EDITORIAL

Contemporary Issues in Legal Education

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This special issue of *Journal of International and Comparative Law* is a response to a number of ongoing issues: a changing academic climate, the development of more sophisticated theoretical models of learning and an increased focus on the student experience. Legal education is a complicated subject area, drawing as it does on explicit academic practice communities in education, psychology and sociology and implicit practice knowledge about legal knowledge, skills and identity. The discourse between these two “ways of knowing” is not always direct and open — indeed, it may be happening within the mind of the individual as well as between colleagues or (not) happening between legal, academic and political tribes. As a discipline, education has a large number of powerful metaphors and a limited number of high-quality comparative studies that subject these metaphors to the rigours of the real world; so in this issue, we have asked our contributors to put their values and beliefs “in harm’s way”.

Politically, we are writing in a climate of accountability and value for money: it is a lengthy and expensive process to study the law, and students rightly demand that we demonstrate the utility and ef cacy of our curricula. In responding to this creatively and non-defensively, it is important to tease out the differences, for example, assessment regimes designed to meet the requirements of professional accreditation, assessment designed to demonstrate and reinforce mastery and assessment designed to highlight and pinpoint re exive practice. It is unlikely that any one assessment can do all these things at once, so we tend to advocate for a mixed diet.¹ This is a reasonable position provided that everyone involved knows what has gone into the pot and how it is supposed to operate on the student’s metabolism. Where this granularity is missing, we have students and faculty boiling all the vitamins out of the lettuce, while congratulating themselves for eating salad.

Thus, “what we talk about when we talk about”² legal education is not always clear: sometimes we are talking about structures and sometimes about experiences; we may be looking at systems and their operation from above or within. In Section I, we offer articles looking primarily at structural issues, and in Section II, the focus shifts to the learner’s experience within these structures. In both sections, we

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privilege both concrete and less tangible outcomes and give voice to the messiness of learning in the liminal space. We are not setting out to “solve” the complication of legal education, rather we seek to describe it in more detail and to be more precise about the claims that we make for relationships between factors. These articles have the goal of greater clarity in the service of interpretation, which in itself is arguably a classically legal hermeneutic endeavour.

I. Structures

Creating a Gold Standard for Practical Legal Training in Common Law Countries

Jack Burke and Hugh Zillmann

Some form of mandatory pre-admission practical legal training (PLT) has been an essential element in many common law countries including England and Wales, New Zealand, Hong Kong and in NSW, Australia, for the last 40–50 years. Key reasons for this have been that past experience has shown that other alternative methods of imparting practical legal knowledge such as articles training have not always provided an even quality approach to the delivery of PLT, nor are related substitutes such as centralised assessments consistent with sound pedagogical practice. Based on the experience of the United States, fundamental change from established practice concerning the delivery of PLT, as occurring in England and Wales, should be viewed by other common law jurisdictions such as Hong Kong (which is contemplating reform in this area) with caution.

Navigating Troubled Seas: The Future of the Law School in the United Kingdom and the United States

Gemma Davies and Margaret Woo

In a 2012 article in Journal of International Law, Catherine Donnelly posited that:

“whilst there appears, at least in the common law world, to be increasing convergence in the manner in which lawyers are educated academically; however, there remain significant divergences in the manner in which lawyers are educated professionally.”

This article seeks to consider the continuing validity of that statement in light of the professional regulators’ proposed changes to qualification as a barrister and a solicitor in England and Wales. The current review of legal education in England and Wales has led to proposals to significantly alter many long-standing features of legal education. In particular, the proposals are to remove the requirements for a “qualifying” undergraduate law degree and to replace the current postgraduate
professional training with the “Solicitors Qualification Examinations”. This article considers to what extent the proposed new examination regime more closely aligns training in England and Wales with “bar exams” taken postgraduation from law school in all the US states.

Such a potential convergence with the US professional legal education deserves greater examination. In particular, this article considers the rise of the “transnational lawyer” (both in the sense of being qualified in different jurisdictions and in dealing with cross-jurisdictional work). Could a convergence in legal training between the two countries help to answer some of the questions posed by Donnelly including to what extent are divergences in academic and professional legal education across the Atlantic justifiable and are the stringent requirements for cross-qualification between the two jurisdictions proportionate and fair? In answering these questions, the authors seek to address what should be included in the training of a transnational lawyer, whether jurisdiction can currently be said to be properly preparing their graduates for the demands of transnational work and finally whether cross jurisdictional training could be a way forward.

**An Integrated Law Curriculum: Balancing Learning Experiences to Achieve a Range of Learning Outcomes**

*Jonny Hall*

This article explores the design of a law curriculum which might more closely achieve the range of outcomes expected of study (and therefore also legal study) in higher education. While different countries express these outcomes in a variety of ways, it will be argued that the following are generally applicable: competence, managing emotions, mature interpersonal relations, autonomy, problem solving and making decisions, establishing identity and developing integrity in the context of being passionate about content and learned about a subject.

In Section II of this article, the author proposes that these areas of knowledge, skills and attributes are best developed throughout the learning experience. Particularly, but not only, because of the increasingly diverse range of students entering legal study, a range of methods should be employed throughout the students’ studies in a curriculum designed to progressively develop these areas.

This article advocates a central place for collaborative, experiential and enquiry-based learning in legal study. It also considers the ‘foundational knowledge’ counter argument. This posits that until basic principles have been imparted (usually this is advocated through more traditional and largely didactic processes) particularly enquiry-based and experiential approaches (clinical ones especially) are not only liable to be ineffective but even potentially counterproductive. It is the contention of this article that while there are undoubtedly issues with attempting to learn through collaboration, experience and enquiry when domain knowledge is at an early stage, a carefully designed curriculum that utilises both more traditionally structured and didactic modes and collaborative, experiential and enquiry-based modes will more
fully develop all of the desired learning outcomes. At the same time, this article explores law curriculum design that acknowledges the possibility of both strong and weak framing and strong and weak classification.

In Section III of this article, a case study explores the ways in which a proposed curriculum meets (or fails to achieve) the desired outcomes and considers the missing ingredients necessary to go beyond the curriculum as written to that which is taught and experienced.

II. Student Experience

Data Wombling: What Re-analysis of Naturally Occurring Student Data Can Tell Us about Courses, Student Performance and Access to the Legal Profession

Cath Sylvester, Rory O’Boyle and Emma Hall

All education sites are data-rich environments and such is the embarrassment of riches that very little use is made of these data beyond their initial purpose. Naturally occurring data about students’ backgrounds, their previous attainment and their module by module progression are, in a sense, “lying all over the ground”, but the combination of data sets or longitudinal analysis rarely takes place. This article considers two projects which take inspiration from the Wombles and re-purpose these discarded data: using large-scale data sets to reveal the potential for more nuanced understanding of students’ trajectories through legal education and towards the profession. Data from Northumbria University’s four-year MLaw exempting degree and the Law Society of Ireland’s Professional Practice Course reveal significant relationships between students’ characteristics and backgrounds and their performance and reveal important developmental shifts and critical experiences on their way to these outcomes. Simple linear assumptions about who can and should enter the profession are challenged by these data, and it also throws up implications for curriculum design to improve legal education and access.

If We Could Instil Social Justice Values through Clinical Legal Education, Should We?

Paul McKeown and Elaine Hall

Universities are more than just institutions for the transfer of knowledge; they are institutions where students learn about the world and how it works. Within the discipline of law, the Quality Assurance Agency for Higher Education (QAA) states that students graduating from an undergraduate degree should be “aware of the consequences of the law as a human creation and that it is subject to the ethics and values of those that make and apply it” (QAA, 2015, p.6), and in clinical legal
education, there is a long and persistent tradition (exemplified most recently in the study by Nicholson (2016)) of seeing the formation of “social justice” clinicians as the principal educational goal. This article covers three areas: first, we will ask “why do we think values are formed in clinic?” through a geographical/historical analysis of the culture of clinical legal education in the United States, Australia, the United Kingdom, Europe, Africa and Asia, noting in particular the elements that have transcended context and those which have been particularly shaped by local circumstances. Section II explores the question “do values change at university and if so, how?” using the latest research from neuroscience and education to assess how we currently understand the development of personal and professional values. In particular, what evidence there is for a sufficient degree of plasticity in undergraduate populations so that values might change over a module or a year and what evidence there is that changes to values at university (if any) persist into later life? Section III takes a broader philosophical position in relation to legal education and the ethical imperatives of the teacher, asking “if we can make students believe something, is this a good thing”. Taking the position that our role is primarily to develop students’ ability to think rather than telling them what to think, to “develop their own reflective system of justice” (Barnhizer, 1990), we problematise the transmission of values through direct pedagogy, modelling and the unconscious curriculum.

The Fairness Project: Doing What We Can, Where We Are

Tina McKee, Rachel Anne Nir, Jill Alexander, Elisabeth Griffiths and Tamara Hervey

There is no doubt that the legal profession, in common with other professions, does not represent the diverse society it serves. It is significantly more difficult to become a lawyer if you are not white, male, middle class, privately and Oxbridge educated than if you are. This is also true for other protected characteristics, such as disability, sexual orientation and age (or at least age on entering the profession). The difficulty gets more intense the further up the “career ladder” one climbs: if we look at the 11 Supreme Court judges, 10 are white men and the other is a White woman; 9 were privately educated and 9 were Oxbridge educated.

The students in the cohort we teach in two post-92 universities and one Russell Group university in the north of England are thus fundamentally and structurally disadvantaged when it comes to their stated career aspirations on entering Higher Education. Our project springs from a shared understanding that this knowledge brings a moral and pedagogical imperative in terms of how we serve the students who have chosen our law schools. This imperative extends to the legal profession more generally and indeed to the society it serves.

This article reports on the project’s aims and objectives and the consequent design of its learning materials. The project has three aims, each associated with a different affective learning domain.
First, it seeks to educate law students about (lack of) equality and diversity in the legal profession. A majority of our students have weak or no understanding of the nature of the legal profession and its (lack of) diversity. The project uses students’ research skills to draw out understandings of the contemporary nature of the various branches of the legal profession in England and Wales (and in some cases in their comparative contexts). Equipped with this information, students begin to form an awareness and understanding of where each of them sits in the market in which law graduates must compete for employment. How will their profile and experience be understood in that context? Students are thus “receiving” information and “responding” to that information: the lower levels of the affective domain of learning.

Second, the project moves to the valuing, organising and characterising, domains, to offer strategies for how students might nonetheless navigate that environment. The project prompts students to consider apparently neutral criteria for selection of a trainee solicitor role, in the context of two fictional profiles of applicants.

Finally, and more as an encouragement to seek future personal and professional development than as a method of developing a current competence, the project seeks to inculcate an understanding of the (lack of) fairness in recruitment processes. To the extent that such processes adopt uncritical notions of merit and pay insufficient attention to structural disadvantage when comparing applicants for a job, they perpetuate the (lack of) diversity in the legal profession. The phenomenon of “appointing like by like” is so well known that one might expect it to be a problem of diminishing significance: the data suggest otherwise. The aspiration of the project is to begin a process of reflection (in the reflective learning domain) among the students concerned, so that those students as employers of the future are better equipped to access equality training and reflective practice to break cycles of uncritical recruitment.

Structural inequalities in the legal profession are all pervasive and long standing. No one project, no one generation, will secure equality, more diversity and fairness in the legal profession. But that is not a reason to do nothing. As educators and human beings, who ourselves are relatively advantaged, we have a moral and pedagogical imperative to do what we can, where we are. That is what The Fairness Project is all about.

Understanding the Scope of Business Law Clinics: Perspectives from the United Kingdom, Israel and the United States

Victoria Roper, Elaine Campbell, Assaf Ben-David, Dov Greenbaum and Jonathan Askin

Law school pro bono clinics are commonly associated with the provision of free legal assistance on personal and family issues to those who cannot afford a lawyer. Clinics advising business owners and entrepreneurs are given limited
attention despite their longstanding establishment in the United States and growing emergence in Europe. Where it exists, scholarly discussion on business law clinics primarily focuses on single-case studies based in the United States. Works that contribute to our understanding of the scope of business law clinics throughout the world are in scant supply. This article addresses the gap in the literature by presenting a comparative review of three business law clinics: the Business & Commercial Law Clinic at Northumbria Law School, England; The IDC Legal Clinic for Start-Ups at Radzyner Law School, Israel; and Brooklyn Law Incubator & Policy Clinic at Brooklyn Law School, United States.

**Legal History and Student Involvement in the Assessment Process**

*Jonathan Bainbridge and Clare Sandford-Couch*

Assessment has been described as “the most powerful lever teachers have to influence the way students respond to courses and behave as learners” (Graham Gibb), but is legal education ready to embrace the possibilities of making law students active participants in the assessment process? This article explores our experiences of both developing peer assessment models and encouraging students to generate their own questions in the context of a module in Legal History in the undergraduate law degree at Northumbria University. In adopting innovative forms of assessment, it is important to understand why the new practices are being adopted and also to be able to justify those practices; so the article addresses potential benefits and pitfalls of student participation in peer review and explores how peer assessment models can be grounded in assessment and learning theory.