school curriculum | <input type="checkbox"/> Law review experience |
| <input type="checkbox"/> Moot court/other competitions | <input type="checkbox"/> Client contacts through law school clinics |
| <input type="checkbox"/> Law related work experience in summers or during academic year | <input type="checkbox"/> Observation of other lawyers |
| <input type="checkbox"/> Your own experience | <input type="checkbox"/> Advice from other lawyers |
| <input type="checkbox"/> Continuing legal education courses | <input type="checkbox"/> Observation of nonlawyers |
| <input type="checkbox"/> Training by another school | <input type="checkbox"/> Advice from nonlawyers |
| <input type="checkbox"/> Legal practice simulations in law school | <input type="checkbox"/> Training by product or service vendors |
- Other (please specify) _____

36. Interpersonal communications, staff relations

- | | |
|-----------------------------------------------------------------------------------------|---------------------------------------------------------------------|
| <input type="checkbox"/> General law school curriculum | <input type="checkbox"/> Law review experience |
| <input type="checkbox"/> Moot court/other competitions | <input type="checkbox"/> Client contacts through law school clinics |
| <input type="checkbox"/> Law related work experience in summers or during academic year | <input type="checkbox"/> Observation of other lawyers |
| <input type="checkbox"/> Your own experience | <input type="checkbox"/> Advice from other lawyers |
| <input type="checkbox"/> Continuing legal education courses | <input type="checkbox"/> Observation of nonlawyers |
| <input type="checkbox"/> Training by another school | <input type="checkbox"/> Advice from nonlawyers |
| <input type="checkbox"/> Legal practice simulations in law school | <input type="checkbox"/> Training by product or service vendors |
- Other (please specify) _____

VII. APPENDIX B

Full tables shows results in 1997/99 & 2013 survey

Legal Skills: Identified Source of Legal Skill Across William Mitchell, Non-William Mitchell and Legal Practicum Graduates

A. Ability to Diagnose and Plan for Legal Problems

	2013	1997/99
<u>Source of Skill - Law School Training:</u>		
Law school curriculum	44.3	51.15
Legal practice simulations	26.6	20.15
Law school clinics	16.9	8.5
Law review	1.0	1.0
Moot court/ competitions	7.7	9.8
<u>Source of Skill - Non-Law School Training:</u>		
Own experience	46.0	52.2
Law related work experience	63.7	53.5
Advice from other lawyers	34.8	34.3
Observe other lawyers	37.3	34.8
CLE courses	6.7	10.3
Advice from non-lawyers	0.2	1.6
Observe non-lawyers	1.0	1.7
Training at other school	0.5	1.2
Training by vendors	0.2	0.0
Other	2.5	2.0

B. Ability in Legal Analysis and Legal Reasoning

	2013	1997/99
<u>Source of Skill - Law School Training:</u>		
Law school curriculum	88.3	88.2
Legal practice simulations	20.4	14.5
Law school clinics	8.2	3.8
Law review	9.3	9.4
Moot court/ competitions	16.5	17.6
<u>Source of Skill - Non-Law School Training:</u>		
Own experience	30.2	38.3
Law related work experience	57.5	54.0
Advice from other lawyers	20.6	20.5
Observe other lawyers	22.6	19.5
CLE courses	4.1	7.0
Advice from non-lawyers	0.1	0.5
Observe non-lawyers	0.3	0.3
Training at other school	0.7	2.3
Training by vendors	0.1	0.0
Other	2.0	1.7

C. Drafting Legal Documents

	2013	1997/99
<u>Source of Skill - Law School Training:</u>		
Law school curriculum	43.5	39.4
Legal practice simulations	24.6	18.5
Law school clinics	8.7	5.4
Law review	3.9	4
Moot court/ competitions	12.0	9.5
<u>Source of Skill - Non-Law School Training:</u>		
Own experience	36.7	41.0
Law related work experience	60.3	59.8
Advice from other lawyers	33.2	36.3
Observe other lawyers	29.2	29.9
CLE courses	9.4	15.6
Advice from non-lawyers	.5	1.3
Observe non-lawyers	.6	0.6
Training at other school	.7	0.5
Training by vendors	1.1	0.3
Other	2.8	3.7

D. Knowledge of the Substantive Law

	2013	1997/99
<u>Source of Skill - Law School Training:</u>		
Law school curriculum	84.7	91.8
Legal practice simulations	9.2	5.3
Law school clinics	5.9	2.9
Law review	4.0	4.6
Moot court/competitions	5.2	7.3
<u>Source of Skill - Non-Law School Training:</u>		
Own experience	33.2	35.1
Law related work experience	52.4	51.5
Advice from other lawyers	21.0	21.9
Observe other lawyers	13.5	8.9
CLE courses	28.9	38.3
Advice from non-lawyers	0.0	0.0
Observe non-lawyers	0.1	0.5
Training at other school	0.7	0.8
Training by vendors	1.7	0.7
Other	3.3	3.3

E. Library Legal Research

	2013	1997/99
<u>Source of Skill - Law School Training:</u>		
Law school curriculum	93.4	93.7
Legal practice simulations	13.8	8.5
Law school clinics	0.5	1.2
Law review	17.9	16.5
Moot court/ competitions	9	15.4
<u>Source of Skill - Non-Law School Training:</u>		
Own experience	20.2	34.4
Law related work experience	22.2	52.1
Advice from other lawyers	3.5	7.6
Observe other lawyers	1.3	2.6
CLE courses	1.7	2.1
Advice from non-lawyers	1.3	2.6
Observe non-lawyers	0.8	0.7
Training at other school	1.5	1.3
Training by vendors	5.8	5.5
Other	2.8	2.3

F. Computer Legal Research

	2013	1997/99
<u>Source of Skill - Law School Training:</u>		
Law school curriculum	84.6	84.4
Legal practice simulations	11.4	6.6
Law school clinics	1.3	0.8
Law review	17.4	15.3
Moot court/ competitions	11.1	10.8
<u>Source of Skill - Non-Law School Training:</u>		
Own experience	36.3	40.4
Law related work experience	45.0	43.6
Advice from other lawyers	5.7	5.9
Observe other lawyers	2.7	2.7
CLE courses	2.8	6.0
Advice from non-lawyers	1.0	3.0
Observe non-lawyers	0.1	0.8
Training at other school	1.5	0.8
Training by vendors	25.9	26.8
Other	3.3	2.2

G. Fact Gathering

	2013	1997/99
--	------	---------

<u>Source of Skill - Law School Training:</u>		
Law school curriculum	28.2	25.9
Legal practice simulations	15.8	12.9
Law school clinics	15.4	8.8
Law review	0.7	2.0
Moot court/ competitions	6.6	5.3
<u>Source of Skill - Non-Law School Training:</u>		
Own experience	55.7	63.0
Law related work experience	53.2	44.6
Advice from other lawyers	29.7	30.8
Observe other lawyers	36.3	34.7
CLE courses	2.4	4.4
Advice from non-lawyers	2.4	2.9
Observe non-lawyers	3.7	3.3
Training at other school	0.8	1.6
Training by vendors	0.4	0.0
Other	2.0	2.1

H. Oral Communication

	2013	1997/99
<u>Source of Skill - Law School Training:</u>		
Law school curriculum	34.2	36.9
Legal practice simulations	25.3	17.3
Law school clinics	12.6	4.9
Law review	.8	1.2
Moot court/ competitions	27.8	25.6
<u>Source of Skill - Non-Law School Training:</u>		
Own experience	58.8	69.7
Law related work experience	33.8	30.4
Advice from other lawyers	14.2	14.8
Observe other lawyers	39.3	32.7
CLE courses	1.3	2.35
Advice from non-lawyers	2.5	3.75
Observe non-lawyers	5.5	3.35

Training at other school	5.0	8.6
Training by vendors	.4	0.2
Other	2.2	1.65

I. Written Communication

	2013	1997/99
Source of Skill - Law School Training:		
Law school curriculum	66.0	65.8
Legal practice simulations	19.9	9.8
Law school clinics	7.1	3.3
Law review	14.4	14.6
Moot court/ competitions	16.6	17.2
Source of Skill - Non-Law School Training:		
Own experience	44.5	56.9
Law related work experience	49.4	42.9
Advice from other lawyers	23.2	19.0
Observe other lawyers	24.0	20.4
CLE courses	1.7	3.6
Advice from non-lawyers	1.5	1.6
Observe non-lawyers	2.3	1.3
Training at other school	5.0	11.1
Training by vendors	0.5	0.2
Other	2.8	2.0

J. Counseling

	2013	1997/99
Source of Skill - Law School Training:		
Law school curriculum	19.7	17.2
Legal practice simulations	16.6	13.2
Law school clinics	19.5	10.0
Law review	0.1	0.7
Moot court/ competitions	2.9	3.9
Source of Skill - Non-Law School Training:		
Own experience	52.8	63.1
Law related work experience	36.0	28.5
Advice from other lawyers	31.5	31.6
Observe other lawyers	49.6	46.6
CLE courses	2.1	3.6
Advice from non-lawyers	2.7	3.3
Observe non-lawyers	6.1	6.3
Training at other school	1.4	2.6
Training by vendors	.1	0.4
Other	1.7	1.8

K. Instilling Others' Confidence in You

	2013	1997/99
Source of Skill - Law School Training:		
Law school curriculum	6.8	7.8
Legal practice simulations	7.5	4.3
Law school clinics	13.4	6.1
Law review	1.4	2.0
Moot court/ competitions	4.5	2.7
Source of Skill - Non-Law School Training:		
Own experience	69.7	80.4
Law related work experience	31.5	25.3
Advice from other lawyers	33.9	27.4
Observe other lawyers	43.4	40.1
CLE courses	2.3	2.3
Advice from non-lawyers	7.4	5.2
Observe non-lawyers	8.9	6.5
Training at other school	1.6	2.8
Training by vendors	0.1	0.4
Other	2.5	2.0

L. Negotiation

	2013	1997/99
Source of Skill - Law School Training:		
Law school curriculum	34.4	26.25
Legal practice simulations	24.0	15.7
Law school clinics	6.8	4.9
Law review	0.0	0.8
Moot court/ competitions	6.1	4.5
Source of Skill - Non-Law School Training:		
Own experience	50.5	65.45
Law related work experience	30.3	24.45
Advice from other lawyers	27.7	28.5
Observe other lawyers	45.6	47.6
CLE courses	5.3	9.55
Advice from non-lawyers	2.4	1.9
Observe non-lawyers	6.7	7.05
Training at other school	2.2	3.2
Training by vendors	.4	0.5
Other	1.9	2.15

M. Knowledge of Procedural Law

	2013	1997/99
Source of Skill - Law School Training:		
Law school curriculum	78.1	82.5
Legal practice simulations	14.1	8.6
Law school clinics	6.9	3.8
Law review	.5	1.2
Moot court/ competitions	5.8	5.5
Source of Skill - Non-Law School Training:		
Own experience	32.6	36.6
Law related work experience	50.5	44.9
Advice from other lawyers	25.4	25.6
Observe other lawyers	19.2	18.0
CLE courses	11.9	14.2
Advice from non-lawyers	.5	1.2
Observe non-lawyers	.5	0.6
Training at other school	.6	0.6
Training by vendors	.7	0.7
Other	2.1	3.0

N. Understanding and Conducting Litigation

	2013	1997/99
Source of Skill - Law School Training:		
Law school curriculum	36.1	39.8
Legal practice simulations	23.2	18.6
Law school clinics	7.6	4.9
Law review	0.0	0.5
Moot court/ competitions	7.6	6.1
Source of Skill - Non-Law School Training:		
Own experience	32.2	38.1
Law related work experience	47.1	44.2
Advice from other lawyers	33.1	37.3
Observe other lawyers	44.7	43.7
CLE courses	7.5	10.0
Advice from non-lawyers	.6	0.7
Observe non-lawyers	1.1	0.7
Training at other school	.7	0.9
Training by vendors	.4	0.3
Other	2.3	1.6

O. Organization and Management of Legal Work

	2013	1997/99
Source of Skill - Law School Training:		
Law school curriculum	12.1	11.1
Legal practice simulations	9.3	7.4
Law school clinics	8.5	5.3
Law review	1.2	0.7
Moot court/ competitions	1.4	2.0
Source of Skill - Non-Law School Training:		
Own experience	60.2	63.1
Law related work experience	46.0	38.0
Advice from other lawyers	41.1	41.2
Observe other lawyers	45.5	46.1
CLE courses	4.9	4.6
Advice from non-lawyers	2.2	3.0
Observe non-lawyers	2.8	2.2
Training at other school	1.3	1.0
Training by vendors	1.0	0.9
Other	2.2	2.7

P. Ability to Obtain and Keep Clients

	2013	1997/99
Source of Skill - Law School Training:		
Law school curriculum	3.9	6.1
Legal practice simulations	3.2	3.2
Law school clinics	5.8	3.9
Law review	0.0	0.4
Moot court/ competitions	0.0	0.0
Source of Skill - Non-Law School Training:		
Own experience	53.9	60.3
Law related work experience	26.4	20.4
Advice from other lawyers	55.1	50.9
Observe other lawyers	55.7	55.7
CLE courses	5.7	3.2
Advice from non-lawyers	6.9	4.6
Observe non-lawyers	4.7	4.1
Training at other school	.4	0.9
Training by vendors	.8	0.7
Other	4.4	1.7

Q. Sensitivity to Professional Ethical Concerns

	2013	1997/99
Source of Skill - Law School Training:		
Law school curriculum	86.8	84.5
Legal practice simulations	6.1	4.1
Law school clinics	4.9	1.1
Law review	0.5	0.6
Moot court/ competitions	0.8	1.4
Source of Skill - Non-Law School Training:		
Own experience	32.2	39.0
Law related work experience	26.5	24.7
Advice from other lawyers	34.2	31.0
Observe other lawyers	22.6	25.0
CLE courses	21.3	24.0
Advice from non-lawyers	0.7	0.9
Observe non-lawyers	0.5	1.6
Training at other school	0.7	1.1
Training by vendors	0.9	0.0
Other	1.0	1.7

Management Skills

Table 10. Management Skills: Sources Across William Mitchell, Non-William Mitchell and Legal Practicum Graduates

A. Fee Arrangements, Pricing, Billing

	2013	1997/99
Source of Skill - Law School Training		
Law school curriculum	7.9	4.3
Legal practice simulations	5.3	3.9
Law school clinics	2.0	1.2
Law review	0.0	0.4
Moot court/ competitions	0.3	0.3
Source of Skill - Non-Law School Training:		
Own experience	51.4	55.1
Law related work experience	28.8	29.0
Advice from other lawyers	55.0	61.5
Observe other lawyers	49.5	52.1
CLE courses	8.3	5.2
Advice from non-lawyers	3.2	4.3