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Contents

The Journal of the European Law Faculties Association

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Foreword

Dear Reader,

It gives me great pleasure to share with you the first issue of the European Journal of Legal Education whose relaunch coincides with the 25th anniversary of the European Law Faculties Association (ELFA). This relaunch has been some time in coming but when the idea was born to bring it back to life, momentum started building up behind publication, albeit in digital form only for now, and the enthusiasm of its editorial board has never waned. Admittedly, the choice of words whereby we are relaunching the journal rather than launching it implies that there was a time when the publication of the journal was suspended. While the loss of a valuable resource is always regrettable, the lessons it teaches us help to make up for the separation and focus our minds on ensuring continuity in its present form. That is certainly my wish and the wishes of all those who have nursed the idea since 2017 when, at the ELFA conference in Brno, Josep Maria de Dios, the newly elected president of ELFA, suggested I steer the relaunch until an extremely competent, enthusiastic and dedicated team could step in to share the editorial responsibilities. I am happy to report that I can now count on the support of just such a group of law teachers, distinguished academics and legal experts. They include Greta Bosch, chief editor of the EJLE, deputy editor Izabella Kraśnicka, Nigel Duncan, whose editorial insights and technical advice have shaped the journal as it appears today, Laurence Gormley, who has championed the idea from the start, and many others who have volunteered their time and cheered us on our way.

Before I close, let me put the journal's relaunch in context. First and foremost, it is as common as it is desirable for a self-respecting professional organization today to have a recognizable presence in the larger marketplace of ideas than just the immediate circle of insiders. Recognition is at once motivating and rewarding. By putting a public face on ELFA we are no more courting publicity than raising awareness of its efforts to promote excellence in legal education. Secondly, as centrifugal forces tear at European unity, it is apt that we have a European journal of legal education. And to live up to its name, it ought to promote openness and cooperation across the continent and beyond, not just inside political constructs. Finally, we are seeing challenges to the established

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juridical order across the world, which inevitably entail reforms in the teaching of law in the respective countries. It would be a loss if the European Journal of Legal Education was not there to record and comment on them.

I hope you enjoy this issue of the EJLE.

Marek Grzybowski
President of ELFA

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Editorial

European and international cooperation and collaboration is integral to our strong and longstanding community of higher education. The European Journal of Legal Education will provide a forum for this community of knowledge and learning. The Journal is committed to generating debate and publishing outstanding contributions on and of interest to legal education in Europe, bringing together and promoting cooperation between scholars globally. In furtherance of this mission, the European Journal of Legal Education encourages reflection on existing and emerging analyses of legal education and works through rigorous peer review and selection processes.

Six articles form the inaugural re-launch of the Journal. Three articles focus on how we might deliver legal education as educators, and three focus on how students experience education.

We begin with a global, international theme recognising the need to teach and learn without borders and outside the box:

Stuart MacLennan, *Teaching European Union Law after Brexit* views a challenging disruption as a pedagogic opportunity to shape a distinct new discipline of legal study. This opportunity should consider the foreign, supranational, and international influences on the legal system and legal practice - a theme that is reflected also in the following pieces.

Greta Bosch, *Deconstructing Myths about Interdisciplinarity - is now the time to rethink interdisciplinarity in legal education?* explores how interdisciplinary learning and teaching might complement the traditional doctrinal approach. It is argued that experiences and good practice from comparative law can provide inspiration for the strengthening of interdisciplinary legal education.

Andreas Ziegler, *How Global should legal education be? Recommendations based on the compulsory teaching in international aspects taught at Swiss law schools* uses research into Swiss Law Schools' teaching of foreign, international, transnational and supranational law to make recommendations to enhance adequacy of teaching provision.

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We then continue with three articles focused on how students experience education. The theme here is an awareness that academic achievement could improve by adapting to students as individual learners, enhancing our teaching effectiveness.

Nigel Duncan, Caroline Strevens, and Rachael Field, *Resilience and Student Wellbeing in Education*: *A theoretical basis for establishing law school responsibilities for helping our students to thrive* uses a theoretical basis and international comparative and interdisciplinary methods to propose ways of designing students' learning experience to reduce unnecessary stress and to maximise their wellbeing.

Daniel Barrow, Louise Glover, and Tamara Hervey, *Pro Bono Develops Pericles and Plumbers: the roles of clinical legal education in contemporary European law school,* analyses the nature and purpose of clinical legal education in law schools addressing how it can help students develop research skills, legal argumentation and especially legal writing, to which the final article of our journal turns its attention.

Mary Catherine Lucey, *Creating Legal Writing Opportunities in the Digital Era* recognises the lack of legal writing skill in teaching and demonstrates how, with the assistance of appropriate technology, to introduce legal research writing assignments into substantive modules.

In the process of preparing this first issue of our relaunched journal we have met new ideas and new people, have been inspired to think differently about some matters we had always taken for granted. We are a growing community of legal educators with an interest in how we teach and how students learn as much as in what we teach. There are so many ideas to share and research to encourage and to disseminate. Please join us in this endeavour.

We hope that you enjoy our first issue as much as we enjoyed putting it together.

Greta Bosch
Editor-in-Chief

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Teaching European Union Law after Brexit

Stuart MacLennan*

Abstract

European Union law has been an integral part of the legal order of the United Kingdom for over 40 years, and features in every qualifying law degree taught in the UK at the date of country's departure from the EU. The United Kingdom's decision to leave the European Union (Brexit) radically alters the nature and effects of EU law in the UK's legal jurisdictions. It is, consequently, necessary for those responsible for teaching EU law within UK law schools to reflect and, potentially, fundamentally redesign their EU law modules. This article commences with a consideration of what constitutes the 'typical' EU law module in order to determine those areas of EU law teaching most likely to be affected by Brexit. This article proceeds to consider both the new sources of law with which students will have to become familiar, as well as changes to existing content necessitated by Brexit. This article then seeks to 'reimagine' European Union law after Brexit through consideration of the teaching of EU law outside of the EU. While it may be possible to emulate the approach of certain non-EU law schools the uniqueness of the United Kingdom's position after Brexit means that a bespoke approach to the teaching of EU law after Brexit is necessary.

Keywords: EU law, curricula, Brexit, legal education

Introduction

The United Kingdom's exit from the European Union ('Brexit') poses a litany of challenges to UK law schools. In the context of increasing student numbers, increasing competition, and increasing student expectations, the additional challenges imposed by Brexit are a growing cause for concern. These challenges include recruiting EU students, recruiting and retaining EU-nationals as staff, access to EU research funding and collaborative research

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projects, as well as the broader reputation of the UK's academic community in light of the UK's decision to retreat from European integration.[1] In addition to these broad, sectoral challenges, however, there is a small group of academics with an acute Brexit-related problem: the professors and lecturers of European Union law.

EU law has been an integral part of the legal order of the UK since 1973, and features in every qualifying law degree taught in each of three jurisdictions – Scotland, England & Wales, and Northern Ireland – at the date of the UK's exit. It is, consequently, necessary for those responsible for teaching EU law within UK law schools to reflect and, potentially, fundamentally redesign their EU law modules and courses in light of the decision to leave the EU.

Of course, Brexit has an impact beyond the direct study of EU law. Brexit has a profound effect on the study of UK constitutional law, and competition law; as well as substantial marginal effects, at a minimum, on the study of contract and obligations, family law, taxation law, employment law, commercial law, and consumer protection, among others. The need for law schools to adapt to this new reality is clear.

This article commences with a consideration of the requirements of the professional bodies[2] with respect to the teaching of EU law in UK law schools, as well as the contents of 'typical' EU law modules. On the basis of those 'typical' EU law modules this article proceeds to consider the new knowledge and skills students will need to acquire in these modules, in particular with respect to the sources of EU law, the role of EU law in the courts, the free movement of goods, and the free movement of persons. This article concludes that while EU law will continue to be an important part of legal education in the UK it may be necessary to 'reimagine' both the contents and objectives of the study of EU law.

The 'typical' EU Law module

The teaching of EU law is not limited to European law schools. The Jean Monnet programme finances EU law modules, research centres, and chairs

[1] Ludovic Highman, 'Future EU-UK Research and Higher Education Cooperation at Risk: what is at stake?' (2019) 25(1) Tertiary Education and Management 45.
[2] The Solicitors Regulation Authority and Bar Standards Board in England and Wales, the Law Society and Faculty of Advocates in Scotland, and the Law Society and Bar of Northern Ireland.

around the world,[3] while the European Union funds the China-EU School of Law in Beijing.[4] Many of the leading scholars in EU law are affiliated with institutions beyond Europe, including Professors Weiler and de Búrca at New York University, and Professor Martínez Sierra at Harvard. The overwhelming focal point for the study of EU law, however, is Europe.

In the United Kingdom, the study of the law of the European Union is a compulsory element of legal qualification in each of the UK's three legal jurisdictions. In England and Wales, both the Bar Standards Board and Solicitors Regulation Authority require the study of EU law as one of the 'foundations of legal knowledge'.[5] Likewise, the Law Society of Northern Ireland requires the study of 'European Law'.[6] While the English and Welsh requirements are not particularly prescriptive, the Law Society of Scotland sets more detailed requirements in its Foundation Programme Learning Outcomes. In order to qualify as a solicitor, and, therefore, subsequently, an Advocate, a student must have studied

> The constitutional structure and competence of the EU and allocation of competencies between the EU and Member States.
>
> The sources of EU law, EU institutions and the legislative process.
>
> The relationship of EU law and national law, including domestic and EU remedies.

[3] European Commission, 'Jean Monnet Programme' <https://ec.europa.eu/programmes/erasmus-plus/opportunities/jean-monnet_en> accessed 15 January 2020.
[4] China-EU School of Law, 'The School' <http://en.cesl.edu.cn/About_us/The_School.htm> accessed 15 January 2020.
[5] General Council of the Bar and Law Society of England and Wales, 'Joint Statement on the completion of the initial or academic stage of training by obtaining an undergraduate degree' (1999) <https://www.sra.org.uk/globalassets/documents/students/academic-stage/academic-stage-handbook.pdf> accessed 5 November 2019. This statement has subsequently been adopted by the Bar Standards Board and Solicitors Regulation Authority.
[6] Law Society of Northern Ireland, 'Solicitors Admission and Training Regulations 1988', Regulation 8(1) (1988) < https://www.lawsoc-ni.org/DataEditorUploads/Solicitors%20Admission%20Training%20Regulations%201988.pdf> accessed 5 November 2019.

> The principles of the EU single market.[7]

The importance of studying EU law is recognised by the report of the Legal Education and Training Review (LETR). In a survey of the legal professions, the LETR found that, as a subject, European Law ranked highly among both barristers and solicitors as important knowledge for legal services providers.[8]

As an academic discipline European Union law has developed somewhat independently from broader legal scholarship. The academy of EU lawyers, much like those working in EU institutions, was originally drawn from various and previously somewhat disconnected disciplines.[9] As EU law developed so did its scholarship, with a new generation of Community legal scholars emerging.[10] Yet, despite European Union law increasingly pervading so many fields of legal scholarship, European Union law has always been regarded as something of an anomaly in legal education. It is extremely uncommon for EU law to simply be integrated into the study of domestic law.[11] Instead, EU law is overwhelmingly taught

> within the confines of a national university system, in which the emphasis is clearly on learning about the national legal system first, and learning about European Union law (if at all) in the light of the categories and ways of argument of the national system.[12]

While UK law schools are fairly consistent in having a standalone EU law module in their qualifying law degree (QLD) programmes, there is a significant degree of divergence with respect to the size of these modules and their

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[7] Law Society of Scotland, 'Foundation Programme Learning Outcomes' <https://www.lawscot.org.uk/media/359158/foundation-programme-outcomes.pdf> accessed 5 November 2019.
[8] Legal Education and Training Review, 'The Future of Legal Services Education and Training Regulation in England And Wales' (2013) < http://www.letr.org.uk/wp-content/uploads/LETR-Report.pdf>, 34, accessed 7 November 2019.
[9] Andreas M. Donner, 'The Court of Justice of the European Communities' (1961) 1 International and Comparative Law Quarterly Supp.Pub. 66.
[10] Bruno de Witte, 'European Union law: a unified academic discipline?' in Antoine Vauchez and Bruno de Witte (eds), *Lawyering Europe: European law as a transnational social field* (Hart Publihsing 2013) 101.
[11] Although this approach is being taken by the SRA for the new Solicitors Qualifying Examination, see Solicitors Regulation Authority, 'Solicitors Qualifying Examination' <https://www.sra.org.uk/sra/policy/sqe/> accessed 18 January 2020.
[12] *Supra* n. 10, 107.

contents. While Swansea University's mandatory 'European Union Law 1 & 2' modules bear 15.0 ECTS credits between them, the University of Edinburgh's sole mandatory module, 'European Union Law (Ordinary) A', carries a mere 5.0 credits. Typically, however, EU law modules in UK law schools carry 7.5-10.0 ECTS credits.

Table 1: Contents of EU Law modules in UK law schools based on published module descriptors

	EU Institutions & Law Making	Supremacy and Legal Effects	Judicial Action	Free Movement of Goods	Free Movement of Workers	EU Citizenship	Freedom of Establishment	Free Movement of Capital	Competition Law	Equalities & Fundamental Rights	Consumer Protection	EU Criminal Law	Internal Market (generally)
Abertay	✓	✓	✓	✓	✓	✓	✓	✓		✓			
Aberystwyth	✓	✓	✓	✓									
Birmingham	✓	✓	✓										✓
Bristol	✓	✓	✓							✓			
Coventry	✓	✓	✓	✓	✓	✓			✓				
Durham	✓	✓	✓										
Edinburgh	✓	✓	✓							✓			✓
Essex	✓	✓	✓	✓	✓		✓		✓		✓		
Glasgow Caledonian	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓			
Keele	✓	✓	✓			✓				✓			
Kent	✓	✓		✓	✓	✓	✓			✓			
Lancaster	✓	✓	✓	✓	✓	✓	✓		✓	✓			
Leeds	✓	✓	✓	✓	✓	✓	✓		✓				
Lincoln	✓	✓	✓	✓	✓	✓				✓		✓	
Liverpool	✓	✓	✓	✓	✓	✓							
Nottingham	✓	✓	✓										✓
Queens, Belfast	✓	✓	✓	✓	✓		✓	✓					
RGU	✓	✓		✓	✓	✓	✓						

Roehampton	✓	✓	✓										
Royal Holloway	✓	✓	✓	✓	✓		✓	✓					
Surrey	✓	✓	✓	✓	✓	✓	✓			✓		✓	
Swansea	✓	✓	✓	✓									
UCL	✓	✓		✓		✓				✓			
Warwick	✓	✓	✓	✓	✓	✓							

Similarly, with respect to content, while some topics appear extremely consistently, others are more sporadic. Every single standalone module surveyed teaches EU institutions and law making as well as the legal effects of EU law, while most modules also cover the Court of Justice/judicial action. This is, perhaps, unsurprising given that these can be seen as the foundational knowledge necessary to understand how the domestic legal system interacts with the EU's legal order. The overwhelming majority of modules surveyed also cover some elements of substantive EU law, in particular the free movement of goods, while aspects of free movement of persons are also covered in a majority of modules. While competition law was previously commonplace in EU law modules it is now something of a rarity. The free movement of capital, EU equalities law, and consumer protection, and EU criminal law are similarly rare. The 'typical' EU law module can, therefore, be said to include EU institutions and law-making, the legal effects of EU law, judicial action, the free movement of goods and the free movement of persons.

New sources of EU Law

The first significant change to the teaching of EU law necessitated by Brexit is a need for students to appreciate the new sources of law that will exist in the legal system of the United Kingdom. First, the Withdrawal Agreement between the UK and EU & Euratom constitutes a new EU treaty.[13] Second, while the European Communities Act 1972 is (notionally) repealed on exit day the European Union (Withdrawal) Act 2018, as amended, preserves the effects of the 1972 Act while transforming what we now know as EU law into a new source of law which has come to be known as retained EU law.

[13] Department for Exiting the European Union, 'Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community' (HMSO 2019a) ('Withdrawal Agreement').

Withdrawal Agreement

The Withdrawal Agreement is a new EU treaty which ranks alongside the TEU, the TFEU, and the Charter of Fundamental Rights. Article 4 of the Withdrawal Agreement provides that

> [t]he provisions of [the] Agreement and the provisions of Union law made applicable by [the] Agreement shall produce in respect of and in the United Kingdom the same legal effects as those which they produce within the Union and its Member States.
>
> Accordingly, legal or natural persons shall be able to rely directly upon the provisions contained or referred to in this Agreement which meet the conditions for direct effect under Union law.[14]

The Withdrawal Agreement, therefore, has direct effect both vertically and horizontally provided it meets the criteria set out in the case law of the Court of Justice, in particular in *van Gend en Loos*.[15] The Withdrawal Agreement has extensive legal effects, institutional and substantive, both during the transition period and afterwards. Substantive provisions that might be of particular relevance to undergraduate law students include residence rights for UK and EU workers and Citizens, recognition of professional qualifications, circulation of goods placed on the market prior to exit day, and co-operation on judicial, criminal, and commercial matters. The agreement also makes provision for continued access to the Court of Justice during the transition period as well as the continuance of the preliminary ruling procedure with respect to the Withdrawal Agreement for a period of eight years from the end of the transition.[16]

In particular, part four of the withdrawal agreement provides for a transition period running until 31 December 2020 which is extendable until 31 December 2022, however, the European Union (Withdrawal Agreement) Act 2020 provides that the implementation period 'completion day' means 31 December 2020 at 11.00pm. Under s1 of the European Union (Withdrawal) Act 2018 (the 2018 Act) the European Communities Act 1972 (the 1972 Act) is repealed on

[14] Article 4, Withdrawal Agreement.
[15] Case 26/62, *van Gend en Loos* [1963] ECR 1.
[16] Article 158, Withdrawal Agreement.

exit day. s1A of the 2018 Act, however, introduces a rather convoluted workaround to maintain much the effect of the 1972 Act during the transition period notwithstanding the 1972 Act's repeal. Under s1A, the 1972 Act continues to have effect during the transition period insofar as is necessary to give effect to the Withdrawal Agreement. Furthermore, as a legally binding treaty the United Kingdom will continue to be bound by the contents of the Withdrawal Agreement long after the end of the transition period, albeit without the direct effect that EU treaties enjoy at present. Consequently, it will be important for students to be familiar with the Withdrawal Agreement for many years to come.

Retained EU law

The 2018 Act contains a number of provisions which have the effect of 'freezing' EU law on exit day and incorporating the *acquis communautaire* of EU law, with limited exceptions, into domestic law. s2(1) of the 2018 Act provides that 'EU-derived domestic legislation, as it has effect in domestic law immediately before exit day, continues to have effect in domestic law on and after exit day.' s2(2) defines such legislation as any enactment 'made under section 2(2) of, or paragraph 1A of Schedule 2 to, the European Communities Act 1972' or anything made or operating for the purpose of implementing any EU law obligation. This will include a number of pieces of EU-derived domestic legislation of relevance to undergraduate students, such as the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 which implements Directive 2011/83/EU (the Consumer Rights Directive).

Section 3 of the 2018 Act provides for the incorporation of direct EU legislation including any EU regulations, EU decisions, and EU tertiary legislation. s3(2)(a) excludes from this saving the measures specified in schedule 6, decisions addressed to Member States other than the United Kingdom, and measures the effects of which have been reproduced in domestic law. Such legislation is only retained in its English language form and is not retained where no English language version exists.[17] A question therefore arises with respect to direct EU legislation, for example a decision, which has been reproduced in regulations made under s2(2) of the 1972 Act but whose reproduction is imperfect or incomplete. It is arguable that measures which, on

[17] s3(4).

their face, appear to be excluded by virtue of s3(2)(a) are, in fact, directly incorporated in such circumstances.

Section 4(1) of the 2018 Act provides for a broad general saving of EU rights:

> Any rights, powers, liabilities, obligations, restrictions, remedies and procedures which, immediately before exit day—
>
> (a) are recognised and available in domestic law by virtue of section 2(1) of the European Communities Act 1972, and
>
> (b) are enforced, allowed and followed accordingly
>
> continue on and after exit day to be recognised and available in domestic law (and to be enforced, allowed and followed accordingly).

Exactly what constitutes recognition and availability in domestic law is open to question. It is not at all clear if recognition by a court or tribunal is necessary in order for an EU law right to be relied upon after Brexit. For example, the principle of subsidiarity is a widely recognised general principle of EU law, yet one which has never actually been successfully relied upon in the Court of Justice.[18] It is unclear whether or not the principle is one that can be relied upon in a domestic court after Brexit given that it has never been 'enforced' prior to exit day. The contrast between the broad saving for rights under s4(1) and the more limited saving for directives under s4(2) is significant.

Notably, the saving in s3 of the 2018 Act does not extend to directives. Directives do not automatically have direct effect, however, a directive may have vertical direct effect only[19] where the criteria set out in *Van Duyn* has been

[18] In cases such as Case C-84/94, *United Kingdom v Council (Working Time Directive)* [1996] ECR I-5755 and Case C-491/01, *British American Tobacco* [2002] ECR I-11453 the Court avoided relying upon the principle of subsidiarity as advocated by the claimants and instead relied upon the principle of proportionality.

[19] Case 152/84, *Marshall v. Southampton and SW Hampshire Area Health Authority* [1986] ECR 723.

fulfilled.[20] In effect, a directive can only produce legal effects against a public body where that directive has not been adequately implemented by the Member State concerned and the directive creates a clearly identifiable and justiciable right that ought to be capable of being relied upon against that state. Evaluating the legal effectiveness of a directive therefore requires students to understand the process for implementation of directives, to be able to identify justiciable rights, and to appreciate the distinction identified in cases such as *Foster*[21] between the state and non-state actors.

Section 4(2) poses arguably the greatest intellectual challenge to the post-Brexit undergraduate student. Under s4(2) rights derived from directives are not retained in UK law unless the right arising under a directive is

> of a kind recognised by the European Court or any court or tribunal in the United Kingdom in a case decided before exit day (whether or not as an essential part of the decision in the case).[22]

It will therefore be necessary for students to perform an additional step and determine whether or not any right that might be available under a directive has previously been recognised by a court or tribunal prior to exit day. Further questions arise with respect to what constitutes 'recognition' by a court. As with the broad saving provided for by s4(1) it is likely that a body of jurisprudence will develop as to what constitutes 'recognition' with which future law students will need to be familiar.

Institutional provisions

The study of EU institutions is a common component of most EU law modules. The inclusion of EU institutions makes logical sense insofar as the study of domestic law invariably includes the study of constitutional law. Furthermore, an understanding of the decision-making and legislative processes in the EU is necessary in order to properly understand, *inter alia*, the operation of Article

[20] Case 41/74, *Van Duyn v Home Office* [1974] ECR 1337. For an extensive disquisition on the legal effects of directives see Paul Craig, 'The Legal Effect of Directives: policy, rules and exceptions' (2009) 34(3) European Law Review 349; Michael Dougan, 'The "Disguised" Vertical Direct Effect of Directives?' (2000) 59(3) Cambridge Law Journal 586.
[21] Case C-188/89, *Foster v British Gas* [1990] ECR I-3313.
[22] s4(2)(b).

263 TFEU. Critiques of the democratic (or otherwise) nature of EU institutions are equally commonplace in EU law modules,[23] although their relevance to the prospective legal practitioner is highly questionable.

The most immediate consequence of Brexit is the United Kingdom's exclusion from participation in EU institutions. From the moment the Prime Minister notified the European Council of the UK's intention to leave under Article 50 TEU the UK has been (logically) excluded from participation in the European Council with respect to Brexit negotiations. Immediately upon the UK's exit from the EU the UK no longer participates in

> the nomination, appointment or election of members of the institutions, bodies, offices and agencies of the Union, as well as the participation in the decision-making and the attendance in the meetings of the institutions.[24]

This exclusion takes effect immediately upon exit day, and not at the conclusion of the transition period. Furthermore, during the transition period 'provisions of the Treaties which grant institutional rights to Member States enabling them to submit proposals, initiatives or requests to the institutions' no longer apply to the UK. It is arguable, therefore, that the need to devote substantial attention to the institutional provisions of the EU is greatly diminished. Oslo University, situated outside of the EU but within the European Economic Area, offers two modules – EU Substantive Law and EU Competition Law – which are concerned, principally, with the law of the EU internal market, including the external dimension of the internal market, the Common Commercial Policy. These modules offer little consideration of the institutional legal frameworks of the EU.[25]

The Withdrawal Agreement, however, establishes new institutional structures which may be of relevance to law students. Article 164 establishes a Joint Committee to oversee the implementation of the EU withdrawal agreement, while Article 165 establishes a number of specialised committees, including a committee on citizens' rights, a committee on issues related to the

[23] See, for example, Paul Craig and Gráinne de Búrca, *EU Law: Text, Cases, and Materials* (6th edn, OUP Oxford 2015) ch. 5 and Tony Storey and Alexandra Pimor, *Unlocking EU Law* (5th edn, Routledge 2018) ch. 2.
[24] Article 7(1), Withdrawal Agreement.
[25] University of Oslo, 'Courses in Law' (*University of Oslo*) <https://www.uio.no/english/studies/courses/law/> accessed 26 February 2020.

implementation of the Protocol on Ireland/Northern Ireland, and a committee on financial provisions. These committees have the power to make decisions which produce legal effects, as well as recommendations.[26] The Withdrawal Agreement also provides for an arbitration procedure rather than recourse to the Court of Justice.[27]

Consequently, while it will likely be necessary for students of EU law to be familiar with EU institutions and legislative processes in the future, its direct relevance to the UK legal order will be greatly diminished. For several years after Brexit the Joint Committee will play an important role in the disintegration of the UK from the EU, although it is unlikely that the Committee will continue to exist in the 2030s. It is appropriate, therefore, for the role of EU institutions in EU law modules in the UK in the future to be reviewed.

EU Law in the Courts after Brexit

During the transition period the Court of Justice will continue to have jurisdiction in actions brought against the United Kingdom.[28] Furthermore, it will continue to be possible to refer matters to the Court of Justice for a preliminary ruling until the end of the transition period.[29] The jurisdiction of the Court of Justice over the UK is not, however, completely extinguished at the end of the transition period.

Under Article 87 of the Withdrawal Agreement the European Commission can initiate enforcement proceedings against the UK in the Court of Justice for a period of up to four years after the end of the transition period. Such an action can concern not only breaches of the Withdrawal Agreement but the EU Treaties more broadly.

The European Commission will continue to have jurisdiction over competition and state aid matters for a period of four years after the transition period.[30] If the United Kingdom fails to give adequate effect to decisions of the

[26] Article 166, *ibid*.
[27] Article 170, *ibid*.
[28] Article 86(1), *ibid*.
[29] Article 86(2), *ibid*.
[30] Articles 92 & 93, *ibid*.

Commission during this period then the Commission can initiate enforcement proceedings against the UK in the Court of Justice.

While the preliminary ruling procedure will come to an end following the transition period[31] there is no nationality requirement with respect to direct actions before the Court of Justice. It is not unusual for third-country nationals or undertakings to bring actions for annulment before the Court of Justice where they have direct and individual concern – in particular within the field of competition law.[32] It is likely, therefore, that Article 263 TFEU will continue to be of considerable relevance to undergraduate law students.

Furthermore, the jurisprudence of the Court of Justice will continue to have salience within the UK's domestic legal order. The incorporation of direct EU legislation and the broad saving for rights under ss3 & 4 of the 2018 Act brings with it the jurisprudence of the Court that interprets it.[33] Under s6 of the 2018 Act domestic courts and tribunals are 'not bound by any principles laid down, or any decisions made, on or after [the end of the transition period] by the European Court'.[34] A court or tribunal, however, 'may have regard to anything done on or after exit day by the European Court, another EU entity or the EU so far as it is relevant to any matter before the court or tribunal.'[35] This means that it will not only be necessary for students of EU law to learn pre-Brexit case law; post-Brexit case law is likely to be of salience for years to come. It is also likely that, in future, domestic courts will develop jurisprudence for determining whether or not post-Brexit case law is 'relevant' to any matter under consideration.

Trade in goods after Brexit

The form of Brexit being pursued by the British Government means that there will be significant changes to the rules surrounding trade in goods between the UK and the EU. This is particularly the case following the failure of the former Prime Minister Theresa May's Withdrawal Agreement and Political Declaration.

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[31] s6(1)(b) European Union (Withdrawal) Act 2018.
[32] For a recent example see Case C-590/18 P, *Fujikura v Commission* [2019] ECLI:EU:C:2019:1135.
[33] s6(3) European Union (Withdrawal) Act 2018.
[34] s6(1)(a) European Union (Withdrawal) Act 2018.
[35] s6(2) European Union (Withdrawal) Act 2018.

The original political declaration envisaged a relationship that involved

> no tariffs, fees, charges or quantitative restrictions across all sectors, with ambitious customs arrangements that, in line with the Parties' objectives and principles above, build and improve on the single customs territory provided for in the Withdrawal Agreement which obviates the need for checks on rules of origin.[36]

The political declaration also indicated that the UK would 'consider aligning with Union rules in relevant areas.'[37] Such an arrangement was, understandably, described as a 'customs union in all but name'[38] and would likely have necessitated almost-unmodified study of the EU's rules on free movement of goods.

Boris Johnson's accession to the Premiership is arguably a direct result of Mrs May's agreement. To the surprise of many Mr Johnson succeeded in negotiating a revised Withdrawal Agreement and Political Declaration with a much looser future relationship at its core. The new Political Declaration envisages 'an ambitious trading relationship on goods on the basis of a Free Trade Agreement, with a view to facilitating the ease of legitimate trade.'[39] The declaration concedes that rules of origin will be required, thus underlining the looseness of the relationship.

It, therefore, seems likely that the future UK-EU trading relationship will have to be read in the context of the General Agreement on Tariffs and Trade.[40] Students may need to become familiar with key domestic legislation on imports and exports, including the Customs and Excise Management Act 1979 and the

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[36] Department for Exiting the European Union, 'Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community' (HMSO 2018).
[37] *Ibid*.
[38] 'May 'on verge of caving in to Labour' Ministers fear PM is preparing to sign off on 'customs union in all but name' to seal Brexit deal; Hopes for Brexit deal' *Daily Telegraph (London, England)* (1 May 2019) 1 <https://www.telegraph.co.uk/politics/2019/04/30/theresa-may-preparing-cave-labour-demands-brexit-eurosceptics/> accessed 14 May 2020.
[39] Department for Exiting the European Union, 'Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom' (HMSO 2019), para. 19.
[40] General Agreement on Tariffs and Trade (adopted 30 October 1947, entered into force 1 January 1948) 55 U.N.T.S. 194.

Import, Export and Customs Powers (Defence) Act 1939. Similarly, it will likely become necessary for students to study the Common Commercial Policy and the common rules for imports.[41]

Free movement of persons after Brexit

There is little denying that ending the free movement of persons under EU law has been a major objective of the UK Government throughout the Brexit process. In December 2018 the Home Office published its white paper on the UK's post-Brexit immigration policy which proposes, *inter alia*, to roll-up EU and non-EU migration into a single policy.[42] Despite this, however, under the Withdrawal Agreement the free movement provisions of EU law look set to remain an important part of UK immigration law.

Part 2 of the Withdrawal Agreement provides for continued residence rights both for Union citizens residing in the UK and for UK nationals resident in the EU ('continuing residents'). Residence rights continue on the basis of Article 21, 45, and 49 TFEU as well as Directive 2004/38/EC.[43] Article 12 of the Withdrawal Agreement effectively imports Article 18 TFEU thereby prohibiting any discrimination on grounds of nationality against continuing residents. Similarly, the rights of workers under Article 45 TFEU and Regulation (EU) No 492/2011 continue to apply,[44] as do the rights of self-employed persons under Articles 49 and 55 TFEU.[45] Article 39 provides that continuing residents shall continue to enjoy the rights contained in part 2 of the Withdrawal Agreement for their lifetime. Given that part 2 also applies to persons born to, or legally adopted by, continuing residents it seems likely that the free movement of persons provisions of EU law will be of continuing relevance to UK law students for generations to come.

The provisions of part 2 of the Withdrawal Agreement are enforceable in domestic courts. Furthermore, Article 158 of the Withdrawal Agreement permits domestic courts to make references for a preliminary ruling on matters relating to free movement of persons for a period of eight years following the

[41] Regulation (EU) 2015/478 of the European Parliament and of the Council of 11 March 2015 on common rules for imports [2015] OJ L83/16.
[42] Home Office, The UK's future skills-based immigration system (White Paper, Cm 9722, 2018).
[43] Article 13.
[44] Article 24.
[45] Article 25.

conclusion of the transition period. Article 159 of the Withdrawal Agreement mandates the establishment of an independent authority, with powers equivalent to those of the European Commission, to monitor, investigate, and, if necessary, take legal action to enforce the provisions of part 2 of the Withdrawal Agreement.

'Reimagining' EU Law after Brexit

It is clear, therefore, that almost all aspects of EU law as it is currently taught in UK law schools will continue to be of relevance both during the Brexit transition period and afterwards. It will be necessary, however, to review both the weighting and content of these topics as the UK's relationship with the EU loosens. Both the institutional and substantive aspects of EU law produce legal effects *vis-à-vis* third countries, but these effects are rather different to those produced within the Union. It will be necessary for teachers of EU law to adapt their modules to reflect the new reality in which the UK finds itself.

One obvious solution is to look to how EU law is currently taught in non-EU states. It is worth noting from the outset, however, the different educational environment in which EU law is primarily taught outside of the EU. In contrast to British and European legal study, outside of the European Union the study of EU law is primarily a postgraduate level subject.[46] This will, naturally, have a considerable impact upon the teaching and delivery methods employed outside of the EU. Nevertheless, with respect to module content, there are a number of examples outside of the EU that are worthy of consideration.

Non-EU law schools have three options for designing the study EU law outside of the EU. The first is to design a module as a somewhat abstract exercise in observational legal study. This approach can be seen in the modules offered by the University of Auckland or the University of California at Los Angeles. These modules bear a striking similarity to those typically offered within EU law modules in UK universities, examining the EU institutions, the nature and legal effect EU law, and judicial action; as well as the free movement of goods and workers. Crucially, such modules appear to provide little of direct practical

[46] All-bar-one of the EU law modules surveyed are offered at masters' level. The sole exception is Oslo, whose two EU law modules are offered at both bachelors' and masters' level.

relevance to domestic law students. In many respects, therefore, such modules resemble a study in comparative law.

Comparative legal study need not necessarily involve the study of the comparative merits and demerits of one legal system or set of laws relative to another – what Wigmore terms 'comparative nomogenetics'.[47] Comparative legal scholarship can involve what Lambert describes as 'Descriptive Comparative Law'[48] – that is to say, simply knowing what the laws of another jurisdiction are. According to Gutteridge, '[t]the comparative method is sufficiently elastic to embrace all activities which, in some form or other, may be concerned with the study of foreign law'.[49] The value of comparative legal study is more widely recognised today than it was in the era of Gutteridge.[50] Certainly, by the 1970s the value of comparative legal study was widely recognised, even if lacking a consistent and coherent theoretical framework.[51] It is arguable, however, that such an approach to the study of EU law provides neither the value provided by comparative studies of other legal systems, nor does it provide that value delivered by alternative approaches to external study of the EU legal order.

With respect to the former argument while there is, of course, value in knowing the jurisprudence of the EU even outwith the Union there is, undeniably, greater value in comparative nomogenetics. It is arguable, however, that such studies are not possible with respect to EU law, principally because there is no other legal system in the world to which a direct comparison with the European Union is possible. In certain domestic contexts – for example, the USA, Canada, and Australia – an appreciation of the EU provides a useful comparator in studies of federalism. Alternatively, in an international context the EU provides a useful comparator to both global and regional approaches to trade integration – for example through the GATT, MERCOSUR, or the African

[47] J. H. Wigmore, 'A New Way of Teaching Comparative Law' (1926) Journal of the Society of Public Teachers of Law 6.
[48] See Walther Hug, 'The History of Comparative Law' (1932) 45(6) Harvard Law Review 1027.
[49] H. C. Gutteridge, Comparative Law: an introduction to the comparative method of legal study & research (Cambridge University Press 1946), 7.
[50] Gutteridge describes the comparative study as often being 'carried out in an atmosphere of hostility or, at best, in a chilly environment of indifference.' *Ibid*, 23.
[51] Walter Joseph Kamba, 'Comparative Law: a theoretical framework' (1974) 23(3) International & Comparative Law Quarterly 485.

Union. None of these comparators, however, share the objectives and characteristics of the European Union.

With respect to the latter argument – that alternative approaches to the teaching of EU law outside of the EU provides greater value than a purely comparative approach – it is certainly arguable that as legal education shifts away from Socratic, or even didactic, teaching methods towards 'authentic' legal education – to 'think like lawyers'[52] – it is necessary to consider the study of EU law in its teleological context. This can be seen in the approaches of those law schools which consider EU law from an external perspective.

Table 2: Contents of EU Law modules in non-EU law schools based on published module descriptors

	EU Institutions & Law Making	Supremacy and Legal Effects	Judicial Action	Free Movement of Goods	Free Movement of Workers	EU Citizenship	Freedom of Establishment	Free Movement of Capital	Competition Law	Equalities & Fundamental Rights	Consumer Protection	EU Criminal Law	Internal Market (generally)	External Relations	Contemporary Issues
Auckland (NZ)	✓	✓	✓	✓	✓	✓									
ANU (AUS)	✓	✓	✓										✓	✓	
British Columbia (CA)	✓	✓	✓	✓	✓	✓	✓	✓						✓	
Cape Town (RSA)	✓	✓	✓						✓	✓			✓		
CESL (CN)	✓	✓	✓	✓	✓	✓	✓	✓	✓			✓		✓	
Columbia (USA)	✓	✓	✓						✓	✓			✓	✓	✓
Dalhousie (CA)	✓	✓							✓				✓		
Harvard (USA)	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓			✓	
HSE (RUS)	✓	✓	✓	✓	✓	✓	✓	✓	✓					✓	

[52] David T. ButleRitchie, 'Situating Thinking like a Lawyer within Legal Pedagogy' (2002) 50(1) Cleveland State Law Review 29.

Monash (AUS)	✓	✓	✓	✓	✓								✓	
New York (USA)	✓	✓	✓							✓				✓
Oslo (NOR)				✓	✓	✓	✓		✓				✓	
Queensland (AUS)	✓	✓	✓	✓	✓	✓	✓	✓						
NUS (SIN)	✓	✓	✓	✓	✓	✓	✓							
Stanford (USA)	✓	✓	✓	✓	✓		✓	✓	✓					
Wellington (NZ)	✓	✓	✓	✓	✓	✓	✓	✓						
UCLA (USA)	✓	✓	✓	✓	✓				✓	✓				

Arguably the simplest approach to teaching EU law from an outside perspective is to include consideration of the EU's external relations. This can be seen in a number of external EU law modules, such as at the University of British Columbia and the China-EU School of Law. Stanford in California gives special attention 'to the question how companies established outside the EU can efficiently use EU business law to pursue their interests in the EU.'[53] Similarly, the National University of Singapore's EU law module 'looks at those elements of EU law which particularly affect non-EU citizens, both those living within the Union and those living beyond its borders.'[54] In many instances this approach appears to be something of an addendum to an otherwise fairly standard EU law module.

A number of institutions, however, seek to tailor their EU law modules through consideration of those substantive aspects of EU law that are particularly relevant to the local economy. For example, the Higher School of Economics in Moscow, in addition to its extensive consideration of the topics typically covered by EU law modules, also teaches EU energy and environmental law.[55] Harvard's EU law module 'looks at how EU regulation in diverse areas such as antitrust, data protection, the environment and food safety influences US

[53] Stanford Law School, 'European Union Law' <https://law.stanford.edu/courses/european-union-law/> accessed 26 February 2020.
[54] National University of Singapore, 'Course Listing: European Union Law' <https://law.nus.edu.sg/student_matters/course_listing/courses_desc.asp?MC=LL4069V&Sem=1> accessed 26 February 2020.
[55] National Research University: Higher School of Economics, 'European Union Law: course syllabus' <https://pravo.hse.ru/mirror/pubs/share/229390249> accessed 26 February 2020.

firms and citizens, and non-EU residents more generally.'[56] The Australian National University's EU law module 'is intended to provide students with a deep insight into the internal structure and functioning of the EU together with its role as a global actor, particularly in the Asia Pacific Region.'[57]

Situating EU law in a domestic legal context in post-Brexit UK law schools, however, is unlikely to be such a straightforward exercise. The level of extant legal integration, as well as the substantive EU law that will remain in the UK's legal order for decades to come, will require a somewhat bespoke approach.

The United Kingdom's new position as the first former EU Member State is without precedent. EU law will continue to exist within the domestic legal system through the incorporation of the *acquis communautaire* as retained EU law. Domestic courts will continue to be bound by pre-Brexit jurisprudence of the Court of Justice and may have regard to post-Brexit case law where relevant.[58] The Withdrawal Agreement produces new and unique legal effects with respect to the United Kingdom. As EU law evolves within the UK legal system to bear greater resemblance to public international law it may, therefore, be necessary to include consideration of the Vienna Convention on the Law of Treaties.[59] As the UK Government also intends to leave the EEA and EFTA[60] it is likely that the future UK-EU trading relationship will be a bespoke one. It will therefore be necessary to 'reimagine' EU law as part of the legal curriculum in the UK.

EU law modules in future will need to focus upon, *inter alia*, retained EU law as a species of domestic law, the ongoing juridical links between domestic courts and EU law, the rights of individuals provided for by the Withdrawal Agreement and their legal effects, the role of third country nationals and

[56] Harvard Law School, 'European Union Law and Policy' <https://hls.harvard.edu/academics/curriculum/catalog/default.aspx?o=73829> accessed 26 February 2020.
[57] Australian National University, 'The European Union' <https://programsandcourses.anu.edu.au/2020/course/LAWS8239> accessed 26 February 2020.
[58] *Supra* n. 35.
[59] (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331.
[60] Department for Exiting the European Union, 'Agreement on arrangements between Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland following the withdrawal of the United Kingdom from the European Union, the EEA Agreement and other agreements applicable between the United Kingdom and the EEA EFTA States by virtue of the United Kingdom's membership of the European Union' (HMSO 2018b).

undertakings in the EU legal order, and the future rules governing trade in goods.

It may be, however, that the way in which European Union law is taught is not, in fact, the problem. There is, arguably, a much broader need to re-orient the study of law more generally to reflect a more globalised legal environment.[61] The failure to integrate the study of EU law into the study of domestic law in UK law schools, as noted above, reflects a broader failure of law schools and curricula to consider the foreign, supranational, and international influences on the legal system and legal practice. Should law degrees reflect the increasing globalisation of both legal scholarship and practice the study of EU law, despite the UK's departure from the European Union, might not look quite so anomalous.

Conclusion

While the United Kingdom's departure from the European Union fundamentally changes the effects of EU law in the domestic legal systems, the salience of EU law remains. The change in the legal effects of EU law within the UK necessitates substantial revision to the institutional and procedural elements of EU law modules, in particular. This might include a substantial reduction in the attention devoted to the democratic structures of the EU although, as noted above, some knowledge and understanding of the legislative and decision-making process remains essential. It will also be necessary to understand the legal effects of the various sources of EU law, as well as new sources of EU law, with an additional layer of understanding of the operation of retained EU law as well. While some aspects of the work of the Court of Justice – preliminary rulings, in particular – will have more limited salience to UK EU law students, third-country nationals frequently bring direct actions before the Court.

Furthermore, it is also necessary to reorient the study of substantive EU law: taking into account both the retained elements of EU law while also considering the external effects of the external EU legal order. While many law schools outwith the European Union teach EU law the extent to which such modules might serve as a template for post-Brexit EU law in the UK is limited. Developing bespoke new EU law modules will be, undoubtedly, challenging

[61] Rosa Kim, 'Globalizing the Law Curriculum for Twenty-First-Century Lawyering' (2017) 67(4) Journal of Legal Education 905.

however today's EU law teachers have an opportunity to shape what will likely become a distinct new discipline of legal study. These substantial changes to the way that EU law will be taught and studied in the future means pedagogical research in the field of EU law will be more important than ever.

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Deconstructing Myths about Interdisciplinarity: is now the time to rethink interdisciplinarity in legal education?

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Abstract

The article wishes to present an argument about how interdisciplinary modules can enhance legal education. This argument is developed against the backdrop of major disruption in higher education and transformation in legal education. Following a definition of interdisciplinarity, the benefits of this method are analysed and demonstrated through practical examples from an interdisciplinary pilot module based in a UK Law programme. Some selected issues from Equality law will be used to demonstrate how an interdisciplinary approach has enabled students to look more critically at what the law chooses to protect and the ways in which laws are drafted and applied. Such enhanced learning outcomes from interdisciplinary legal education can support the re-calibration of legal education and complement the traditional doctrinal approach to legal education. It is argued that experiences and good practice from comparative law can provide inspiration for the strengthening of interdisciplinary legal education.

Keywords: Interdisciplinarity, legal education, equality and diversity, comparative law, doctrinal law, transformation of legal education.

* Associate Professor, Law, University of Exeter. The author wishes to thank Professor Geoffrey Samuel and Professor Nigel Duncan for their helpful comments during the composition and revising stages of this paper, as well as the journal's two referees for helpful comments during the refereeing stages of the paper. The article introduces initial thoughts to a new argument and intends further exploration in future research. Due to the limited space some points raised are presented at a level of generality.

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Introduction[1]

Legal education, which undoubtedly itself is in a period of change, is woven into a wider higher education context that is going through major disruption: higher education faces pressures for change, adaptation or at the very least reflection in the light of economic changes globally. This article argues that, although tertiary education has benefited immensely from contemporary theories of excellent pedagogy, change is now pressing. Specifically, legal education must avoid parochialism, achieve a forward-looking vision and needs to overcome the perceived false dichotomy between liberal education and employability. Given that in the UK fewer than half of Law graduates enter into the profession, Law faculties should keep reflecting on how we deliver our curriculum. This article aims to unveil the why and how interdisciplinary modules can enhance legal education. The article will go about it in the following way: (1) Through an epistemological lens, this critique will set the scene and argue that the playing field has changed and legal education at tertiary level is in serious need of transformation. (2) Next, the article will provide a definition of interdisciplinarity and an informed, focused suggestion on the kind of transformation needed. (3) Analysis derived from this will then be utilised to stress the primary importance of interdisciplinarity in re-calibrating today's legal education. Yet it is not just knowledge and understanding itself that requires an overhaul as one outcome of our principled approach to education. It is the way we deliver legal education and its enhancement for graduates of today that is at the centre of this article. The benefits of interdisciplinarity – as a complementary teaching method, not a replacement, can help to make a difference. It is argued that the benefits outweigh the (many) challenges. In developing this argument, the critique uses lessons learnt from comparative law. The evolution of comparative law could be seen as paradigmatic, in that its contemporary acceptance, or even favourable reception in recent years might bear some lessons for interdisciplinarity.[2]

[1] Some elements of this article were presented, as an earlier version, at the Berkeley Centre of Comparative Equality and Anti-Discrimination Law Annual conference in Melbourne in 2018.

[2] Comparative law, it is conceded, is different to national doctrinal law, nevertheless has convincing valuable lessons. These help to make the case for increased interdisciplinarity in legal reasoning generally.

The scene

The Nature of Law

Law is characterised by legal perspectives (of which there are many), and this is important.[3] Studying law and applying the law requires a critical approach to academic ideas, theories and problems. Those studying law need to make objective and balanced decisions, and communicate those in a clear, persuasive and convincing way. Is it not crucial, then, to acquire different views and viewpoints, and different formulae to understand concepts from different viewpoints?

The nature of Law lends itself to this character: one factor is its multi-faceted nature,[4] shifting meaning of concepts and definitions. It is argued here that interdisciplinarity must be part of the juristic understanding, which helps shape the parameters of interpretive possibility that inform its development and meaning. Legal perspectives are imperative in defining, shaping and safeguarding the values that underpin our society.[5] Indeed, is not the real joy of law in its application to society and how it can help tackle everyday complex problems within that society? In fact, this is how Law is described to prospective undergraduate students in the UK.[6] Most Law schools in the UK promote the relevance of law as a means to tackle current problems, using the skills that law studies can refine as the means to do so.

However, currently law is a distinct discipline,[7] separated from other disciplines such as history, psychology, linguistics, organisational business

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[3] Raymond Wacks, *Understanding legal Theory* (3rd edn Oxford University Press 2012); Bain Bix, *Jurisprudence: Theory and Context*, (6th edn, Sweet & Maxwell 2012); Nigel E Simmonds, *Central Issues in Jurisprudence, Justice, Law and Rights* (4th edn Sweet & Maxwell 2013); Michael D A Freeman, *Lloyd's Introduction to Jurisprudence* (Sweet & Maxwell 2014).

[4] Michael Giudice, *Understanding the Nature of Law- A Case for Constructive Conceptual Explanation* (Elgaronline, Edward Elgar 2015) 5.

[5] There seems to be, broadly at least, agreement on this issue. How this analysis is, or should be conducted, is widely disputed, see for example Kenneth Einar Himma, *Morality and the Nature of Law* (Oxford University Press 2019).

[6] Catherine Barnard, Janet O'Sullivan, Graham Virgo, *What about Law?: Studying Law at University* (2nd revised edition, Hart 2011).

[7] In the history of legal education in the UK, there were no university law faculties teaching the common law effectively before the 19th century. If one treats the Inns of Court as faculties back then, Law then might be seen as a separate discipline. As for continental Europe, curricula focused on the Corpus Iuris, which isolated legal studies to some extent.

studies etc. It is taught in a silo.[8] This becomes evident following just a cursory look at the high number of straight Law programmes offered through UCAS as compared to the relatively small number of 'Law with…' or 'Law and…' programmes.[9] It is argued that law has its own solutions and answers to certain problems rendering other disciplines unhelpful.[10] This analysis is not going to suggest that the doctrinal approach is inferior or that one approach is more critical than the other. Both approaches use different forms of criticality and both are of equal value and importance for the development of an understanding of the law. It is important to highlight here that by no means should the doctrinal approach and analysis within programmes be replaced or minimized. Black letter law is still the dominant legal education in preparation for the profession. And so it should be: critical engagement with the law requires an in-depth understanding of the core material – this has to do with the critical analysis of the primary documents of the law and thus is something that cannot be replaced. It continues and should continue to lie at the heart of legal research,[11] and must continue to feature prominently in legal education. However, there is a growing argument for an analytical tool that allows for discussion of law as a multi-sided social phenomenon.[12] The need for wider, faceted 'critical thinking' in law[13] leads to the conclusion that doctrinal approaches alone might benefit from a 'top-up'.[14] This is because of the evolution of differing theories in law, including different perspectives and the shifting meaning of concepts in a changing world. Doctrinal approaches need to be complemented by those that recognise that knowledge is (and needs to be) subject to change.[15] This change evolves from different (legal)

[8] A R Codling*, Thinking Critically about Law: a student's guide* (Routlege 2018) 76.
[9] UCAS, <https://www.ucas.com/explore/courses?subject=Law&filterBy=all&studyMode=undergraduate&latLng=false> accessed 8 May 2020.
[10] Dan Priel, 'Two Forms of Formalism) in Andrew Robertson and James Goudkamp (eds), *Form and Substance in the Law of Obligations* (Hart 2019), p. 165.
[11] Terry Hutchinson, Nigel Duncan, 'Defining and Describing What We Do: The Doctrinal Legal Research' (2012) Deaken Law Review 17(1) DLR, 85, 86.
[12] Legal Pluralism, such as Roderick MacDonald 1948- 2014, see: Roderick A MacDonald 'Metaphors or Multiplicity: Civil Society, Regimes and Legal Pluralism' Arizona Journal of International and Comparative Law (1998) 15(1) Ariz. J. Int'l & Comp. L. 69, 70. <https://heinonline.org/HOL/LandingPage?handle=hein.journals/ajicl15&div=10> accessed 4 February 2020.
[13] A term that is extremely difficult to define in itself- though this is not within the ambit of the current article.
[14] This is something that has been discussed in legal research too; see for example: Susan Bartie, 'The Lingering Core of Legal Scholarship' (2010) Legal Studies Vol 30(3) 345-369.
[15] Katerine T Bartlet, 'Feminist Legal Methods' (1989) 103 Harvard Law Review 829.

perspectives. This in turn, requires the evaluation of a range of information from different sources, seeking all sides of an argument, including the wider context. In addition, the change evolves from the higher education context as well: here too discussions have critiqued the meaning of university education.[16] As argued above, this might better be achieved through a less rigid dogmatic attachment to one's own disciplinary contexts.

Let's consider this contemporary disruption of legal education: UK Law schools have, in the past, designed their programmes, mostly, to be qualifying law degrees – thus Law Schools were mostly vocationalist, preparing their students to be lawyers. However, once graduated many law students do not enter the profession. And, given the changes in the way lawyers will qualify in England and Wales (and in line with that the forthcoming changing accreditation standards for UK law schools), Law schools are now more at liberty in the design of their curricula. With these regulatory changes,[17] there is a strong argument to be made that the substance of the student development could well include, to some extent, education about the law in the wider context - what some call educating citizens, rather than just training lawyers.[18] Traditionally, universities in the UK have focused their intended learning outcomes, and their aligned assessment criteria on knowledge and understanding, cognitive and intellectual skills such as analysis and synthesis, use of research-informed literature (such as referencing and academic honesty), and skills for life and employment (such as problem-solving and communication). With regards to the latter, the interdisciplinary synthesis might provide a particularly useful stepping-stone.

What is interesting to highlight, furthermore, is that the benefit of higher education learning is seen by the Office for Students (OfS) as a contribution to regional and national development, and its role in economic prosperity, social mobility and cultural enrichment.[19] This is coupled to an experience for students that enriches their lives and careers. It includes the need for transferrable skills such as communication, team-working, creativity, adaptability and problem-solving, embedded in a programme and in

[16] See below under '[t]he nature of higher education'.
[17] This will not be a change in standards as such, but rather the elimination of the SRA regulations.
[18] Vincent Kazmierski, 'How Much 'Law' in Legal Studies' (2014) Canadian Journal of Legal Studies 29(3) C.J.L.S. 300.
[19] Office for Students, <https://www.officeforstudents.org.uk/> accessed 5 May 2020.

assessment, and an Office for Students review will look at graduate outcomes and employers' perspectives. In this endeavour, the Office for Students has co-funded with Research England a programme to identify and improve the benefits for students in knowledge exchange activities. In line with this, the Office for Students is encouraging development and re-design of curricula to embed skills that enhance employability of graduates. It is argued, therefore, that interdisciplinarity can help embed these skills in the legal curriculum.

Thus, the perceived dichotomy between legal education and education about the law is false- and this is further strengthened by taking a closer look at the nature of higher education.

The nature of higher education

One might say that one function of tertiary education is to teach students academic theories, methods and knowledge domains,[20] contribute to their cultural advancement and prepare students for life after university (occasionally referred to as professional life).[21] Some believe that a strong connection exists between the health of Europe and the partnership of higher education institutions across Europe.[22] However, recent developments across Europe indicate that there now is an increasing economic component to higher education alongside academic idealism and 'higher purpose'. Global knowledge competition,[23] the need to serve economic ends,[24] as well as the

[20] The university as the holder and provider of 'intellectual capital' or the aim of academic enlightenment; some argue this goes back to the Humboldtian theory, creating a community of scholars and students, advancing knowledge by original and critical investigation.
[21] Ulrich Teichler, 'Universities Between the Expectations to Generate Professionally Competences and Academic Freedom: experiences from Europe' (2013) *Procedia – Social and Behavioral Sciences* 77 421, 422-423.
[22] In line with that conviction, Horizon 2020 has invested 3% of the EU's GDP in research and innovation. Universities play a key role in economy in that they increase skills, support innovation and attract investment and talent, see Universities UK, *The Economic Role of UK Universities* 2015, 2-3.
[23] The UK higher education landscape has a culture league tables, key performance indicators, and surveys, as well as student satisfaction surveys.
[24] Sonal Minocha, Dean Hristov, Samantha Leahy-Harland, 'Developing a future-ready global workforce: A case study from a leading UK university' International Journal of Management Education (2018) 16(2) 245; Tomlinson, M, 'Graduate employability: A review of Conceptual and Empirical Themes' Higher Education Policy (2012), 25(4) 407; and Michael Tomlinson, 'Introduction, Graduate Employability in Context: Charting a Complex, contested and multi-faceted Policy and Research Filed' in *Graduate Employability in Context* (Palgrave Macmillan 2017), 1.

metamorphosis of the student into a customer are the source of this crisis.[25] In accepting that the role of universities, and our role as legal educators has changed, it is suggested that interdisciplinarity can deliver to this new demand without academia departing from the original ideals of intellectual expertise, academic autonomy, and isolated from external pressures.

Interdisciplinarity in legal education

Definition of interdisciplinarity

Before the benefits and potential contributions of an interdisciplinary pedagogy to legal education can be evaluated, it is necessary to outline which understanding of the term is applied in this article. An extensive and useful set of definitions and types of interdisciplinarity can be found in a now nearly 50 year-old report following a seminar on Interdisciplinarity. This report organizes interdisciplinary activities into categories of multi-, plury-, inter-, and trans-disciplinarity.[26] The many fragmentations and definitions of interdiscplinarity have been criticized by some authors.[27] For the purpose of this article it will be sufficient to clarify the difference between interdisciplinarity and multi-disciplinarity, though not as detailed as Graff has done it.[28] Here, multi-disciplinarity is understood as a variety of disciplines informing a topic - in a way characterized by the breadth of information. Quite apart from that, interdisciplinarity is understood as depth of information, where two or more disciplines are integrated, focusing on the same real world problem, and solving its complexities through blending and linking of disciplines. Interdisciplinarity brings the disciplines together in such a way that

[25] Although, generally across European countries, access to tertiary education is less fee dependent and overwhelmingly decided by school leaving qualifications. British universities are a peculiarity in this regard in that British Universities select, mainly on the basis of grades/examination results; British universities that can select the best school leavers tend to be the ones with the best performance in league tables. Furthermore, British universities tend to charge high annual tuition fees (since fee introduction in 1998) and this has been criticised as a barrier for social mobility, though data indicates that social mobility has improved as more students from disadvantaged areas are now attending university.

[26] Leo Apostel, 'Interdisciplinarity; problems of teaching and research in universities', OECD (1972).

[27] Robert Frodeman, 'The Future of Interdisciplinarity' in *The Oxford Handbook of Interdisciplinarity* (2nd edn Oxford University Press 2017); Julie Thompson Klein, 'Typologies of Interdisciplinarity, The Boundary Work of Definition' in Robert Frodeman, *The Oxford Handbook of Interdisciplinarity* (2nd edition Oxford University Press 2017).

[28] Harvey J Graff, *Undisciplining knowledge: interdisciplinarity in the 20th Century* (Johns Hopkins University Press 2015).

the problem is viewed through one single lens, rather than through several lenses, and this way widens the perspective and understanding. Frequently, the terms are used interchangeably, and it is argued here, thus incorrectly.

It is imperative at the outset to recognise that the difference between interdisciplinarity and multidisciplinarity is of kind and not of degree. To demonstrate the subtle difference between multi- and interdisciplinarity consider the following two programmes: a degree programme comprised of a variety of modules (Philosophy, Psychology, Sports and a language), each subject-specific module taught and assessed in their home discipline according to their own conventions, would be multi-disciplinary. With multi-disciplinarity the subjects are placed side by side. It is a sequential consideration of subjects without any intersection.[29] The student learns the subjects one alongside the other. However, a programme where the student selects a range of subjects, such as Law and Politics, and the student is taught these disciplines in an integrated way and required to synthesize the information in an assessment, would be interdisciplinary. Each programme would take a different approach, use different methods (learning and assessment) and have rather different learning outcomes. However, through inclusion and integration, interdisciplinarity subsumes multi-disciplinarity; it seeks to create commonalities between the different disciplinary insights and aims to construct a more comprehensive understanding around a complex issue.[30]

In essence, central to interdisciplinarity must be the characteristic of integration and synthesis. Thus, it is not an additive relationship but rather a more complex interrelationship. By way of integrating information, techniques, perspectives, concepts and theories from more than one discipline, this method of learning facilitates solving problems in ways that would have been unlikely through the means of any single discipline. It leads to deep understanding,[31] which allows complex causal thinking and critical argumentation. And this is precisely how it is applied in the following discussion.

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[29] Allen F Repko, *Introduction to Interdisciplinary Studies*, (Sage, 2014), 31.
[30] *Ibid* 37-38. This definition centres around the more common conception of interdisciplinarity – Instrumental interdisciplinarity, rather than critical interdisciplinarity which often questions disciplinary assumptions.
[31] From USA Experience: *ibid* Harvey J Graff; John H Aldrich, *Interdisciplinarity: Its Role in a Discipline-based Academy* (Oxford University Press, eBook 2014), 151.

An example

A good example of this form of integration would be a module on 'Equality and Diversity at Work' designed and delivered by the author. The underlying rationale for the module is to expand and develop the understanding and provision of teaching in the area of Equality and Diversity in the university. The novel idea is to approach education on this topic from a more contextual angle, making problem solving a central aim and in the process equipping students with the tools to tackle contemporary equality issues. In particular, this module breaks new ground in its interdisciplinary approach as it incorporates academics from Law, Business and Psychology.

The module responds to the university education strategy by providing truly inter-disciplinary learning, which is context based and incorporates problem solving. It is designed for, and delivered to Law, Psychology and Business students and it is designed and delivered by academics from Law, Psychology and Business, each with research expertise in equality and diversity issues. It intends to provide a perspective on equality and diversity that incorporates insights about the legal framework, the business environment, and the psychological dimension. Content is limited to the meaning of Equality and shortcomings of that definition, as well as measures to achieve equality (from the Law side), mindsets (from the Psychology side) and organizational diversity paradigms, and reporting analysis (from the Business side).

Third year students (NQF6) build on a rich knowledge base acquired in their own discipline specific subjects, as well as broadening their knowledge through the interdisciplinary approach to develop understanding and capacity to address real life issues of equality and diversity. It is therefore essential that students have a rich knowledge foundation in their own discipline, as this is needed to integrate concepts, theories and ideas, creating new knowledge and skills. Students cover a range of real life and current equality issues and explore how and why problems arise, how these should be managed, and the need to apply a broader critical perspective, transcending discipline limits to enhance equality and achieve diversity.

As an intended learning outcome, the module provides students with a wider disciplinary grounding, helping them break out of their discipline silos. It

requires students to synthesise and integrate arguments, research different material and processes into their own argument. The module supports and facilitates teamwork (from both, colleagues from faculties, and students from the different disciplines) and works to build effective oral and written communication as well as a wider, critical awareness. It equips graduating students with skills so they can make a real difference in public policy on future equality that is evidence based and research informed. This way, the module builds a bridge for students from academia to society. Developing the capacity to understand and inform the translation of theory into practice puts these graduates in a position to lead change.

Academics leading the interdisciplinary teaching and assessment on this module collaborate closely; to achieve true integration, academics must work towards and through common ground.[32] This means, rather than teaching and assessing information on the module through their own discipline knowledge, the academics strive to find a shared foundation, a mutual and shared belief and understanding underpinning all work. This shared basis and belief centres around perspectives in a way disciplinary courses cover subject content. [33] Common ground is established not just with regard to the subject-specific equality and diversity syllabus content but also the way it is taught. It takes time to achieve this common ground when discipline specific conventions, processes, language and methods are so very different. Therefore academic staff teaching and assessing a truly interdisciplinary module must work together closely in design, delivery and support for this module. Staff must, in their delivery, serve as a model for students, guiding them through the integrative approach. Some sessions, at regular intervals, are team-taught to help demonstrate the common ground. Alongside the teaching syllabus, the academic staff have regular team meetings to agree delivery, pace and content. The more academics design the curriculum together, talk to each other and inform each others' content and approach, the more interdisciplinary the module is, rather than just multi-disciplinary. This collaboration ensures common ground and equal weighting of discipline input on substance, theories and discipline insights. These regular meetings also serve as constant review, evaluation and survey of progress.

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[32] William H Newell, 'A Theory of Interdisciplinary Studies' in Issues in Integrative Studies (2001), 19, 1-26, 14.
[33] William H Newell, 'The State of the Field' in Issues in Integrative Studies (2013), 31, 22-43, 30.

Challenges

Interdisciplinarity comes with its challenges.[34] Indeed, interdisciplinarity has yet some way to go to receive a fair share of attention. Constraints such as resource allocation (time and funding), our disciplinary norms and how we work in our discipline silos, as well as external legitimacy are real challenges.[35]

What complicates matters is that there is not much written about interdisciplinary education, and thus there is a lack of a unique set of pedagogies to support interdisciplinary teaching.[36] Subject specific integration challenges could be compared to learning a new language. This language metaphor illustrates the complication: while one might have learnt the actual words of the foreign language, one might not yet have understood their true meaning. And as with a new language, understanding means that the student must move away from thinking in one language (home discipline) and translating the word into another, new language (new discipline). What is really needed is that the student thinks in the new language, without the step of translation. This, combined with institutional barriers - a discipline focus in the higher education system and its rigid institutional and administrative boundaries – is often perceived as an insurmountable hurdle to learning and teaching beyond discipline boundaries. The risk is one of 'dumbing down' or of achieving breadth at the cost of depth, with graduates not really qualified sufficiently in any of the disciplines.

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[34] By no means is this article an attempt to romanticize interdisciplinarity. Interdisciplinarity has been in discussions and criticized for extended periods and there is no room to explore these challenges again. The aim of this article is to suggest ways to overcome some of these challenges and does so at a time, it is argued, when the transforming context of higher education is ready for such change.

[35] Karri Holley, 'Administering Interdisciplinary Boundaries' in Robert Frodeman, *The Oxford Handbook of Interdisciplinarity* (2nd edn Oxford University Press 2017) 530- 542.

[36] While there is much written about liberal arts education in the USA, not much is available on interdisciplinary pedagogy elsewhere; see: *Oxford Handbook on Interdisciplinarity*, edition 1 and 2, 2010 and 2017 by Robert Frodeman. On Pedagogy, see: Debora De Zure, 'Interdisciplinary Pedagogies in Higher Education' in Robert Frodeman, *The Oxford Handbook on Interdisciplinarity* (2nd edn Oxford University Press 2017), Also: Linda de Greef, Ger Post, Christianne Vink, Lucy Wenting, *Designing Interdisciplinary Education: A Practical Handbook for University Teachers* (Amsterdam University Press 2017).

Enhancements- the benefits of interdisciplinarity

Theoretical

The overarching aspiration of interdisciplinary education is to teach something that is going to matter in students' lives - and this is not just important for graduates' knowledge, skills and social attitude,[37] of widening perspectives,[38] and solving problems, but also equipping them with a sophistication that can been applied after university. The question then must be about what Law as a discipline offers and what students can gain from studying Law. The discipline of Law is difficult to categorise. Yet, there is not much controversy to the fact that it is an analytical discipline, one which creates norms with the aim of applying these norms to people in society. Frequently, students enrol in law programmes with the aspiration to become lawyers. The number of those wanting to become lawyers then decreases throughout their studies. Those who have changed their minds then focus on transferable skills such as enhanced critical thinking and their analytical and problem-solving skills. Law students typically examine questions that are also being investigated in other disciplines, such as Psychology and Business, albeit using different methodologies, concepts and manoeuvring within different frameworks. Continuing the language analogy, an interdisciplinary approach to such questions brings together knowledge and understanding from these other disciplines and can foster a wider perspective and an even more relevant discourse.

A student setting out to study law will have selected their chosen degree on the basis of certain pre-conceived notions. As the current practice of delivering higher education teaching of law is largely designed around subject specific modules, the law student will have that discipline specific, 'internalist' view, on which they base their reasoning and assumptions. In seeing a problem as insiders see it, a student tends to construe its history as a progressive accumulation of 'truths' and separate this 'intellectual core' from the 'social contexts'. An extra-disciplinary viewpoint will challenge and potentially balance this internalist viewpoint, enriching and advancing scholarly debate.[39]

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[37] Sue Noy, Rebecca Patrick, Teresa Capetola, Janine McBurnie, 'Inspiration From the Classroom: A mixed Method Case Study of Interdisciplinary Sustainability Learning in Higher Education' (2017) Australian Journal of Environmental Education Vol 33(2) 97-118, 112.
[38] John Aldrich, *Interdisciplinarity* (Oxford University Press 2014) 19.
[39] Ellen Messer-Davidow 'book reviews' (1992) University of Chicago Press Journals Vol. 17(3), 679.

A similar narrative is constructed around the debate of internationalisation, where it is argued that the benefits are cross-cultural knowledge, including global identity development, global mindsets[40] and skillsets, tolerance and understanding, all of which are seen as employability enhancing competencies as well. The pedagogic value of a diversified student and staff body is the fuel for creativity and a broadened perspective that makes a good lawyer even more convincing.[41] The bottom line is that both interdisciplinarity and internationalisation, allow students to think outside the box, to widen their perspective, and to take on the unfamiliar challenges as well as extract good practice worthy of informing one's own context and complexities.[42] These benefits could enhance the very core of law studies and should be a compelling justification for more interdisciplinary teaching and learning. An example is provided further into this article[43]. Further examples would be experiences from comparative law, which will be discussed further down.[44]

Practical

Drawing on the experience from the author's interdisciplinary law module mentioned earlier, there is a good argument to be made that the interdisciplinary approach enhances learning outcomes for students in the following ways:

Through the integration of knowledge – from students' own discipline with knowledge from two additional disciplines, students synthesize and transfer learning within and beyond their own discipline. The learning is consolidated through addressing real world problems in class. This not only enables students to think contextually and enables complex problem solving (rather than complicated problems). It also helps to widen the vision from academic and theoretical subjects to society at large. No doubt, this will enhance skill and

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[40] Wim den Dekker, *Global Mindset and Cross-Cultural behaviour: Improving Leadership Effectiveness* (Palgrave Macmillan UK 2016), discusses how the mindset of a manager can influence cross-cultural leadership behaviour and intentions.

[41] Stephanie Marshall, Steve Ketteridge, Heather Frey, *A Handbook for Teaching & Learning in Higher Education, Enhancing Common Practice* (4th edition Routledge 2015) 26-42.

[42] Mark William Roche, *Why Choose the Liberal Arts* (University of Notre Dame 2010), 20-22; Veronica Boix Mansilla, 'Interdisciplinary learning: A Cognitive-Epistemological Foundation' in Robert Frodeman, *The Oxford Handbook of Interdisciplinarity* (2nd edition Oxford University Press 2017), 263-265.

[43] See below under '[h]ow is interdisciplinarity helping here'..

[44] See below under '[w]hat has this to do with comparative law'.

ability, be it through a calibrated skills set for those students going into the profession or those pursuing a non-professional career.[45]

Members of the law school and colleagues from other faculties collaborate closely in module design, module delivery and module assessment. Though some scholars argue that collaboration is not an essential characteristic of interdisciplinarity, in this module pilot it is certainly imperative for the success.

How is interdisciplinarity helping here

It is argued that the interdisciplinary approach to teaching and learning about equality and diversity is giving students refined problem solving skills and the ability to tackle more comprehensively complex contemporary and unresolved issues through a wider range of important and relevant insights. It is argued thus that the interdisciplinary approach is enabling students to look more critically at what the law chooses to protect and the ways in which laws are drafted and applied. The following snapshots might explain this further.

As good as the law may be in preventing and penalizing inequality, and also in encouraging substantive equality, it is sometimes impossible to achieve a legal remedy. Cases around 'intersectionality' and 'sizeism' (weight based and size based bias), and group rights, such as dress codes are such unresolved legal issues. In dress code cases, the legal framework is clear, but the remedy does not, or cannot function effectively due to external factors. Further examples of insufficient remedy are cases of discrimination, which the victim has concealed to protect wellbeing, promotion, or for fear of being exposed or victimized. Another example would be an organization that erroneously uses its designed in-house diversity structures as indicators of its effective diversity efforts, even though these structures might not actually achieve equality and diversity.

In an era in which positive action and positive duties are on the increase to bring about transformative equality, what is needed is to be informed. This information must include ways in which disadvantage is created, maintained and perpetrated. That crucial bit of information may well lie outside the boundaries of discipline-specific information and may require diving into the wider context. The psychological perspective is a particularly valuable one here: emotion, cognition, motivation and identity need to be understood, as

[45] Janet Weinstein, 'Coming of Age: Recognizing the Importance of Interdisciplinary Education in Law Practice' (1999) Washington Law Review Vol 74(2) 319-366, 325.

well as inter-group behaviour that results in prejudice, stereotyping and discrimination.

Furthermore, if the law has designed effective mechanisms to enhance equality and diversity for organisations, what is required is an additional step to ensure that the implementation of these mechanisms is undertaken effectively, to avoid the illusion of equality and transformation. If this is not ensured on an organizational level, the law is ineffective. Students on the interdisciplinary module would problematize how this sits with the purpose and aim of the law and how the law is applied.

Students critically analyse what the law chooses to protect and that the law has not been able to solve these problem areas on its own. Nor can Organisational Studies or Psychology solve these problems on their own. It is argued, that taking an interdisciplinary approach to teaching equality law might help better understand these 'application issues'. By explaining prejudices, mindsets and organizational approaches, context and common ground can be created. Students need an understanding of this wider context to help with the interpretation, application and further development of the law.

Once this common ground transcending the three disciplines is created wider criticality applied to cases such as *Bahl v Law Society*,[46] or *O'Reilly v BBC and another*,[47] might provide new insights into complex problems. In both cases the claimants felt discriminated against on more than one ground, and felt that the unique combination of these grounds were the true reason for their disadvantage. While the claimants succeed at trial – one protected ground was seen as part of the reason why discriminatory treatment was suffered, the judgements did not acknowledge the intersectionality of the protected grounds that resulted in the disadvantage. The remedy therefore did not address the unique circumstance of the discrimination suffered. Transformative equality should aim at eradicating such discrimination based on stereotyping. Interdisciplinary education and training could help, through recognition, with the development of law and application of law in that wider context.

Given the current limitations of the law in England and Wales, which does not offer protection against sizeism or third party harassment in its legal

[46] *Bahl v The Law Society and others* [2004] IRLR 799 CA.
[47] *O'Reilly v BBC & Anor* 2200423/2010 (ET) published 12 January 2011.

framework,[48] this again is an area where an interdisciplinary approach to legal education might enhance the debate. Currently, at EU level, obesity can be recognized as a disability if it has reached such a degree that weight plainly hinders participation in professional life, and in that case the protected ground is 'disability'.[49] However, up to that degree, weight and size are not protected grounds, though clearly cause for bias in society. The interdisciplinary approach provides students with the opportunity to enhance their understanding of bias and stereotyping.

Group rights, with regards to dress codes is also an area of stereotyping and bias, where an interdisciplinary approach to equality might help understand the reality in ways that are very different to the legal issues. The Equality Act 2010 clearly prohibits direct sex discrimination, and dress codes would be unlawful under this provision. Yet, practice shows that with regards to gender discrimination through dress codes the legislative framework is not effective. As the UK government report and UK government response clearly recognize, gender discrimination is not tackled by regulation alone.[50] Interestingly, the Women and Equalities Committee's response includes the recommendation of an awareness campaign that should be extended to include all sixth form and higher education institutions in England. It is in relation to such awareness and understanding of equality that an interdisciplinary approach to education might shift complex legal problems into context wider than the scope of a single discipline.

In equality and discrimination law, some older UK case law has been criticised for reinforcing stereotyping,[51] and this has been replaced by later case law confirming that gender stereotyping is not acceptable.[52] However, when

[48] Equality Act (2010).
[49] Case C-354/13 *Kaltoft v Municipality of Billund*.
[50] House of Commons Petitions Committee and Women Equalities Committee, 'High heels and workplace dress codes', First Joint report of Session 2016-2017, House of Commons 25 January 2017; and House of Commons petitions Committee and women and Equalities Committee, 'High heels and workplace dress codes: Government Response to the First Joint Report of the Petitions Committee and the Women and Equalities Committee of Session 2016-17, house of Commons 21 April 2017.
[51] *Jermiah v Ministry of Defence* [1980]QB87, at 96; *Peake v Automotive Products Ltd* [1978] QB 233,238; However, this could also be seen when the court was identifying or constructing the characteristics of a suitable comparator (as required when exploring whether direct discrimination was given): When determining whether a pregnant woman was discriminated against.
[52] *Hurley v Mustoe* [1981] ICR 490, 496; [1981]IRLR 208, para 20 and *Moybing v Barts and London NHS Trust* [2006]IRLR860.

defining the broad meaning of the vague concept 'less favourable treatment' the courts have again done so along the lines of social habits and entrenched social norms. Thus, the reinforcement of stereotyping is still evident, most recently this can be seen in the UK dress code cases.[53] The rationale for permitting dress codes has been that a conventional image is necessary for commercial reasons,[54] thus siding with the abovementioned stereotypes and prejudices. And when choosing a suitable comparator, the courts have struggled similarly: UK case law does not acknowledge that some terms we use may be socially or culturally constructed.[55] Similar issues appear at European level.[56] The de-contextualised approach to rights ultimately leads to a violation of non-discrimination.[57] It is not in the remit of this article to determine which approach the courts should have taken in their assessing of our everyday equality and diversity issues. The intention is merely to highlight that such decisions are not entirely de-coupled from society and a wider context.

Now some might argue that equality and discrimination law is very different to national doctrinal law, especially subjects like black letter obligations and property law. The doctrinal approach to law, favouring categorical thinking, aims to guarantee neutrality and supports structure.[58] However, it is argued that black letter law too is confronted with, though to a smaller degree, the complexities highlighted above, such as an ever-increasing inequality of parties and an unequal distribution of power. Furthermore, black letter law relies, just as equality law does, on vague standards and concepts which need further interpretation (for example unjust enrichment, good faith, moral standards or community values). As Priel has argued, the neutrality afforded through a purely doctrinal approach is unconvincing: all humans rely on cognitive

[53] *Schmidt v Austicks Bookshops Limited* [1978] ICR 85; [1977] IRLR 360 – no trouser rule for women; *Burrett v West Birmingham Health Authority* [1994] IRLR 7 – requirement for female nurses to wear a cap;
[54] *Smith v Safeways Plc* [1996] ICR 868, 881 C; [1996] IRLR 456, per Peter Givson LJ.
[55] In *Pearce v Governing Body of Mayfield Secondary School* [2001] EWCA Civ 1347. [2002] ICR 198; [2003] IRLR 512, harassment of a teacher because she was a lesbian was not sex discrimination because a gay male teacher would have been treated equally badly. The presumption was that sexual orientation is gender neutral. many would argue otherwise- sexual orientation may be socially or culturally constructed, but that is not reflected in our own case law.
[56] *S.A.S. v France* (43835/11) ECtHR.
[57] Nieminen, Kati, 'Eroding the protection against discrimination: the procedural and de-contextualised approach in S.A.S. v France 2014' (2019) I.J.D.L. 19(2) 69-88.
[58] Dan Priel, 'Two Forms of Formalism' in Andrew Robertson and James Goudkamp *Form and Substance in the Law of Obligations* (Hart 2019), 186.

biases.[59] The human mind is considered a cognitive miser, taking shortcuts and relying on information and experiences collected; it is a process that allows us to navigate the world, helping us to make decisions and in doing so avoiding taxing resources.[60] Any law student, law academic, judge and anyone else working with and within the law is analysing and making decisions along those lines.

Arguably, a doctrinal approach to law is not equipped to deal with vague standards and concepts unless there is opening up to other disciplines, when undertaking interpretation, giving meaning and legal reasoning. Vague standards and concepts exist across all law subjects- whether black letter law or not. Cognitive biases, the selection of relevant information and the selection (or not) from a range of information is something that is not exclusive to subjects such as equality and discrimination law. The theory of the cognitive miser combined with the lack of diversity at judicial level (and in fact at leadership level generally, outside of the legal profession), adds to this complexity.[61] One would question here whether neutrality is at all possible,[62] as the cognitive miser means that all humans are taking shortcuts and relying on information and experiences collected, regardless of intellectual status. Here again, interdisciplinary legal education could provide support, through offering additional exposures and thus broadening the information collected and on which the decision maker might rely.

Cognitive bias is not exclusive to case law or legislation, it is not exclusive to common law or civil law. In legal reasoning there is a plethora of schemes of

[59] *Ibid*, 182.
[60] Susan T Fiske, Shelley E Taylor, *Social Cognition* (Addison-Wesley 1984). See also: Russel Spears, S Alexander Haslam, Ruurd Jansen, 'The effect of cognitive load on social categorization in the category confusion paradigm' (1999) European Journal of Social Psychology, Eur. J. Soc. Psychol. 29, 621.
[61] There are currently 12 justices on the UK Supreme Court all are white. Two justices are female and Lady Hale was the first female president of the UK Supreme Court. The Judicial Diversity Statistics, published on 11 July 2019 by the Lord Chief Justice of England and Wales and the Senior President of Tribunals, shows 32% of judges in the courts and 46% of tribunal judges were women. 23% of Judges in the Court of Appeal and 27% in the High Court were women; 42% of Upper Tribunal Judges were women. BAME representation among judges in court is still lower than the general population. While this is a considerable improvement since 2017, there is still a long way to go.
[62] Here the concept of neural partisanship comes to mind, which is at the root of much practice and many ethical problems. USA on the neutrality crisis, see Dan M Kahan, 'The Supreme court 2010 term, Foreword: Neutral Principles, Motivated Cognition, and some problems from Constitutional Law' (2011) Harvard Law Review, Harv. L. Rev. 125(1) 1, 8 on extrinsic influences and partisan cultural values.

intelligibility and paradigm orientations that students should be aware of. Many of these schemes are only found in works by social science epistemologists. When embracing this reach beyond disciplinary boundaries, the benefit is a wider understanding and higher skill at relevant reasoning. This benefit materialises in any law subject when interpreting terms, giving meaning to values and concepts, and reasoning. And it is a gain regardless of whether students enter the legal profession or any other non-professional environment.

What has this to do with comparative law

It is striking how the current debate around interdisciplinarity and the historic debate about comparative law have some similarities, and it is worth highlighting how comparative law has developed into a significant activity through the increased collaboration of academics working in jurisdictions other than those they were taught and are researching in. In fact, an interdisciplinary approach is vital, because of the importance of methodology and epistemology, and of course the different cultural contexts.[63] The analogy is seen as suited for Interdisciplinarity as it matches the demonstrated practice of collaborating with colleagues from the Business School and Psychology. When looking closer there are further parallels between interdisciplinary and comparative law.

Comparative Law, at least in the past, has been critiqued as something non-existent, lacking specificity, lacking tradition and history, lacking guidance on methodology.[64] Comparative law is, just as is interdisciplinarity, an intellectual activity and has comparison as its process.[65] However, these days, within comparative law there is a strong argument that 'learning cannot be cabined'[66], just as this article argues with regards interdisciplinary teaching. Furthermore,

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[63] Pierre Legrand, 'The same and the different' in Pierre Legrand and Roderick Munday (eds), *Comparative Legal Studies: Traditions and Transitions* (Cambridge University Press 2003) 240, 302. Annelise Riles, 'Introduction: The Projects of Comparison' in Annelise Riles, *Rethinking the Masters of Comparative Law* (Hart 2001) 1, 3. Geoffrey Samuel, *Rethinking Legal Reasoning* (Edward Elgar 2018).

[64] More in Peter de Cruz, *Comparative law in a Changing World* (3rd edn 2007 Routledge-Cavendish), 1-3 and also Ran Hirshl, *Comparative Matters: The Renaissance of Comparative Constitutional Law* (Oxford University Press 2014) Vicki Jackson, *Constitutional Engagement in Transnational Era* (Oxford University Press 2010), and in connection with that the book review by Melissa A Waters in *The American Journal of Comparative Law* (2011), vol 59, 602- 608 as well as Victor F Comella, in *The European Constitutional Law Review* (2011), Vol 7(3), 2011, 517.

[65] Konrad Zweigert, Hein Kötz, *An Introduction to Comparative Law*, (Translated by Tony Weir, Clarendon 1977) p. 2.

[66] Vicki Jackson, *op cit*, 280.

normative questions in law, as was argued further up with regards to the law in context, or the beauty of law in its application, can and should be analysed related to other ethical and social science perspectives.[67] Again, the reasoning and justification of comparative law is applicable and convincing. interdisciplinarity strives to achieve this too.[68]

A core challenge to comparative law is the methodological approach to comparison, and the methods chosen differ, language barriers, linguistic details or cultural aptitude pose additional hurdles. In fact, it has been argued that the marginalisation of comparative law in the past was due to its lack of methodological reflection and a lack of theory.[69] A big gap was filled with a single work dedicated to comparative law methodology, drawing on many years of comparative law teaching.[70] It appears that these methods are still varied, yet there is acceptance that the 'otherness' should be embraced and seen in context[71] - in fact, quite like interdisciplinarity, which aims to include the wider context in the normative analysis too. Comparative law methods caution sensitivity, avoiding imposition of one tradition over another- some have termed this avoiding legal imperialism.[72] And it seems further that comparative law has grown in its acceptance despite differing views on methodological approaches. Indeed, comparative law has grown to be a strong analytical activity with exceptional legal authority.[73] What has crystallised are clear and

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[67] Christopher McCrudden, 'Legal Research and the Social Science' (2006) Law Quarterly Review L.Q.R. 122, 632.

[68] A convincing case is made by Shraya Atrey, *Intersectional Discrimination* (Oxford University Press 2019), when arguing for a distinct category of intersectional discrimination, when she argues that disadvantage must be understood in the context, at p.211.

[69] Mitchel De S.O.-L. Lasser, 'The question of understanding' in Pierre Legrand and Roderick Munday (eds), *Comparative Legal Studies: Traditions and Transitions*, (Cambridge University Press, 2003) 197.

[70] Samuel, Geoffrey, *An Introduction to Comparative Law Theory and Method* (Hart 2014).

[71] See John Bell, 'Legal Research and the Distinctiveness of Comparative Law' in Mark von Hoecke (ed), *Methodologies of Legal Research – What Kind of Method for What Kind of Discipline* (Hart 2011) 170; Though even this is contested: while some comparative lawyers would insist comparative law must be seen and understood in context, other would argue that legal transplants are insulated from social and economic context; see: Allan Watson, 'The Evolution of Law- The Roman System of Contracts' (1984) Law and History Review and 'The Evolution of Law continued' (1987) in Law and History Review.

[72] Samuel, G, n 6.

[73] To name just a few: Geoffrey Samuel, Konrad Zweigert and Hein Kötz *An Introduction to Comparative Law*, (1998); Pierre Legrand, in Pierre Legrand and Roderick Munday (eds), *Comparative Legal Studies: Traditions and Transitions*, 2003'; Reinhard

convincing objectives, such as depth, the ability to see things relatively, and a dialectic between the domestic and the foreign[74]. Additionally, comparative law can allow the student to analyse the interaction between different disciplines and relate these to legal rules.[75] Here too we see a similar rationale in interdisciplinary education as mentioned above.

However, an already crowded undergraduate curriculum and the danger of attempting these 'academic stunts' without a robust knowledge base were seen as insurmountable barriers.[76] These are the same arguments used against interdisciplinary learning and teaching. Yet, some UK universities would argue that comparative law has been a cornerstone of legal studies for many years.[77] Having said that, comparative law has established itself as powerful and respected scholarship and there is much that can be learned to further interdisciplinary learning and teaching.

Conclusion

This article is not about whether we are learning and teaching law the wrong way. It is not about right or wrong. The argument is about how we might enhance legal education and how we might strengthen its credibility.

While interdisciplinarity has been viewed as the outcast, it is gaining momentum, even if this is currently happening outside Europe. Granted, in the UK there is a lack of interdisciplinary tradition and a lack of literature on

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Zimmermann, and Matthias Reimann, in Frodeman *The Oxford Handbook of Comparative Law* (Oxford University Press 2012) – with contributions from over 40 academics from around the world. Matthias Siems, *Comparative Law* (2nd edn Law in Context Cambridge University Press 2014)- leading the reader to a deeper and more interdisciplinary perspective.

[74] Jacques Vanderlinden, 'Book Review Geoffrey Samuel An Introduction to Comparative Law and Theory' (2015) Journal of Civil Law Studies, Vol. 8(1) Article 18 355, 363.

[75] Peter Cruz, *Comparative Law in a changing World* (2nd edn Routledge-Cavendish 1999) 19.

[76] Angelique Chettiparamb, 'Interdisciplinarity: a literature review' The Higher Education Academy Interdisciplinary Teaching and Learning Group 2007, 9-10.

[77] LSE's law department argues this has been the case since Professor Otto Kahn-Freund joined their law faculty in the 1930s, see http://www.lse.ac.uk/law/research/comparative-law, accessed on 21 January 2020. Professor Rene David, a French Professor of law and chair of the University of Paris, then professor at the University of Aix en Provence and as one of the key representatives in the field of comparative law, lectured at Cambridge, the University of Columbia, Ludwig Maximilian University in Munich and the University of Teheran. Alan Watson, was an authority in comparative law and created the term 'legal transplants' in 1974 has lectured in at many European universities and in the US.

interdisciplinarity. Progress here is hampered by vagueness and ambiguity with regards to its method, namely effective synthesis and integration. What is imperative is a guide to methodology and integration, as well as critical analysis of the processes. This might aid its cultivation and institutionalisation. For the student of an interdisciplinary module, a mature knowledge base is essential, at least in one discipline, to avoid shallow learning, sacrificing depth and academic rigour. If attempted with more experienced students, in an organised and planned way with clearly designed goals and intended learning outcomes (and aligned assessment of these), law schools could secure long-term educational value and students would benefit from additional gain. In the very least, interdisciplinarity advances the legal mind and supports meaningful reasoning. This way, we, as legal educators, are doing justice not just at a discipline level (Law) but also a moral level (what students really need irrespective of whether they enter the legal profession or not). However, as the challenges are not just about content, but also form, interdisciplinarity has much work to do on mapping out a clear methodology, not least regarding which notions or concepts require an interdisciplinary approach, and how we should integrate external notions and concepts to avoid just borrowing them. In fact, what is needed is a single introductory work to method and methodology in interdisciplinarity. This would enhance credibility, since academia thrives on theory and critique, and it would support interdisciplinarity in its manifestation as an activity and process to legal analysis with practical relevance. Indeed, Law's relevance and beauty is also its application within society and tackling our everyday complex problems. For this, we need to understand more and look beyond our discipline for a wider perspective and do so with enhanced authority - let's cast the net wider and enrich the curriculum.

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How global should legal education be? Recommendations based on the compulsory teaching in international aspects taught at Swiss law schools

Andreas R. Ziegler*

Abstract

International aspects play an immense role in the work of most lawyers today. Accordingly, knowledge of how to deal with these aspects is of fundamental importance for the goal-oriented and high-quality training of lawyers. Ideally, these aspects should always be an essential part of the training, but this is only possible if sufficient basic knowledge and skills are guaranteed. The main finding of this article is that most universities (in Switzerland - and this probably applies elsewhere) offer a good choice of courses covering international aspects of law but do not ensure that all their students get the minimum necessary. In addition, the language skills so necessary on the (Swiss) job market are too often left to the student and not guaranteed by the university when delivering a degree. A third finding is that it is not easy for students to find out which universities are more diligent regarding the adequate teaching of international aspects. Without a thorough introduction to the basic foundations and the skills necessary to find and apply non-domestic sources legal education in all areas of law is inadequate.

Keywords: Education, lawyers, international law, European law, languages, Switzerland.

Part I: Introduction

International aspects or the international dimension play an immense role in the work of most lawyers today. Accordingly, knowledge of how to deal with these aspects is of fundamental importance for the goal-oriented and high-

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quality training of lawyers. Ideally, these aspects should always be taken into account in the training, but this is normally only possible if enough basic knowledge and skills have been taught beforehand. The purpose of this article is to inquire whether as of today international aspects are sufficiently taken into account in legal education (in Switzerland) and whether universities guarantee the teaching of the necessary knowledge and skills as required by individual employers and current challenges for society as a whole. The results will be used to formulate recommendations that could be used to assess law schools and programmes in Europe and beyond.

In Switzerland, as in many small open economies, traditionally[1] more emphasis has been (and in some cases still is) placed on this part of the training (Part II). Nevertheless, there are immense differences between the content and skills ('skills') taught (Part III) at the training institutions and in the different programmes (Part IV).[2] There is certainly no common Swiss approach or concept. Sat the same time, this seems not too different from other countries – but seems more disturbing in Europe in view of political and legal developments. Certain institutions in Switzerland (and elsewhere) should urgently reconsider their minimum requirements and the purely optional character of most of the respective offer (Part V).

The question dealt with in this article is of course not new. For at least one hundred years, lawyers have struggled with the question of how much time should be allowed to teach foreign and international law.[3] There are also (very

[1] See Andreas R. Ziegler, 'Von den Anfängen des Unterrichts des internationalen Rechts in der Schweiz' in Franco Lorandi & Daniel Staehelin (eds), *Innovative Recht - Festschrift für Ivo Schwander* (Zürich 2011) 125and Andreas R. Ziegler, 'Die Entwicklung der Völkerrechtslehre und -wissenschaft in der Schweiz – eine Übersicht' [2016] SZIER 21.

[2] Should you be less interested in the detailed description of the Swiss institutions, you can skip Parts III and IV and should still be able to understand the analysis and recommendations in Part V and the Conclusion (Part VI). I found it important to do justice to the exact differences between institutions to justify may recommendations and think this could also be important for the historic analysis of the (hopefully positive) developments with regard to the teaching if international aspects of law (in Switzerland and elsewhere).

[3] See, for example, for other German-speaking countries Rudolf Bernhardt (ed.), *Das internationale Recht in der Juristenausbildung - Materialien einer Kommission der Deutschen Gesellschaft für Völkerrech*t (Heidelberg 1981) or for an empirical analysis Ryan Scoville and Mark Berlin, 'Who Studies International Law? Explaining Cross-National Variation in Compulsory International Legal Education' (2019) 30 EJIL 481. More recently also: Stephan Hobe and Thilo Marauhn, 'Lehre des internationalen Rechts im deutschsprachigen Raum – Herausforderungen und Entwicklungspotentiale' in Stephan Hobe and Thilo Marauhn (eds), *Lehre des internationalen Rechts - zeitgemäß?* (Heidelberg 2017). It contains various contributions on the topic, namely, Stephan Hobe

few) contributions to this in Switzerland (as it is a small country with different traditions due to the various languages spoken in different parts of the country).[4] Of course, this debate has always been a highly political (and emotional) issue where nationalists and cosmopolitans can be played off against each other.[5] However, it is a fact that the general consequences of globalisation and integration are also reflected in the legal reality and that corresponding knowledge is needed especially today.

The questions and recommendations in this article say nothing about whether a legal solution can be better found at the municipal, cantonal, national, European or global level. However, the multi-level system of legislation and its application is an undisputed reality (in Switzerland[6] and elsewhere) that must also be taken into account in the (legal) training.[7] Even if one continues to accept the state as a fundamental building block of the legal system,

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and Thilo Marauhn, 'Lehre des internationalen Rechts im deutschsprachigen Raum – Herausforderungen und Entwicklungspotentiale'; Andrea Hamann, 'Die Lehre des Völkerrechts in Frankreich – Überblick und Beobachtungen'; Lauri Mälksoo, 'Die Lehre des Völkerrechts: ein Blick aus Estland'; Volker Röben, 'Die Lehre des Internationalen Rechts in Großbritannien'. For an older appraisal of the situation in France see 'L'enseignement du Droit international Public en France' [1955] Annuaire Français de Droit International Année 816.

[4] See Luzius Wildhaber, 'Die Bedeutung des Völkerrechts, des Internationalen Privatrechts und der Rechtsvergleichung in der Universitätsausbildung der Juristen in der Schweiz' in Bernhardt (n. 3); with an emphasis on comparative law: Peter V. Kunz, 'Einführung zur Rechtsvergleichung in der Schweiz - Ein bedeutsames juristisches Fachgebiet für Studenten sowie für Praktiker zwischen «notwendigem Übel» sowie «Königsdisziplin»' [2006] recht 37. With regard to the influence of the French tradition in (French-speaking) Switzerland (influenced mostly by legal education in France (and to a much lesser extent in Belgium) there are no important theoretical contributions to my knowledge.

[5] See for example, the use of the ICRC to promote education in international humanitarian law, Etienne Kuster, 'Promoting the Teaching of IHL in Universities: Overview, Successes, and Challenges of the ICRC's Approach' (2018) 9 Journal of International Humanitarian Legal Studies 61.

[6] See, for example, Stephan Breitenmoser and Michel Jutzeler, 'Schengen und Dublin im Mehrebenensystem' in Stephan Breitenmoser *et al*. (eds.), *Schengen und Dublin in der Praxis* (Zürich 2018); Nicolas F. Diebold, *Freizügigkeit im Mehrebenensystem eine Rechtsvergleichung der Liberalisierungsprinzipien im Binnenmarkt-, Aussenwirtschafts- und Europarecht* (Zurich 2016) or Friederike Engler, *Steuerverfassungsrecht im Mehrebenensystem - ein Vergleich des Schutzes vor Besteuerung durch EMRK, Grundrechtecharta und die nationale Grundrechtsordnung* (Baden-Baden 2014).

[7] This article deliberately does not deal with the domestic aspects of this topic (communes, Cantons, Confederation) or general questions of federalism, although it does of course deal systematically and theoretically with analogous questions.

questions of foreign, international, transnational[8] and supranational law cannot be ignored.

This phenomenon may be weaker in large states than in a small state with traditionally intensive relations with foreign countries such as Switzerland.[9] In addition, due to the way the 'Global Community' operates, there are specific issues of soft law or otherwise formally non-binding rules, which are also important in national law, but which can be found even more often at the international level.

Several international and national associations have recalled on various occasions the importance of a sufficient understanding of international aspects in legal education. Among the more international ones, one can mention the International Law Association (ILA, founded in 1873)[10] and the European Law Faculties Association (ELFA). Other organisations interested in the field are certainly the European Society of International Law (ESIL), the European Law Institute (ELI), FIDE (Fédération Internationale pour le Droit Européen) and the recently created Global Network for International Law (a so far informal gathering of national and regional international law associations). A good example is a recent resolution adopted by ELFA in 2019:

> Considering that: … the ongoing process of legal integration both at the regional level and on a world scale raises new challenges for legal educators, and creates new learning needs that must be satisfied by educational institutions; merely national approaches to legal education are insufficient to prepare legal professionals that can meet societal challenges, serve the needs of the public, and render justice under the law; law schools should better prepare law students for their future

[8] The concept of 'transnational law' which tries to overcome the classic distinction between domestic or national law and international law certainly remains very interesting. There were attempts in Switzerland to use it in legal education (in particular by combining foreign and international aspects of the law). As of today, however, it is (no longer) very important in the programmes of Swiss law schools and is therefore not further analysed in this contribution. See, however, apart from the classic Philip Jessup, *Transnational Law* (Yale University Press 1956) also Alfred C. Aman and Carol J. Greenhouse, *Transnational Law* (Carolina 2017).

[9] See, for example, Hans Vogel, *Der Kleinstaat in der Weltpolitik* (Frauenfeld 1979) or Joëlle Kuntz, *La Suisse ou le génie de la dépendance* (Carouge-Genève 2013).

[10] See, in particular, the work of the Committee on Teaching International Law (1998-2010). I presented reports in this respect (e.g. in 2002 and 2010). See 'Committees' (*International Law Association*) <https://www.ila-hq.org/index.php/committees> accessed 8 May 2020.

> roles in European and transnational contexts by deepening their formation in those areas of the law that are vital to operate in such contexts, along with the more traditional legal education imparted during law studies; …
>
> Calls upon its members to: […]1. Educate students who shall have a firm understanding of the complexity of the sources of law in Europe and possess the methodological skills that are required to deal with the multiple normative orders that are integrated in the European dimension. […]3. Duly take into consideration the need to develop those linguistic and terminological capabilities and skills that must be acquired to operate in cross border contexts in Europe and beyond, and that are required to guarantee the respect of human rights.[11]

Another relatively recent resolution of the German Society for International Law (of which many Swiss professors are members)[12] from 2016 is also of particular importance for Switzerland:

> Lawyers today have to face challenges in all areas, not only national and European, but also global and transnational. This has changed the demands on young lawyers, who are expected almost everywhere to be able to work in a system of order that extends from national to European to international and transnational law. Legal training has not kept pace with this development to the full extent.
>
> The German Society for International Law therefore appeals to all those responsible in the German-speaking world to work towards ensuring that the basic elements of International Law, Private International Law and Comparative Law become an integral part of basic legal training. In the in-depth studies, students should also be offered the opportunity to learn international law in foreign-language and interactive form.

[11] See, for example, the 'Resolution adopted at the Annual General Meeting in Turin' (*ELFA,* 11 and 12 April 2019) <https://elfa-edu.org/event/turin-2019/#b1bc8f2aee6683ea3> accessed 8 May 2020.

[12] While some Swiss professor are also members of the *Société française du droit international*, its influence of the latter on the debate in Switzerland is less prominent. See, however, Hamann (n. 3) for the work undertaken by the SFDI.

> Insofar as the universities are able to initiate a corresponding strengthening on their own responsibility, the Society makes this appeal to their bodies. In addition, the Society encourages law schools in the German-speaking world to develop specializations in international law, including qualified courses in English and, if necessary, other languages, and to expand the deaneries with a dean for international affairs if necessary.[13]

Part II: Relevant institutions and programmes

Institutions

The following educational institutions have been taken into account for Switzerland: all universities with a law school or faculty (Basel, Bern, Fribourg, Geneva, Lausanne, Lucerne, Neuchâtel, St. Gallen, Zurich), the only distance-learning university of Switzerland offering a law programme (Fernstudien Schweiz/UniDistance) and the accredited universities of applied sciences offering a law-oriented programme (Zurich University of Applied Sciences - ZHAW, HES SO-HEG Arc, Private University of Applied Sciences Kalaidos).

These institutions all offer relevant courses to prepare students for mostly legal activities. No mention is made of other programmes that contain (international) legal components but cannot be classified as legal (especially in the fields of economics, political sciences or administrative sciences or technically oriented courses). The (very extensive) international law courses offered by the Graduate Institute of International and Development Studies (IHEID, Geneva), a higher education institution pursuant to the relevant Swiss legislation[14], will

[13] Translation of the German text by the author. On 16 March 2016, the DGIR organized a conference at the University of Cologne under the title: 'Teaching International Law - Contemporary? (translation by this author) on the topic of training and teaching in international law. The participants adopted the 'Resolution einstimmig verabschiedet von den Teilnehmerinnen und Teilnehmern der Konferenz 'Lehre des internationalen Rechts – zeitgemäß?'' (*DGIR*) <http://www.dgfir.de/veranstaltungen/archiv/lehre-des-internationalen-rechts-zeitgemaess/> accessed 8 May 2020. For older recommendations by this association Hobe and Marauhn (n. 3).

[14] Federal Law on the Promotion and Co-ordination of Higher Education (Bundesgesetz über die Förderung der Hochschulen und die Koordination im schweizerischen Hochschulbereich - Hochschulförderungs- und -koordinationsgesetz, HFKG, SR 414.20).

therefore not be discussed either, since, in particular, it offers no bachelor's programme in law.[15]

Programmes

The main focus is on the classic main programmes *Bachelor of Law* (180 ECTS, BLaw)[16] and *Master of Law* (90 ECTS, MLaw), which are still chosen by most students (as they normally offer the direct access to the bar exam and thereby indirectly to most of the regulated legal professions). Wherever possible, it is also indicated in which study section the courses are offered and how. In particular, the information on the division between exercises and lectures or the exact number of attendance hours or semester hours per week is only indicative, since in practice there is often a great deal of flexibility for the teachers.[17] So far there are no specialisations in international law available at Bachelor level, as it is for example the case in France.[18]

Where relevant, however, alternative programmes are also mentioned, in particular Bachelor of Arts (180 ECTS, BA), Master of Arts (180 ECTS, MA) and Bachelor of Science (180 ECTS, BSc), Master of Science (180 ECTS; MSc) programmes in law or law and economics (Law and Economics) at universities and universities of applied sciences[19], especially if this basic

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[15] See 'Master and PhD Programmes, (*Graduate Institute Geneva*) <https://graduateinstitute.ch/Master-PhD> accessed 8 May 2020. However, it may happen that, for example, an applicant with a BLaw from a Swiss university and a MIL IHEID is admitted to the bar exam, since other universities often also grant full freedom of choice for their MLaw. However, this will not be discussed further here, as in this case at least a broad education in international law would be guaranteed (possibly not to the full extent, as far as private and European Law aspects are concerned).

[16] See Art. 3 of the respective law (Verordnung des Hochschulrates über die Koordination der Lehre an den Schweizer Hochschulen vom 29. November 2019, SR 414.205.1): The universities and other institutions of higher education in Switzerland apply the European system for the transfer and accumulation of credits (ECTS). They award credits for verified study achievements. A credit corresponds to a workload of 25-30 hours (translation by this author).

[17] See the attempt of a comprehensive (but not completely correct and already outdated) representation in Sethe (Fn. 2), 37-38.

[18] See for example the 'Licence Droit, parcours international' available at the Université de Pars (Saclay): 'Ce parcours … a pour ambition de former des juristes accomplis, dont les compétences sont strictement équivalentes à celles des étudiants de la licence générale, mais présentant une spécificité par leur ouverture internationale marquée.' 'Licence Droit, parcours international' (*UVSQ*) <http://www.uvsq.fr/licence-droit-parcours-international-342003.kjsp> accessed 8 May 2020.

[19] See on this topic Article 11 of the relevant law (Verordnung des Hochschulrates über die Koordination der Lehre an den Schweizer Hochschulen vom 29. November 2019, SR

education (Bachelor) is intended to guarantee access to advanced classical legal education (MLaw) and regulated activities (lawyer, judge, notary etc.). In particular, the numerous post-graduate courses (especially CAS, DAS, MAS) are not discussed.

Part III: Relevant compulsory subjects

Only those subjects that are actually compulsory will be credited (compulsory courses). In fact, the larger faculties in Switzerland in particular usually have an impressive range of optional courses in this area. However, it can be seen that it is mostly only offered as an option in the already very freely designed area of specialisation (especially at Master's level). Thus, it cannot be guaranteed that the graduate has been effectively trained in the respective areas. Often it is very few students who are particularly interested in working in Switzerland or those from abroad (in exchange or here for a Master's degree) who take these courses in large numbers. For the sake of completeness, however, a cursory reference is made to these courses (options, electives that can be avoided altogether). The same applies to foreign language courses, which are also offered quite extensively but are still rarely compulsory, which means that they can be (and in reality, will be) easily avoided.

For the following comparison, some disciplines were taken as particularly relevant: Public International law, European Law, Comparative Law (and special comparative law subjects such as Comparative Private Law, Comparative Constitutional Law etc.) and foreign languages.[20]

Public international law

In Switzerland, Public International Law is usually taught in a separate course and not as an integrated part of public law or general teachings.[21] It should be noted, however, that parts of it can already be covered in other courses during

414.205.1). At this point, we will not go into more detail about the recognition or transfer to a university master's programme (MLaw) with a bachelor's degree from a university of applied sciences, unless questions of compulsory instruction in international aspects of law play a major role here.

[20] In fact, this represents a simplification, because international aspects can of course already be dealt with in other subjects. However, in the compulsory basic training this is the exception (especially with the exception of international human rights protection in public law or certain aspects of the introduction to law).

[21] See on the development of the education in international law in Switzerland: Ziegler (n.1). For a very general overview on other countries see Hobe and Marauhn (n. 2).

basic training. A particularly good example of this is the fact that the protection of fundamental rights (usually in compulsory lectures on constitutional law) can hardly be taught meaningfully without references to international and regional (European) law (especially ECHR). Nevertheless, in the following presentation, we will refrain from examining the compulsory lectures in public law as to what extent they deal with international sources (especially in the protection of fundamental rights).

European law

In addition, the present study includes European law,[22] which is closely related to the law of the European Union (EU) and is also partly combined with bilateral legal relations. Switzerland is a third country. Only rarely are sources from other European organisations (especially the Council of Europe or EFTA) dealt with.[23]

Private International Law (and International Civil Procedure Law)

Furthermore, there is a long tradition in this country of teaching certain international aspects of private law (in particular conflict of laws) in separate lectures under the title Private International Law, possibly with special mention of aspects of procedural law (International Civil Procedure Law).[24]

Comparative law

Comparative law has also traditionally played an important role in Switzerland in order to better identify the supranational context and possible conflicts between state legal systems.[25] Most of the lessons are either based on a more theoretical approach (comparative law, in particular with references to private law) or directly oriented towards a specific field of law (especially comparative constitutional law in addition to comparative private law). Increasingly, there is also a return to thematic teaching combining international, European and comparative aspects, as was often the case in the early days of institutionalised

[22] See the development of teaching of European law in Switzerland, Ziegler (n. 1).
[23] See for characterisation and delimitation the common textbooks on European Law for Switzerland, e.g. Matthias Oesch, *Europarecht. Band I: Grundlagen, Institutionen, Verhältnis Schweiz-EU* (2nd edn, Bern 2019).
[24] See Marc-Philippe Weller, 'Die Lehre des Internationalen Privatrechts im deutschsprachigen Raum – Herausforderungen und Entwicklungspotentiale', in Hobe and Marauhn (n. 2).
[25] See on this topic, in particular, Kunz (n. 4).

research in this field.[26] However, this is rarely or never the case in Switzerland, at least in basic training or in compulsory education. It is rare to find compulsory lectures on important special areas such as international criminal law, international tax law, etc., already at this level.[27]

If we take the modern university education of lawyers in Switzerland since the 19th century as a basis, these aspects were fundamentally recognised in the small state of Switzerland from the very beginning. In the development of domestic law, a respectable level of comparative law has been achieved, which has been at least partially incorporated into the training of lawyers, initially in private law in particular, and later also in public law (including criminal law). With the completion of the fundamental codifications, however, a reduction, even impoverishment, could be observed in many places in this area, which was advocated in particular by the representatives of practice-oriented training. The possibility of temporary training abroad (exchange programs, postgraduate programs, joint training courses) could only counteract the consequences of this tendency to a limited extent. In private law, Roman law (and the history of law) played an important role for a long time in tracing current institutions and norms back to common classical predecessors. However, this will not be discussed further in this paper.[28]

Foreign languages (in particular legal terminology)

A specific issue in many training courses is the extent to which foreign language skills need to be promoted. Although this is often welcomed in principle, the question of whether specific courses (specialist terminology) must be offered and whether these are recognised as academic achievements is usually very controversial. In the following, the stock of such forms of

[26] For examples in Germany see the Kaiser-Wilhelm-Institut für ausländisches öffentliches Recht und Völkerrech, Berlin (founded 1924), the Kaiser-Wilhelm-Institut für ausländisches und internationales Privatrecht, Berlin (founded 1926) or the academic journal 'International and Comparative Law Quarterly' (founded 1952). The Swiss Institute of Comparative Law (SIR) in Lausanne is a documentation and research centre for comparative law, foreign and international law (Art. 2 Bundesgesetz über das Schweizerische Institut für Rechtsvergleichung (SIRG) vom 28. September 2018 SR 425.1).

[27] Where this is exceptionally the case, however, it will be pointed out below.

[28] In addition to the general discussion on the role of Roman law (and on an obligatory course, possibly even with knowledge of Latin), an optional course at the University of Lausanne should be mentioned here. Professor Hansjörg Peter teaches there a course under the title 'Fondements communs du droit européen' (4 ECTS) at Bachelor level, which is offered in addition to the compulsory lessons in Roman law and history of law.

instruction will be listed, since the question is particularly relevant for Switzerland on the one hand because of its multilingualism and, in addition, access to foreign and supranational law without a certain foreign language (especially English) is no longer easily possible today. The fact that technological tools could change the situation even more in the future (Legal Tech) does not in itself mean that language skills do not remain essential for understanding and actively participating in legal developments.

Specific international aspects of domestic law

A particular problem is that the acquisition of international aspects of law abroad is in principle very desirable and positive. However, it does not guarantee an understanding of how exactly the Swiss legal system deals with international law or European law (rank, direct applicability, consideration of the case law of the European Court of Justice, etc.), or how the Swiss Private International Law or International Civil Procedure Law is presented (e.g. *ordre public* in the case law of the Federal Supreme Court or questions of sufficient domestic relevance in the recognition of foreign decisions or arbitral awards). This problem will not be discussed in detail here (as it is usually not reflected in the teaching programmes but will be included in the recommendations at the end of this article.

Part IV: State of affairs (academic year 2019/2020)

University of Lausanne (UNIL) – Law School

Compulsory subjects

The most comprehensive compulsory programme in international subjects (20 ECTS) and foreign languages (3 ECTS) of all the institutions examined here is currently offered by the Ecole de droit of the University of Lausanne.[29] Here, three compulsory courses are offered in the Bachelor's programme (BLaw) in the subjects of Public International Law (first year, Droit international public, 6), European law (6 ECTS, 2nd or 3rd year), and Private International Law/Comparative Law (2nd or 3rd year, 8 ECTS). This results in a minimum of 20 ECTS lessons in international subjects with guaranteed completion of the

[29] See 'Faculté de droit, des sciences criminelles et d'administration publique: Plan d'études (BLaw) 2019' (*Université de Lausanne*) <https://www.unil.ch/ecolededroit/fr/home/menuinst/enseignement/bachelor-en-droit/reglements--plans-detudes.html> accessed 8 May 2020.

subjects Public International Law, European Law, Comparative Law and Private International Law.[30]

Foreign languages (in particular legal terminology)

The acquisition of 3 ECTS (1st or 2nd year) in German legal language (Langue juridique allemande) is also compulsory.

Electives (optional subjects)

At Bachelor level a course in Social Law can alternatively be taken in German instead of French. For the Master's programme, as in most law faculties, there is currently still a free choice of courses. Among other things, a specialisation in International and Comparative Law (Droit international et comparé) can be acquired. It is chosen by a large number of foreign students who are denied access to courses focusing on Swiss law. It should also be pointed out that there are still special programmes in German law, but these are mainly used by German students on exchange. There are also English-language continuing education programmes such as an LLM in International Business Law (MAS).

Universität Luzern (UNILU) – Law Faculty

Compulsory subjects

At the University of Lucerne[31], the international subjects 'Public International Law' (4 ECTS in the 2nd semester)[32] and 'European Law' (4 ECTS, in the 3rd semester)[33] are currently prescribed in the Bachelor's programme. A separate subject 'Comparative Law' or a lecture on comparative private law or

[30] See on the development Andreas R Ziegler and Jérome Reymond, 'L'enseignement lausannois du droit international public, de Barbeyrac à nos jours : un exemple de diversification' in Denis Tappy *et al.*, (eds), *300 ans d'enseignement de droit à Lausanne: Mélanges offertes en honneur du Tricentennaire de la Faculté de droit et des sciences criminelles de l'Université de Lausanne* (Zurich 2010).
[31] See 'Fakultät III für Rechtswissenschaft: Studien– und Prüfungsordnung vom 28.9.2016' (*Universität Luzern*) <https://www.unilu.ch/fileadmin/fakultaeten/rf/0_Dekanat_RF/Dok/reglemente/Studien-_und_Pruefungsordnung_2016.pdf> accessed 8 May 2020 and 'Musterstudienplan' (*Universität Luzern*) https://www.unilu.ch/studium/lehrveranstaltungen-pruefungen-reglemente/rf/reglemente/#section=c75058 accessed 8 May 2020.
[32] 'Public International Law' (*Universität Luzern*) <https://vv.unilu.ch/details?code=FS201159> accessed 8 May 2020.
[33] 'European Law' (*Universität Luzern*) <https://vv.unilu.ch/details?code=HS191039> accessed 8 May 2020.

comparative constitutional law is not compulsory, nor is Private International Law. This results in a total of 8 ECTS in international subjects.

Foreign languages (in particular legal terminology)

The compulsory acquisition of legal terminology in a foreign language is no longer required.

Electives (optional subjects)

At Master's level, there is once again complete freedom of choice.[34] Private International Law (5 ECTS) is offered here, but also International Family and Inheritance Law (5 ECTS), an Introduction to the Common Law System (5 ECTS) etc. In addition, a Master's profile 'International Law and Human Rights' is also offered.[35]

Universität Freiburg (UNIFR) – Law Faculty

Compulsory subjects

At the University of Fribourg[36], the Faculty of Law at Bachelor's level (BLaw) requires a course in 'European and Public International Law' amounting to 9 ECTS to be completed in the first year. The courses are offered in German and French (students choose one of them) during two semesters (1st year of study). Private International Law and Comparative Law are not examined at this level.[37]

Foreign languages (in particular legal terminology)

As far as foreign language teaching is concerned, it is possible within the framework of the BLaw to optionally obtain the additional qualification

[34] See § 19 'der Studien- und Prüfungsordnung der Rechtswissenschaftlichen Fakultät der Universität Luzern' (*Universität Luzern*, 28 September 2016) <https://www.unilu.ch/studium/lehrveranstaltungen-pruefungen-reglemente/rf/reglemente/#section=c34921> accessed 8 May 2020.
[35] See 'Masterprogramm' (*Universität Luzern*) <https://www.unilu.ch/studium/lehrveranstaltungen-pruefungen-reglemente/rf/lehrveranstaltungen/#section=c14662> accessed 8 May 2020.
[36] See 'Faculté de droit, Règlement du 28 juin 2006 (Etat le 10 décembre 2018) des études de droit' <https://www3.unifr.ch/apps/legal/fr/document/790199> accessed 8 May 2020.
[37] See 'Programme des cours' (*Université de Fribourg*) <https://www3.unifr.ch/timetable/fr/> accessed 8 May 2020.

'bilingual' by acquiring at least 72 ECTS credits in the second language (German or French) during the Bachelor's programme. This also includes writing a seminar paper in the other language of instruction. Alternatively, an entire examination block and a proseminar paper can be completed in the second language in order to obtain this additional qualification. However, bilingualism is purely optional. Legal English is neither required nor offered at this level.

Electives (optional subjects)

Optionally, an additional qualification in 'European Law' can already be obtained at Bachelor level (BLaw) if the 'Introduction to European Private Law' (4 ECTS) and the course 'Internal Market Law' (4 ECTS) as well as a seminar paper of 3 ECTS on a topic of European Law are completed. At the Master's level, there is a free choice of subjects with the possibility of specialising in European law.[38] In the postgraduate area various international programs are offered.

In addition, the Faculty of Economics and Social Sciences (in cooperation with the Faculty of Law) offers a 'Bachelor of Arts (BA) in Economics and Law Studies'. Students complete two thirds of their studies at the Faculty of Economics and Social Sciences (major subject in 'Management and Economics', 120 ECTS credits) and the remaining third at the Faculty of Law (major minor subject in 'Law', 60 ECTS credits). In accordance with the regulations for students with law as a minor subject, students can compile their own programme at the Faculty of Law during their entire Bachelor's programme. Therefore, there are no compulsory courses in international law. Due to its strong focus on economics, it will only be equated with a BLaw in exceptional cases (with conditions), if an MLaw study or the admission activity for which a BLaw is normally required is pursued.[39]

[38] See 'Faculté de droit, Règlement du 28 juin 2006 (Etat le 10 décembre 2018) des études de droit' (*Université de Fribourg*)
<https://www3.unifr.ch/apps/legal/fr/document/790199> accessed 8 May 2020.
[39] See on this issue the comments on the BLE programme of the University of St. Gallen (Part IV.4), as the university promises to graduates of this programme an access to the bar exams throughout Switzerland.

Universität St. Gallen (UNISG) - Law Department

Compulsory subjects

At the University of St. Gallen[40], 3 ECTS in 'Public International Law' and 3 ECTS in 'European Law' are compulsory in the 5th semester within the framework of the classic BLaw, and in the 6th semester additionally 3 ECTS in 'Private International Law', resulting in a compulsory program of 9 ECTS in international subjects. Comparative law is not offered at this level.

The Law School of the University of St. Gallen also offers a Bachelor of Arts in Law and Economics (BA HSG in Law with Economics, BLE), which, like a BLaw (after completion of the Master's degree), is intended to guarantee access to the legal internship. In this programme, the programme completely dispenses with lectures in international and European law. Only the lecture 'Private International Law' in the 6th semester (3 ECTS) is compulsory.[41]

Foreign languages (in particular legal terminology)

Foreign language teaching is compulsory for all students at the University of St. Gallen during the assessment year (1st year). Since the Law course can only be started in German, 4 ECTS must be acquired in a foreign language. This is not necessarily legal terminology. Within the framework of this compulsory course, the University recommends that prospective lawyers choose the 'English for Law' course.[42] It is also possible to take the course 'Le français du droit' instead.[43]

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[40] 'Curriculum: Die Bachelorausbildung setzt sich aus einem Fachstudium (96 ECTS) und einem Kontextstudium (24 ECTS) zusammen' (*Universität St. Gallen*) <https://www.unisg.ch/de/studium/bachelor/majorrechtswissenschaft/curriculum> accessed 8 May 2020.

[41] As a result, e.g. the only admits these students to their Master Programme if they acquire additional credits in international (Public and Private) and European Law (and other courses). 'Zulassung' (*University of Zurich*) <https://www.ius.uzh.ch/de/studies/general/admission.html> accessed 8 May 2020.

[42] 'Englisch: Ziel der Englischkurse im Assessmentjahr ist es, Ihnen eine Einführung in die Sprache der Wirtschaft und der Wirtschaftswissenschaften zu geben' (*Universität St. Gallen*) <https://www.unisg.ch/de/studium/bachelor/assessmentjahr/curriculum/kontextstudium/Foreign languages (in particular legal terminology)/englisch> accessed 8 May 2020.

[43] *Ibid* at 'Französisch 'La communication professionnelle': Im Mittelpunkt des Kurses steht die spezifische Sprache der Unternehmenswelt'

Electives (optional subjects)

At Master's level, there is a large degree of freedom of choice, with numerous courses being offered and foreign languages can also be used (especially English).[44] In addition, the School of Economics and Political Science (SEPS-HSG) offers a Master's programme in International Law (MIL), which is offered in English. In the Programme Master in Law and Economics (MLE) there is a compulsory Course in 'Public International and European Law' in order to compensate the lack of instruction at the Bachelor Level (BLE). As it is, however, not guaranteed, that students take this Master programme after the BLE, it shall not be counted in this survey.[45]

Universität Bern (UNIBE) – Law Faculty

Compulsory subjects

At the University of Bern, the lecture 'Public Law I: Public Law I: Introduction to Public International Law and Administrative Law' in the 2nd semester also includes a compulsory introduction to Public International Law (4.5 of 9 ECTS).[46] In the third semester, the lecture 'Public Law II: State Organizational Law and Introduction to European Law' is completed, whereby it must again be assumed that only half can be attributed to European Law (1.5 of 3 ECTS). There is no obligatory offer at this level in Private International Law or Comparative law. It can therefore be assumed that there is a compulsory programme of about 6 ECTS in international subjects.

Foreign languages (in particular legal terminology)

There are no compulsory courses in foreign languages.

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[44] 'Pflichtbereich
Der Major Recht sieht Pflichtfächer vor, die von allen Studierenden des Majors zu belegen sind' (*Universität St. Gallen*)
<http://www.unisg.ch/de/studium/bachelor/majorrechtswissenschaft/curriculum/pflichtbereich> accessed 8 May 2020.

[45] University of St. Gallen, Masterprogramme/Graduate Programmes 2019, 93.

[46] See 'Studienplan für das Bachelor-Monoprogramm und das Master-Monoprogramm in Rechtswissenschaft vom 16.10.2014 und Anhänge zum Studienplan für das Bachelor-Monoprogramm und das Master-Monoprogramm in Rechtswissenschaft vom 16. Oktober 2014' (*Universität Bern*, 1 August 2019)
<https://www.rechtswissenschaft.unibe.ch/studium/studienprogramme/bachelor_rechtswissenschaft/index_ger.html> accessed 11 May 2020.

Electives (optional subjects)

At Master's level, there is a large degree of freedom of choice, with numerous courses being offered and foreign languages can also be used.

Universität Zürich (UZH) – Law Faculty

Compulsory subjects

At the University of Zurich, the international subjects are offered in postgraduate studies (2nd and 3rd year of BLaw).[47] The 'Public International Law/European Law' module is spread over 2 semesters and comprises the courses 'Public International Law' (3 ECTS) and 'European Law/Institutions' (3 ECTS). Within the framework of the planned Study Reform 2021 this area should be upgraded from 6 to 9 ECTS.[48] There is a combined module 'Private International Law and Civil Procedure Law' (6 ECTS) which is equally compulsory during the 2nd or 3rd year of the BLaw programme. It would still be requested after the study reform. This means that 12 ECTS are currently available in international subjects, whereas 15 ECTS would be required after the study reform.

Foreign languages (in particular legal terminology)

There is no obligation to learn foreign languages or take courses in foreign languages.

Electives (optional subjects)

A wide range of international subjects is offered, especially at Master's level. There are also numerous postgraduate courses.

[47] 'Bachelorstudium' (*University of Zurich*) <https://www.ius.uzh.ch/de/studies/bachelor.html> accessed 11 May 2020.
[48] 'Bachelor of Law' (*University of Zurich*) <https://www.ius.uzh.ch/de/studies/bologna21/bachelor.html> accessed 11 May 2020.

University de Genève (UNIGE) – Law Faculty

Compulsory subjects

Public International Law (Droit international public, in the 2nd year, 6 ECTS), Private International Law (Droit international privé, 5 ECTS, in the 5th semester) and European law (Droit de l'Union Européenne, 4 ECTS) are compulsory in the 2nd or 3rd year of study. This results in 15 ECTS and compulsory international subjects.[49]

Foreign languages (in particular legal terminology)

At Bachelor's level, a course German Legal Terminology (Allemand juridique, 2 ECTS) is compulsory.[50]

Electives (optional subjects)

Already at Bachelor's level, various special courses in international law (e.g. IHR, International Criminal Law, etc.) but also in comparative private law (e.g. Droit civil Européen: les principes de la responsabilité civile) can be optionally taken. A particularly wide range of international subjects is also offered, particularly at Master's level. In addition, there are numerous further education opportunities at postgraduate level.

University de Neuchâtel (UNINE) – Faculty of Law and Economics

Compulsory subjects

Public International Law (Droit international public, 6 ECTS) is compulsory in the second year of study at the University of Neuchâtel and European Law (Droit européen institutionnel, 6 ECTS) and Private International Law (Droit

[49] 'Plan d'études et horaires des cours' (*University of Geneva*) <https://www.unige.ch/droit/etudiants/programme-et-calendriers/plan-etudes/> accessed 11 May 2020.
[50] 'Baccalauréat universitaire en droit (Bachelor of Laws)' (*University of Geneva*) <http://www.unige.ch/droit/etudes/formation/bachelor.html> accessed 11 May 2020.

international privé, 6 ECTS) in the third year (6th semester). This means that 18 ECTS are guaranteed for international subjects.[51]

Foreign languages (in particular legal terminology)

In the second semester, a course in German Legal Terminology (Terminologie juridique allemande) must also be attended (3 ECTS).

Electives (optional subjects)

Especially at Master's level, a quite attractive range of international subjects is also offered.

Universität Basel (UNIBAS) – Law Faculty

Compulsory subjects

In the 5th semester, a course in Public International and European Law (6 ECTS) is compulsory at the University of Basel. Comparative Law and Private International Law are nor offered nor examined.[52]

Foreign languages (in particular legal terminology)

There is no compulsory education in legal foreign language terminology.

Electives (optional subjects)

Within the framework of the 'Fundamentals of Law', which are designed as elective courses, BLaw students are also offered two courses: 'The major legal systems from the perspective of public law' and 'The major legal systems from the perspective of private law'. However, other courses can also be attended in

[51] 'Bachelor en droit' (*University de Neuchâtel*) <http://www10.unine.ch/descriptifs/faculte-de-droit/bachelors/bachelor-en-droit/> accessed 11 May 2020.

[52] See 'Ordnung für das Bachelorstudium Rechtswissenschaft der Juristischen Fakultät der Universität Basel vom 1. Dezember 2011' (*University of Basel*) <https://www.unibas.ch/dam/Oeffentliche-Dokumente/Rechtserlasse__LegalRegulations/JuristischeFakultaet_FacultyofLaw/Bachelor__Bachelor/446_210_03/446_210_04.pdf and https://ius.unibas.ch/studium/studiengaenge/bachelorstudiengang/pruefungsordnung/> accessed 11 May 2020.

their place. However, a wide range of international subjects is offered, especially at Master's level. [53]

Fernuniversität Schweiz und UniDistance (Brig)

Compulsory subjects

For some years now, the Distance Learning University of Switzerland or UniDistance has also been offering training in law (BLaw in both languages, MLaw so far only in German).**[54]** The Bachelor's degree does not offer independent courses in the international subjects examined here. This is justified by the fact that these aspects are given space in the other courses.[55] Certain universities therefore only admit these bachelor's students with conditions, although it is not guaranteed that this will compensate for the lack of knowledge of international aspects of law.[56] Only at Master's level (which is currently only offered in German) is there a compulsory module.[57]

Foreign languages (in particular legal terminology)

There is no mandatory requirement. At Bachelor's level, students have the opportunity to complete the individual modules of their choice in either German or French. If 60% of the modules are taken in the main language (German or French) and 40% in the second language, the students will receive a Bachelor's degree with the addition 'bilingual'. However, there is no compulsory course.

Electives (optional subjects)

In addition, the optional modules 'Private International Law' (M 05, 10 ECTS) and/or 'European Law' (M 13, 10 ECTS) can be taken at Master's level.

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[53] See Modul: Grundlagen des Rechts (Bachelorstudium: Rechtswissenschaft).
[54] See 'Programme du Bachelor en droit' (*UniDistance.ch*) <https://unidistance.ch/droit/bachelor/modules/> accessed 11 May 2020.
[55] Personal information of the person in charge Prof. Adriano Previtali (25 January 2019).
[56] At the University of Zurich, students with a BLaw from the Fernuniversität Brig are normally admitted to the MLaw UZH with a requirement of 6 ECTS credits (See 'Zulassung Master of Law' (*University of Zurich*) https://www.ius.uzh.ch/de/studies/master/admission.html) accessed 12 May 2020.
[57] 'Master-Studium Recht' (*Bildung-Weiterbildung*) <https://www.ausbildung-weiterbildung.ch/SchuleFrame.aspx?schoolID=2180> accessed 12 May 2020.

Zürcher Fachhochschule – ZHAW (Winterthur)

Compulsory subjects

A 'Bachelor (BSc) in Business Law' is offered at the Zurich University of Applied Sciences (ZHAW = Zürcher Hochschule für Angewandte Wissenschaften).[58] It is sometimes possible to be accepted into an MLaw program of a university with certain conditions (especially University of Lucerne [59]). Other universities credit achievements (e.g. University of Zurich [60] or Neuchâtel[61]). In Winterthur, a course in Public and Private International Law (6 ECTS) is examined in the third semester. In addition, there are also compulsory courses in European Law (6 ECTS) and a course in Anglo-American Law (3 ECTS) in the fourth semester. These are all offered in English only. There is therefore a relevant compulsory programme of 18 ECTS.

Foreign languages (in particular legal terminology)

In addition to the English courses already mentioned, a total of 12 ECTS in Legal English must be completed in the Bachelor's degree (4 courses, 3 ECTS each). In addition, there are compulsory courses in 'Language and Law' (3 ECTS) and 'Communication and Law' (3 ECTS).

Electives (optional subjects)

In the Bachelor's degree, certain elective modules (12 ECTS in total) must be completed. There are options in the relevant subjects (e.g. International Tax Law or 'International Trade and Policy'), but these can also be avoided. Among other things, there is a Master (MSc) in Management and Law.

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[58] 'Modultafel Bachelorstudiengang Wirtschaftsrecht
Vollzeit, ab Herbstsemester 2014' (*ZHAW*)
<https://filestore.sml.zhaw.ch/modultafeln/bachelor/14_modultafel_bl_vz.html> accessed 12 May 2020.

[59] See 'Studien- und Prüfungsordnung StuPO 2016 und Wegleitung Zulassung zum Masterstudium unter Auflage [«Passerelle»]' (*Universität Luzern*)
<https://www.unilu.ch/studium/lehrveranstaltungen-pruefungen-reglemente/rf/reglemente/#section=c34921> accessed 12 May 2020.

[60] 'Zulassung' (*University of Zurich*)
<https://www.ius.uzh.ch/de/studies/general/admission.html> accessed 12 May 2020.

[61] 'Master of Law' (*University de Neuchâtel*)
<https://www.unine.ch/droit/en/home/formations/master.html#cid1da725dc-71a1-4809-b5e9-b7ec7fbf2797> accessed 12 May 2020.

HES-SO – HEG Arc (Neuchâtel)

Compulsory subjects

The University of Applied Sciences of Western Switzerland (HES-SO) also offers a Bachelor of Science in Business Law for French-speaking Switzerland through its HEG Arc (Neuchâtel Berne Law) in Neuchâtel (BSc HES-SO en Droit économique - Business Law - 180 ECTS).[62] In Neuchâtel, for example, this training can also explicitly lead to the recognition of certain achievements in the admission to the BLaw course.[63] Half of the lectures are devoted to legal subjects.[64] In Module 5 two courses (Droit international 1: Droit européen and Droit international 2 : DIP with 2 ECTS each) are internationally oriented (one each in the 1st and 2nd semester). There is also a course Private International Law (Droit international 3: Droit international privé, 2 ECTS) in the 4th semester and a course Common Law (in English - 4 ECTS) also in the 4th semester. In addition, a course Free Movement (Libre circulation, i.e. internal market law of the EU or EU/CH - 1 ECTS) is compulsory in the 3rd semester (part of the module Droit public 2). Totally, 11 ECTS relating to international aspects will be required.

Foreign languages (in particular legal terminology)

There is a relatively strong emphasis on compulsory foreign language training. In the Communication block, Module 2 requires two courses in German (Allemand 1 with 2 ECTS and Allemand 2 with 3 ECTS) and two courses in English (Anglais 1 with 3 ECTS and Anglais 2 with 2 ECTS) (1st and 2nd semester). In addition, there are the courses Legal German (Allemand juridique, 2 ECTS) and Legal English (Anglais juridique, 2 ECTS) in the 3rd semester and a course Commercial English and German (Anglais et allemand commercial, 2 ECTS) in the 4th semester. This means that at least 16 ECTS are dedicated to the foreign language English or the second national language German.

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[62] 'Bachelor of Science HES-SO en Droit économique' (*Haute école spécialisée de Suisse occidentale*) <https://www.hes-so.ch/fr/bachelor-droit-economique-1463.html?theme=T8> accessed 12 May 2020.
[63] *Supra* n.61.
[64] See 'Plan d'études' (*Haute école spécialisée de Suisse occidentale*) <https://www.he-arc.ch/gestion/bachelor-bl> accessed 12 May 2020 and 'Déscriptifs des modules' (*Haute école spécialisée de Suisse occidentale*) <https://www.he-arc.ch/reglementation> accessed 12 May 2020.

Electives (optional subjects)

Some of the options (especially in the 5th and 6th semester) also contain international elements. At the moment no consecutive Master is offered. However, there is an offer within the framework of the continuing education programme for the MAS Fight against economic crime (Lutte contre la criminalité économique).

Kalaidos University of Applied Sciences Switzerland (Zurich)

Compulsory subjects

For some years now, the private Kalaidos University of Applied Sciences Switzerland has also been offering a degree in business law (Bachelor of Science FH in Business Law). While in several courses there seem to be minor elements of international (Private and public law) it seems not justified to establish that there is actual guaranteed instruction in international aspects. Within the framework of 'Case Management in Public Law III' (6 ECTS), however, cases are also dealt with in International Law (2 ECTS).[65]

This institution offers now also a Bachelor in Law (Bachelor of Arts in Law Kalaidos FH, 180 ECTS) and a Master in Law (Master of Arts in Law Kalaidos FH, 90 ECTS).[66] There is no compulsory presence. In the third year of the bachelor's programme, a course in 'International Law' (6 ECTS) is examined, which deals with the basics of both European and Public International Law. Within the framework of 'Case Management in Public Law III' (6 ECTS), cases in Public International Law are also dealt with (2 ECTS), which means that approximately 8 ECTS are devoted to international aspects.[67]

Foreign languages (in particular legal terminology)

There is no mandatory requirement.

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[65] 'Bachelor of Science FH in Wirtschaftsrecht' (*Kalaidos Fachhochschule*) <https://www.kalaidos-fh.ch/de-CH/Prorektorat-Lehre/BBA-WR#fakten> accessed 12 May 2020.
[66] 'Master in Law' (*Kalaidos Fachhochschule*) <https://www.kalaidos-fh.ch/de-CH/Lawschool/Studium/Master-of-Law/> accessed 12 May 2020.
[67] 'Bachelor of Law' (*Kalaidos Fachhochschule*) <https://www.kalaidos-fh.ch/de-CH/Lawschool/Studium/Bachelor-of-Law/Hauptstudium> accessed 12 May 2020.

Electives (optional subjects)

At Master level (Master of Arts in Law Kalaidos FH) further modules on international aspects are offered, currently International Private and Procedural Law (6 ECTS) and International Contract Law (3 ECTS).[68] In addition, specific further education courses (MAS) in (international) tax law are offered.[69]

Part V: Analysis and Recommendations

The following is a personal assessment based on the findings in Part IV and taking into account the general framework presented in Part I. The references and theoretical considerations are limited to the absolutely necessary. The main goal is to stimulate discussion and provide decision makers in Switzerland and elsewhere with ideas.

As outlined in the introduction, globalisation and the current state of society need more understanding of the international aspects of problems and legal solutions available. Climate change, migration, poverty, terrorism, pandemics (like COVID 19) etc. all require international cooperation - or at least a good understanding to what extent domestic solutions are affected by those taken in other countries. This relies on an understanding (concepts, language) of international and foreign law. In addition, universities must teach the skills to (quickly) find the information and assess it. This is best done through a good introduction to the foundations of international, European and comparative law and the respective skills (languages, research tools etc.) and the integration into all other courses in order to apply these skills and understand the specific international aspects of the various areas of law (private law, public law, criminal law etc.). This seems particularly important in the often less developed teaching of public law, most importantly when it comes to administrative law (in the large sense) such as taxation, health law, environmental law, migration law, economic law, financial law etc.

[68] 'Module' (*Kalaidos Fachhochschule*) <https://www.kalaidos-fh.ch/de-CH/Lawschool/Studium/Master-of-Law/Module> accessed 12 May 2020.
[69] 'Weiterbildung - MAS/LL.M.' (*Kalaidos Fachhochschule*) <https://www.kalaidos-fh.ch/de-CH/Lawschool/Weiterbildung/Weiterbildung-MAS-LLM> accessed 12 May 2020.

Overall, the results of the present overview for the compulsory internationally oriented services in traditional legal education (BLaw and MLaw) in Switzerland can be summarised as follows:

There are considerable differences in the compulsory training in international aspects between law graduates in Switzerland

While the University of Lausanne, for example, makes 20 ECTS obligatory in the relevant subjects and 3 ECTS for German legal terminology at the basic level, a BLaw from UniDistance can be obtained without having to do any work in this regard (0 ECTS). At most Swiss-German universities (Basel, Bern, Lucerne, St. Gallen), only 6-9 ECTS in international and European law are offered. With the study reform, Zurich is increasing the number of ECTS to 15, thus catching up with Geneva. Neuchâtel cultivates the French-language tradition with 18 ECTS, while the Fribourg also only offers 9 ECTS (be it in French or German).

Fernstudien Schweiz (the only distance-learning university in the country) offers 10 ECTS, but since these are only obtained at Master's level (which exists only in German), there is a risk of total avoidance when changing university. Thus, both distance learning courses do not provide any guarantee that international aspects have been examined at the BLaw level. The same holds true for the Business Law Education at the private Kalaidos UAS.

There is certainly no common Swiss concept. Certain institutions should urgently reconsider their minimum requirements. On the other hand, the Bachelor's programmes offered by the universities of applied sciences (BA and BSc) are average (BA, Kalaidos UAS) or even belong to the top group (BSc, ZHAW and HES-SO) in terms of internationality.

The universities in French-speaking Switzerland (except Fribourg and UniDistance) generally outperform the German-speaking universities (Basel, Bern, Lucerne, Freiburg, St Gallen Fernstudien Schweiz) while the University of Zurich will be closer to the leaders when it introduces its proposed reform 2021. The timing of the lessons probably plays a rather subordinate role in assessing the number of ECTS and attendance lessons.[70] St. Gallen can close

[70] Though I must admit that teaching at the beginning of legal education involves a lot of conceptual work that could or should be dealt with in more general foundational courses (Methodology, Introduction to Law etc.). This subject should be developed further in future research in this respect.

the gap to the midfield by teaching languages. However, the amount of teaching in the BLE programme is clearly in the lower range.

I would strongly recommend introducing adequate compulsory teachings of international law (public and private) as well as European law during the early years of legal education (Bachelor where applicable). This is the only way to make sure that students understand the challenges and connections in all areas of law while studying them in a more detailed way. In addition, it is the only way to guarantee student mobility (between institutions, programmes, and even university systems) without risking that some students never acquire the necessary skills and tools (as it can even be the case within a system, as shown for Switzerland). It becomes even more dangerous and painful if students move globally and lack the sufficient foundations to understand the legal problems and challenges when studying specialized field of international or foreign law.[71]

The Swiss Society for International Law (SVIR/SSDI)[72], the Swiss Association for European Law (ASDE)[73] and the Swiss Branch of the International Law Association (ILA-Suisse)[74] should urgently address the minimum requirements in this area and make appropriate recommendations to the relevant institutions. This is probably true for many university systems at this stage. The example of the German Society for International Law and its resolutions could serve as examples. At the European Level, the respective organisations like ESIL (European Society of International Law), FIDE (Fédération Internationale Pour Le Droit Européen) or the European Law Institute (ELI) could envisage a common initiative. European Law Faculties Association (ELFA) could play a major role in this respect.[75] and at the international level, the International Law Associations (ILA) has undertaken such efforts in the past. Nowadays the

[71] As I often observe personally when I teach very motivated students at Master level who simply lack the necessary skills to take advantage of the courses offered at this level as their home institutions did not ensure the teaching of the international aspects as outlined in this article.
[72] 'Schweizerische Vereinigung für Internationales Recht
Société suisse de droit international' (*SVIR-SSDI*) <http://www.svir-ssdi.ch/fr/> accessed 12 May 2020.
[73] 'Association suisse pour le droit européen' (*ASDE*) <http://www.asde.ch/> accessed 12 May 2020.
[74] 'International Law Accociation – Swiss Branch' (*Université de Lausanne*) <http://www.ilasuisse.ch> accessed 12 May 2020.
[75] See above Part I on the existing initiatives.

Global Network for International Law, a relatively recent informal body could be a good forum.

Public International and European law is almost always offered at Bachelor level, but as it is not guaranteed certain graduates may miss out completely

International and European law is almost always offered at Bachelor level. Only FernstudienSchweiz/UniDistance does not impart proven knowledge at Bachelor level in this field. The University of St. Gallen also completely dispenses with lectures in 'International and European Law' in its BLE programme (BA HSG in Law with Economics), which, like a BLaw, is supposed to guarantee access to the bar exam. At these institutions, this can very easily lead to students not acquiring any knowledge at all during their education in this field (because, as has been shown, there is no guarantee at Master's level either or they may change institution before the get to the respective compulsory training).

It would therefore be desirable that the University of St. Gallen (BLE programme) and the Distance Learning University Switzerland/UniDistance (Brig) should also teach international and European law at the Bachelor level. Until then, it is recommended that the other universities, when admitting students to the MLaw programme, demand missing knowledge in the form of conditions.

European Systems that have not introduced the option of easily switching institution after obtaining a Bachelor may have more flexibility in this respect. It should be recalled however, that this mobility has many advantages, in particular to allow students to spend more time in another legal system. Therefore, the general introduction of international compulsory courses at Bachelor level certainly ensures a better compatibility and allows students to take advanced courses at Master level.

Private international law is rarely a compulsory subject at Bachelor level

In less than half of the universities in Switzerland, Private International Law is examined as a compulsory subject in the BLaw (3-6 ECTS). On the one hand, there are the purely French-speaking universities (Geneva, Lausanne, and Neuchâtel), and on the other hand, those that aim for an economic orientation (St. Gallen, Zurich). The latter also applies to education at the ZHAW (FH Winterthur) which will be discussed under Point 10.

It would be desirable for international aspects to be built into the Bachelor's degree in private law. This should take into account aspects of IPR and possibly also comparative law. Where this does not take place in a separate course, it should be ensured that compliance with these aspects is reported transparently and verifiably in the existing units.

It seems that this finding is rather common in most university systems and therefore this recommendation could be taken up again by the respective associations at national or international level (in particular ELI and the ILA which are more topical in this respect) but also ESIL, FIDE, ELFA, Global Network for International Law as the understanding of international law involves necessarily the private law aspects.

International Law and European Law are taught in virtually the same way in terms of scope

It can be seen that, despite the later development of European Law into a subject in its own right, teaching today has been able to bring it practically on a par with Public International Law (where these are taught). Often the lessons are combined anyway in a common course (but often with different lecturers). Geneva gives Public International Law slightly more space than European Law (4 as opposed to 6 ECTS) while Berne dedicates only 1.5 ECTS to European Law and 4.5 ECTS to Public International Law.

At least in Switzerland, - but probably also elsewhere, at least in Europe - it may not always be possible to teach Public International Law without covering the regional, i.e. European level. Therefore, it is difficult to draw conclusions on the effectiveness of these combinations. Nevertheless, one can certainly say that it would be appropriate to evaluate whether the understanding of regional structures and mechanisms (i.e. EU, Council of Europe, etc.) is safeguarded in the compulsory teaching. For transparency reasons it may make sense to clearly indicate this in the titles of the courses or at least in the course descriptions.

Comparative Law can easily be avoided

Comparative law is nowhere in Switzerland (any longer) considered to be compulsory except in Lausanne. Even here it is limited to comparative private law, which is certainly also due to the local tradition and the high regard in which the Swiss Institute of Comparative Law (SIR, Lausanne) is held for its long tradition and presence.

German (a second national language) is compulsory (to a small extent) at most French-speaking institutions

At the purely French-speaking universities in Switzerland (with the exception of UniDistance) German legal terminology is taught (to a small extent) (2-3 ECTS). In Fribourg, the indirect effect of bilingualism is emphasized. This is justified in view of the importance of legal writings and case law (which even at the Federal level is not officially translated) in German, the German-speaking part of the country being almost three times the size of the French-speaking part.

Therefore, the French-speaking distance-learning university (UniDistance) should also consider compulsory instruction in German legal terminology at Bachelor level. The teaching of legal terminology in a second national official language should not be seen as an additional obstacle to studying law but as a necessary requirement to understand law.

Similar conclusions may apply to other countries where several official languages are used but obviously this becomes more of a domestic issue, especially when these national languages are not particularly important of international law.

French (a second national language) is not compulsory at any of the German-speaking institutions

At the German-speaking universities (including German-language training in Freiburg), it is not considered necessary to require an obligatory understanding of French legal language. This clearly reflects the size of the language groups in Switzerland, as mentioned under Point 6. In St. Gallen there is a compulsory 4 ECTS in foreign languages. However, it does not have to be French, nor is legal terminology provided. Nevertheless, the University of St. Gallen recommends that you either take the course ‘Le français du droit’ or alternatively ‘English for Law’ as part of this compulsory course.

It would be desirable to ensure an understanding of French-language literature and case law in German-speaking Switzerland as well. Here again, the teaching of legal terminology in a second national official language (even of the minority) should not be seen as an additional obstacle to studying law but as a necessary requirement to understand law.

Again, one can consider this a mostly domestic objective, but here it can in addition be useful to understand documents from international organizations (admittedly less so today than in the past) and other regions (such as French-speaking Africa). Obviously French-speaking countries (e.g. in the framework of the Francophonie) have a particular interest in this respect as it became clear e.g. recently in discussions held at the Global Network for International Law in the Hague (2019).[76]

English or specific English legal terminology is mostly lacking in compulsory training

To date, no university institution in Switzerland requires students to prove their English language skills in order to obtain a BLaw. In St. Gallen there is a compulsory 4 ECTS in foreign languages. However, it does not have to be English, nor is legal terminology mandatory. Nevertheless, the University of St. Gallen recommends that students take either the course 'Le français du droit' or alternatively 'English for Law' as part of this compulsory coursework. The universities of applied sciences offering law programmes in Switzerland (ZHAW and the HES-SO but not Kalaidos, see below Point 10) go much further in this respect by examining specific achievements in 'Legal English' and compulsory lectures in English.

All institutions should consider ensuring that students have a knowledge of Legal English. As for the teaching the teaching the legal terminology in a second national official language, this should not be seen as an additional obstacle to studying law but as a necessary requirement to understand law (in a globalized) world as such.

In the optional area, many (Swiss) institutions stand out with a comprehensive range of foreign language and international courses, but it is not used to assure an overall minimum

Traditionally, the offer of elective courses in Public International Law, European Law and Private International Law is relatively good in Switzerland. Even with regard to comparative law, for example, most traditional law faculties at universities can offer courses (especially the bigger ones). In addition, in recent years an increasing number of continuing education courses (mostly in English) have been developed. At many institutions, these are in

[76] See n. **Error! Bookmark not defined.**.

business law, and in Geneva (and to a lesser extent elsewhere) in international humanitarian law and human rights. The programmes in European law have tended to decline in importance due to the slow development of the institutional relations between Switzerland and the EU.[77]

It would be advisable to make better use of the resources tied up in optional courses, even in the compulsory area, and to ensure that international aspects are guaranteed as a fundamental part of the basic training (Bachelor) of all lawyers. There is a risk, that most resources available are used for a small group of interested students and do not reach most students. This is particularly true when these resources are mostly used for exchange programmes with foreign students and courses taken by students lacking a knowledge of Swiss law. This is not to say that these offers are not important[78], but it seems wasteful not to make sure these offers are also used to assure the understanding of international aspects by those students who will be shaping the domestic legal environment, i.e. judges, prosecutors, attorneys, notaries, and civil servants in general.

Similar problems are known, at least from the neighbouring countries (in particular France and Germany) where international aspects remain somewhat exotic and irrelevant for the examinations organized by the State. While not a new trend, this problem should be addressed again with more vigour.

Alternative legal programmes (universities of applied sciences, economic and social science departments) are much more innovative in introducing offers relevant under international law

As in other areas, legal education in Switzerland is subject to new trends. While the classical education (BLaw and MLaw) still dominates, many universities also offer Bachelor and especially Master programmes with a more interdisciplinary character (especially law with economics). Master programmes with a strongly international character (e.g. MIL St. Gallen or MIL IHEID) are also on the rise here. While these programmes are expanding the range of educational opportunities and thus the educational profiles, the clarity of course decreases at the same time.

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[77] See, for example, Andreas R. Ziegler, 'Die de facto-Mitgliedschaft der Schweiz in der EU: Binnen- und Aussenbeziehungen' (2007) 10 Zeitschrift für Europarechtliche Studien 247.

[78] Certain university systems have even created a business model on this basis, see e.g. for the United Kingdom, Röben (n. 3).

In addition, there are also the offers of universities of applied sciences, which are also new for Switzerland. The question of sufficient training in international aspects of law also arises here. It appears that some programmes are clearly focusing on internationalisation.

This diversity in legal programmes makes it all the more important to analyse the profile of an applicant with regard to the activity he or she wishes to pursue. With regard to admission to the regulated professions (lawyer, notary, public prosecutor, judge etc.) this problem is already known, but will require additional clarification in the coming years. The professional associations (Swiss Society for International Law, Swiss Association for European Law, Swiss Lawyers Association etc.) are invited to become more involved in this area.

The concretisation of international aspects in relation to domestic law is not necessarily addressed

A particular problem is that the international aspects of the law must be specified in concrete terms with regard to their significance for Swiss law. This is not always ensured. On the one hand, this can happen if the reference to the positive law of Switzerland (and in particular the case law of the Federal Supreme Court) is not made in the respective teaching in Switzerland. Furthermore, although the acquisition of international aspects of law abroad is, in principle, highly desirable and positive, it also does not guarantee an understanding of how the Swiss legal system exactly deals with international law or European law (rank, direct applicability, consideration of the case law of the European Court of Justice, etc.), or how the Swiss Private International Law is presented (e.g. *ordre public* in the case law of the Federal Supreme Court or questions of sufficient internal reference in the recognition of foreign decisions or arbitral awards).

It must be ensured that the international aspects are concretized in relation to Swiss law. The training institutions must ensure that this problem is taken into account in teaching and in the recognition of services provided abroad. Here the example of Germany, where the international and European aspects and their interrelations ship with German Law are usually only taught in a compulsory course as a continuation of the teaching of domestic public law (Staatsrecht III)[79] could be used as an inspiration (though it should not replace

[79] See Hobe and Marauhn (n. 3).

the more comprehensive compulsory teaching of international aspects as it is currently the case in Switzerland).

Quality and transparency with regard to international aspects, or even a conceptual approach, are not guaranteed

Traditionally, Switzerland (and rightly so) places great emphasis on academic freedom. In the case of traditional universities, the quality of teaching was normally assured by reputation and informal peer review and by reputation. Normally, it is the national and international professional associations that are particularly challenged in this respect. The management of the institutions concerned should be interested in ensuring their own quality in this way. Due to the many new actors and new forms of organisation, this is not always possible today.

The Swiss academic associations (especially the Swiss Society for International Law, the Swiss Association for European Law and the Swiss Branch of the ILA) would be well advised to ensure that they are interesting and relevant to all lecturers in the subjects concerned. The universities and the universities of applied sciences should be invited to ensure that the subjects concerned are adequately equipped, with clear responsibilities and transparency. It would be desirable for accredited institutions to develop a concept not only of their training as a whole or for individual courses, but also with regard to the appropriate consideration of international aspects. It could be worthwhile to ensure that national or international accreditation systems of law schools and programmes takes this aspect into due account. Potentially, the development of a label (e.g. by ELFA) could be such a means to increase awareness and transparency.

Part VI: Conclusion

The main finding of this article is that most universities in Switzerland offer enough courses on international aspects of law but do not ensure all their students get the minimum necessary. In addition, the language skills so necessary on the (Swiss) job market are too often left to the student and not guaranteed by the university when delivering a degree. This certainly contributes to the claim that universities do not prepare students well for the actual needs of employers. It is also unfair when no free language education is available at the universities (or elsewhere in the education system).

A third finding is that it is not easy for students to find out which universities are more diligent with regard to the adequate teaching of international aspects. The need for more transparency in this respect and the setting of certain minimum standards is being reinforced by new forms of education (in addition to the Bachelor/Master system, as it originally emerged in Switzerland – and many European Countries - from the Bologna reform) and new institutions (distance universities, universities of applied sciences, etc.). Ideally, the integration of foreign and international (including European) law would take place in all areas today. Such an integrated approach is, however, more difficult to achieve and it will take time before in all courses all levels of regulation can be integrated. Without a thorough introduction to the basic foundations and the skills necessary to find and apply non-domestic sources this can normally not work. This contribution therefore focuses on the existing situation where specific knowledge on the international aspects (or at least the foundations and skills/tools) are taught in separate courses. Personally, I would advocate an accreditation or label that improves awareness and transparency regarding this aspect.

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Resilience and student wellbeing in Higher Education: A theoretical basis for establishing law school responsibilities for helping our students to thrive

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Abstract

There is widespread concern for the mental wellbeing of our students. We argue that, while resisting the neoliberal tendencies that contribute to this, we have a responsibility for helping our students to thrive. Rooted in a theory of positive psychology: self determination theory, we present methods which may help us in this endeavour. These include our approaches to marketing and recruitment, curriculum design, assessment and feedback, experiential learning and developing a safe learning environment. We suggest how addressing these areas of our practice may assist students to develop their competence, and to experience autonomy and relatedness during their programmes of learning. In so doing we provide sources which underpin our arguments and which, we hope, will encourage a debate across European law faculties on this important topic.

Keywords: student wellbeing; self determination theory; neoliberalism; curriculum design; learning methods.

Student Wellbeing

Across most jurisdictions there is an increasing concern for the mental health of students in universities.[1] Research in the UK shows that 'the number of

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[1] Rainer M Holm-Hadulla (ed), Special Issue: Mental Health of Students – National and International Perspectives (2015) 3(1-2) *Mental Health and Prevention;* Ann Macaskill, 'The Mental Health of University Students in the United Kingdom' (2012) 41(4) *British Journal of Guidance & Counselling* 426; Seeta Bhardwa, 'UK's Biggest Student Mental Health Study Launched' (Times Higher Education, 31 July 2017) <https://www.timeshighereducation.com/student/news/uks-biggest-student-mental-health-

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students who disclose a mental health condition to their university has increased dramatically in the past 10 years' and 'between 2007 and 2015, the number of student suicides increased by 79 per cent (from 75 to 134)'.[2]

The issue is receiving attention in continental Europe.[3] Responses to this issue vary. Within Europe, for example, it seems that psychological counselling services are more likely to be available in northern countries, with services in southern countries focussing on specific health issues such as stopping smoking.[4] Whilst this appears to be a growing problem across higher education generally there is research that suggests that it might be worse for law students.[5]

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study-launched> accessed 29 August 2019; Paul Basken, 'US Campuses Report Surge in Student Mental Health Woes' (Times Higher Education, 12 August 2019) <https://www.timeshighereducation.com/news/us-campuses-report-surge-student-mental-health-woes> accessed 29 August 2019; John Ross, 'Australia Plans New Guidelines to Address Student Mental Health' (Times Higher Education, 5 September 2018) <https://www.timeshighereducation.com/news/australia-plans-new-guidelines-address-student-mental-health> accessed 29 August 2019. See also, for example, the Student Mental Health Research Network <https://www.smarten.org.uk/> accessed 16 March 2020; and the work and resources of the UK's student mental health charity - *Student Minds* - which is available at <https://www.studentminds.org.uk/> accessed 16 March 2020. See also for example, Paul Gorczynski et al, 'Examining Mental Health Literacy, Help Seeking Behaviours, and Mental Health Outcomes in UK University Students' (2017) 12(2) *The Journal of Mental Health Training, Education and Practice* 111; Craig Thorley, Not by Degrees: Improving Student Mental Health in the UK's Universities, IPPR.
<www.ippr.org/publications/not-by-degrees> accessed 16 March; Emma Broglia, Abigail Millings and Michael Barkham, 'Challenges to Addressing Student Mental Health in Embedded Counselling Services: A Survey of UK Higher and Further Education Institutions' (2018) 46(4) *British Journal of Guidance & Counselling* 441; Yasuhiro Kotera, Elaine Conway and William Van Gordon, 'Mental Health of UK University Business Students: Relationship with Shame, Motivation and Self-Compassion' (2019) 94(1) *Journal of Education for Business* 11.

[2] Craig Thorley, 'Not By Degrees: Improving Student Mental Health in the UK's Universities' (Institute for Public Policy Research) <https://www.ippr.org/files/2017-09/not-by-degrees-summary-sept-2017-1-.pdf> accessed 29 August 2019.

[3] David De Coninck, Koen Matthijs and Patrick Luyten 'Subjective Well-Being Among First-Year University Students: A Two-Wave Prospective Study in Flanders, Belgium' (2019) 10(1) *Student Success* 33.

[4] Hans-Werner Rückert, 'Students' Mental Health and Psychological Counselling in Europe' (2015) 3(1-2) *Mental Health and Prevention* 34, 36.

[5] See for example, Kennon M Sheldon and Lawrence S Krieger, 'Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being' (2004) 22(2) *Behavioral Sciences and the Law* 261; Kennon M Sheldon and Lawrence S Krieger, 'Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory' (2007) 33(6) *Personality and Social Psychology Bulletin* 883; Lawrence S Krieger, 'The Most Ethical of People, the Least Ethical of People: Proposing Self-Determination Theory to Measure Professional Character Formation' (2011) 8 *University of St. Thomas Law Journal* 168; Lawrence S

Evidence of this comes from the US,[6] Australia[7] and the UK.[8] The extent to which this is true has been contested,[9] and this is an important area for further research, since, if it is true, there will be law-specific concerns and thus approaches to remediation that may be particularly important for law schools to address. For example, Bleasdale and Humphreys found, in a study of students across six disciplines[10] at a prestigious university in the UK, that law students were more likely to see success in terms of achieving the highest possible grades, ideally the highest in the class. By contrast students in other disciplines were more concerned with consistency of performance and being

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Krieger and Kennon M Sheldon, 'What Makes Lawyers Happy? Transcending the Anecdotes with Data from 6200 Lawyers' (2015) 83 *Geo Wash L Rev* 554. See also, Judy Allen and Paula Baron, 'Buttercup Goes to Law School: Student Well-being in Stressed Law Schools' (2004) 29(6) *Alternative Law Journal* 285; Colin James, 'Seeing Things as We Are: Emotional Intelligence and Clinical Legal Education' (2005) 8 *Clinical Legal Education* 123; Martin Seligman, Paul Verkuil and Terry Kang, 'Why Lawyers are Unhappy' (2005) 10(1) *Deakin Law Review* 49; Massimilano Tani and Prue Vines, 'Law Students' Attitudes to Education: Pointers to Depression in the Legal Academy and the Profession?' (2007) 19(1) *Legal Education Review* 3; Kath Hall, 'Do We Really Want to Know? Recognising the Importance of Student Psychological Well-being in Australian Law Schools' (2009) 9 *QUT Journal of Law and Justice* 1; Catherine Leahy et al, 'Distress Levels and Self-Reported Treatment Rates for Medicine, Law, Psychology and Mechanical Engineering Students: Cross-Sectional Study' (2010) 44(7) *Australian and New Zealand Journal of Psychiatry* 608; Kath Hall, Molly Townes O'Brien and Stephen Tang, 'Developing a Professional Identity in Law Schools: A View from Australia' (2010) 4 *Phoenix Law Review* 19; Molly Townes O'Brien, Stephen Tang and Kath Hall, 'No Time to Lose: Negative Impact on Law Student Well-Being May Begin in Year One' (2011) 2(2) *International Journal of the First Year in Higher Education* 49; Molly Townes O'Brien, Stephen Tang and Kath Hall, 'Changing our Thinking: Empirical Research on Law Student Well-Being, Thinking Styles and the Law Curriculum' (2011) 21(2) *Legal Education* Review 149; Natalia Antolak-Saper, Lloyd England and Anthony Lester, 'Health and Well-Being in the First Year: The Law School Experience' (2011) 36(1) *Alternative Law Journal* 47.

[6] Sheldon and Krieger 'Does Legal Education Have Undermining Effects on Law Students?' (n 5) 261; Sheldon and Krieger 'Understanding the Negative Effects of Legal Education' (n 5) 883.

[7] Norm Kelk, et al, *Courting the Blues: Attitudes Towards Depression in Australian Law Students and Lawyers* (Brain & Mind Research Institute, 2009) 42; Catherine Leahy et al (n 5); Townes O'Brien, Tang and Hall, 'Changing our thinking' (n 5).

[8] See for example, Emma Jones, 'Connectivity, Socialisation and Identity Formation: Exploring Mental Wellbeing in Online Distance Learning Law Students' in Caroline Strevens and Rachael Field (eds), *Educating for Well-Being in Law: Positive Professional Identities and Practice* (Routledge, 2019) 103-116.

[9] Christine Parker, 'The "Moral Panic" over Psychological Wellbeing in the Legal Profession: A Personal or Political Ethical Response' (2014) 37 *University of New South Wales Law Journal* 1103.

[10] The other disciplines are biological sciences, geography, mechanical engineering, medicine and music.

thought well of in ways not solely concerned with grades.[11] In spite of this, there is evidence from the UK that undergraduate students across all disciplines have a lower self-perception of well-being than the general population of the same age.[12]

These findings are now well-established, although it would be useful for related work to be undertaken in the UK and Europe.[13] It is clear that, as legal educators, there is a level of responsibility for the mental wellbeing of our students. This is so regardless of the ethical framework we adopt to inform our approach to our work.[14] We have the task of assisting students to undertake major life transitions; for example, from the relatively protected environment of school and home to the independent learning (and often independent living) associated with higher education. A lot has been written and researched about this,[15] but it is worth observing that the years of the undergraduate degree constitute a continuing process of many transitions, as does graduation and the movement into employment, postgraduate education or work experience. This is unique for every student, depending on their economic, social and ethnic background, whether they are studying away from home, in their own first language or as recent school leavers or after a period of work or other life experience.

Transitions in, through and out of law school should be positive and life-affirming processes; providing opportunities to make new friends, to open the mind to new information, perspectives and critiques, and to develop

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[11] Lydia Bleasdale and Sarah Humphreys, 'Identity, Well-Being and Law Students' in Strevens and Field (n 8) 172-188, 181. The full report is at <http://teachingexcellence.leeds.ac.uk/wp-content/uploads/2018/01/LITEbleasdalehumphreys_fullreport_online.pdf> accessed 29 August 2019.

[12] Jonathan Neves and Nick Hillman, *The 2016 Student Academic Experience Survey* (York: Higher 2016, Education Academy) <https://s3.eu-west-2.amazonaws.com/assets.creode.advancehe-document-manager/documents/hea/private/student_academic_experience_survey_2016_hea-hepi_final_version_07_june_16_ws_1568037352.pdf> accessed 16 February 2020.

[13] *Student Minds* (n 1).

[14] See for example, Nigel Duncan, Rachael Field and Caroline Strevens, 'An Ethical Conceptual Framework for the Promotion of Law Student and Lawyer Well-Being.' Paper given at 8th International Legal Ethics Conference, Melbourne, 2018, <http://teachinglegalethics.org/index.php/content/ethical-conceptual-framework-promotion-law-student-and-lawyer-well-being> accessed 30 August 2019.

[15] See, for example, Ann RJ Briggs, Jill Clark and Ian Hall, 'Building Bridges: Understanding Student Transition to University' (2012) 18(1) *Quality in Higher Education* 3.

intellectually and to build curiosity about the world. However, the evidence of increasing mental health problems for university students, and for law students in particular, suggests that too often such transitions prove to be miserable experiences and ones which are ultimately damaging.

Neoliberalism, Accommodationism and Individualisation

Before developing our proposals we should point out a major risk in the discourse that has arisen around student mental health and its corollary, student wellbeing and resilience. That risk is the tendency to individualise responsibility for wellbeing and thus for the causes of mental ill-health. This has been described by Carrette and King as an 'accommodationist orientation'[16] which takes as given the environment and circumstances that individuals encounter and expects each person to find ways of accommodating them. An uncritical acceptance of unsupportive or negative circumstances is extremely damaging as it inhibits critique.

As legal educators we need to address the cultures of the practising profession as many of our students aspire to join that profession. '[T]here appears broad agreement … that powerful connections exist between the shifting cultures and practices of the legal academy and the development of the legal discipline; and that changes in these relations … have consequences not just for legal academics and law students but also for the legal profession'.[17] For example, there is much that can be criticised about the way in which legal professionals are expected to work: a long hours culture, business practices which may undermine the rule of law and, in many workplaces, a failure to address harassment and bullying.[18] As Collier explains: 'economic pressures associated with neoliberalism are producing a reserve army of legal labour, casting the

[16] Jeremy Carrette and Richard King, *Selling Spirituality: The Silent Takeover of Religion* (Routledge 2004) quoted in Ron Purser and David Loy, 'Beyond McMindfulness' (7 January 2013) <https://www.huffpost.com/entry/beyond-mcmindfulness_b_3519289?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&guce_referrer_sig=AQAAAJS0tJbMqntOwIXb3QA6_6n3G1Pm4u-XBXOdTAQwuVWOvuu1GgvCs7eJdyET1h4bn8JsgmJUlvl7ZqHkay6sxFfsqClAF92QX6w0NPn_iaODxrvFvg8AGCKlhqxKb7r9I7JEvRrdQ0TyU7EHlY1KD_pcJr3mt_I6G8ahmv1X-7_N> accessed 29 August 2019.

[17] Richard Collier, '"Love Law, Love Life": Neoliberalism, Wellbeing and Gender in the Legal Profession – the Case of Law School' (2014) 17(2) *Legal Ethics* 202.

[18] Kieran Pender, *Us Too? Bullying and Sexual Harassment in the Legal Profession*, (International Bar Association, 2019) <https://www.ibanet.org/bullying-and-sexual-harassment.aspx> accessed 29 August 2019.

individual as author of her/his own success or failure.'[19] Contemporary legal work culture, resulting from the increasing influence of neoliberal ideology, must be challenged. As Christine Parker puts it: 'It is part of the neoliberal condition to interpret dissatisfaction with our lives in terms of individual troubles to be addressed by medication and personal coping and wellbeing strategies rather than collective political and social action.'[20] Neoliberalism does not only affect the work of legal practitioners, it impacts the work of universities,[21] including law schools,[22] and as a consequence the experience of students. Margaret Thornton condemns the 'neoliberal turn', which she describes as a sharp move to the right in politics, which 'insidiously transformed higher education from a public to a private good',[23] departing from the egalitarian values of social liberalism.[24] We have all experienced this shift towards a commodification of higher education and a marketisation of universities.[25] This produces poorer staff:student ratios, increased student perceptions of themselves as consumers and increased competition for student numbers. All these factors may inhibit our ability to address student mental health and wellbeing.

It is challenging to identify a major source of student mental ill-health to be neoliberalism.[26] It is a foe that appears to be far beyond the reach of us as

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[19] Richard Collier (n 17) 229-30.
[20] Parker (n 9) 1129.
[21] John Smyth, *The Toxic University: Zombie Leadership, Academic Rock Stars and Neoliberal Ideology* (Palgrave Macmillan 2017).
[22] Richard Collier (n 17) 213-214.
[23] Margaret Thornton, 'Law Student Wellbeing: A Neoliberal Conundrum' (2016) 58(2) *Australian Universities Review* 42.
[24] Colin James, 'The Ethics of Wellbeing: Psychological health as the vanguard for sociological change' in Strevens & Field (n 8) 1-13, 2.
[25] See, for example, within a wide literature, Roger Brown and Helen Carasso, *Everything for Sale? The Marketisation of UK Higher Education* (Routledge, 2013).
[26] See, for example, Daniel Saunders, 'The Impact of Neoliberalism on College Students' (2007) 8(5) *Journal of College and Character* 1; Collier (n 17); Margaret Thornton, 'Neoliberal Melancholia: The Case of Feminist Legal Scholarship' (2004) 20(1) *Australian Feminist Law Journal* 7; Margaret Thornton, 'Among the Ruins: Law in the Neo-Liberal Academy' (2001) 20 *Windsor Year Book of Access to Justice* 3; Margaret Thornton, 'The Law School, the Market and the New Knowledge Economy' (2007) 17 *Legal Education Review* 1; Margaret Thornton, *Privatising the Public University: The Case of Law* (Routledge 2011). See also, Colin James, Caroline Strevens, Rachael Field and Claire Wilson, 'Fit Your Own Oxygen Mask First: The Contemporary Neoliberal University and the Wellbeing of Legal Academics' in Judith Marychurch and Adiva Sifris (eds), *Wellness for Law as Core Business* (LexisNexis 2019) and Colin James, Caroline Strevens, Rachael Field and Claire Wilson, 'The Changing World of Legal Education and Law Teachers' Quality of Working Life in Australia and the UK: What Do Law Schools

individuals or as a collective group of legal academics.[27] It is unrealistic to think that we are in a position to prevent this trend. However, we should continue to challenge developments that our research suggests are damaging. Our task as academics is to speak truth to power. We undermine our position ethically if we fail to do so. We do, however, need to recognise that to challenge neoliberalism we need to work collectively, and to do so locally, nationally and internationally, and that there is a political element to this responsibility. We should maintain a reasonable degree of hope. As Colin James has said, 'Since change is the only constant, neoliberalism will pass like other historical phases.'[28] The cracks may already be visible, as suggested by Martin Wolf.[29] There is a part for us to play.

Addressing Student Wellbeing in our Law Schools

Having explored the question of student wellbeing it is appropriate to turn to potential impediments to that wellbeing. Students' circumstances are diverse. They may provide a source of strength that helps students to rise to the challenges of higher education, but they may also be a source of challenges that may impede learning. It means that their experience of the education we provide them differs. We have little influence over their external circumstances, but we can influence what it is they experience when they are at university. This may be best understood in terms of stress, with its potential to have positive or negative consequences. There are many sources of stress that are inherent in the transitions that students go through when entering

Need to Change?' in Janet Chan, Michael Legg and Prue Vines, *The Impact of Technology and Innovation on the Well-Being of the Legal Profession* (Intersentia 2020).

[27] See for example, Henry A Giroux, *Impure Acts* (Taylor and Francis 2000); Henry A Giroux, *Against the Terror of Neoliberalism: Politics Beyond the Age of Greed* (Routledge 2015); Henry A Giroux, *Terror of Neoliberalism: Authoritarianism and the Eclipse of Democracy* (Routledge 2018); Alfredo Saad-Filho, 'Crisis *in* Neoliberalism or Crisis *of* Neoliberalism?' in Alfredo Saad-Filho (ed), *Value and Crisis: Essays on Labour, Money and Contemporary Capitalism* (Brill 2019) 302; Simon Springer, Kean Birch and Julie MacLeavy (eds), *Handbook of Neoliberalism* (Routledge 2016); William Davies, *The Limits of Neoliberalism: Authority, Sovereignty and the Logic of Competition* (Sage 2016); Stuart Hall, Doreen Massey and Michael Rustin, *After Neoliberalism?: The Kilburn Manifesto* (Lawrence & Wishart 2015); David Harvey, *A Brief History of Neoliberalism* (Oxford University Press 2007); Alfredo Saad-Filho and Deborah Johnston, *Neoliberalism: A Critical Reader* (University of Chicago Press 2005); Noam Chomsky, *Profit Over People: Neoliberalism and Global Order* (Seven Stories Press 1999).

[28] James (n 24) 12.

[29] Martin Wolf, 'Why rigged capitalism is damaging liberal democracy' *Financial Times,* 18 September 2019.

university, learning within it and graduating from it.[30] Stress is not necessarily an evil, being often the spur to learning and development. Moderate amounts of stress promote the production of adrenalin, which enables us to perform mentally and physically more effectively.[31] However, when stress becomes excessive a cortisol reaction is promoted, which tends to produce a 'fight or flight' reaction, and inhibits a desirable rational response.[32] As legal academics, we should be creating student experiences that are constructive, designing in developmental demands that encourage growth while minimising unnecessary stress which may inhibit learning.

There are inherent stressors in studying law, such as encountering a new discipline in an unfamiliar environment, facing a summative assessment or, for clinic students, meeting a distressed client.[33] When we identify such inherent stressors we share with our students the responsibility for responding

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[30] See for example, the work of Barbara A Glesner Fines on this point: 'Law School and Stress (Why It's So Hard and What to Do About It)' (1999 University of Missouri — Kansas City School of Law); 'Competition and the Curve' (1996) 65 *University of Missouri Kansas City Law Review* 879; 'Fear and Loathing in the Law School' (1991) 23 *Connecticut Law Review* 627. See also, Barbara A Glesner Fines, 'The Impact of Expectations on Teaching and Learning' (2002) 38 *Gonzaga Law Review* 89; Barbara A Glesner Fines, 'Fundamental Principles and Challenges of Humanizing Legal Education' (2007) 47 *Washburn Law Journal* 313; Barbara A Glesner Fines, 'Three Views of the Academy: Legal Education and the Legal Profession in Transition' (2015) 51 *Tulsa Law Review* 487; Barbara A Glesner Fines, 'Picturing Professionals: The Emergence of a Lawyer's Identity' (2018) 14 *University of St Thomas Law Journal* 437.

[31] See for example, Owen Kelly, *Coping with Stress and Avoiding Burnout: Techniques for Lawyers*, CBA PracticeLink http://www.cba.org/cba/practicelink/bwl/stresscoping.aspx accessed 13 December 2019; American Bar Association, *What is Stress* <https://www.americanbar.org/groups/lawyer_assistance/resources/stress/> accessed 20 April 2020. See also for example, Lorelle Burton, Drew Westen and Robin Kowalskic, *Psychology* (5th ed, John Wiley & Sons 2018) ch 14; Hans Selye, 'History of the Stress Concept' in Leo Goldberger and Shlomo Breznitz (eds), *Handbook of Stress: Theoretical and Clinical Aspects* (2nd ed, Free Press 1993); and George Fink, *Stress Science: Neuroendocrinology* (Academic Press 2010).

[32] Nigel Duncan, 'Addressing Emotions in Preparing Ethical Lawyers' in Paul Maharg and Caroline Maughan (eds), *Affect and Legal Education: Emotion in Learning and Teaching the Law* (Ashgate 2011) 257-282, 274-277; Alan Lerner, 'Using our Brains: What Cognitive Science and Social Psychology Teach us about Teaching Law Students to Make Ethical, Professionally Responsible Choices' (2004) 23 *Quinnipiac Law Review* 643.

[33] Gregory Baker, 'Do You Hear the Knocking at the Door - A Therapeutic Approach to Enriching Clinical Legal Education Comes Calling' (2006) 28 *Whittier Law Review* 379; Adrian Evans et al, *Australian Clinical Legal Education: Designing and Operating a Best Practice Clinical Program in an Australian Law School* (ANU Press 2017); Nigel Duncan, 'Resilience, Positive Motivation and Professional Identity: The Experience of Law Clinic Students Working with Real Clients' in Caroline Strevens and Rachael Field, *Educating for Well-Being in Law: Positive Professional Identities and Practice* (Routledge 2019)

effectively to them and doing what we can to support our students in developing their own responses. At the same time, we need to identify all sources of stress with care, as many arise within the university environment and thus lie within our control. We have a duty to design the law school learning environment bearing in mind its potential to do harm, in order to minimise the risk of stress becoming excessive. This duty applies as much to senior managers as to academics. A balanced perspective on these issues recognises that there are sources of student stress that we can address and where we identify those, we should do what we can to address them, by local, national and international initiatives as appropriate.[34]

Empirical research conducted in America gives some indication of how legal education may have an adverse effect on the psychological wellbeing of law students. As Sheldon and Krieger assert:

> Many researchers and commentators have proposed that legal education may be the common source of some of the problems among both students and lawyers. Potential negative aspects of legal education include excessive workloads, stress, and competition for academic superiority; institutional emphasis on comparative grading, status-seeking placement practices, and other hierarchical markers of worth; lack of clear and timely feedback; excessive faculty emphasis on analysis and linear thinking, causing loss of connection with feelings, personal morals, values, and sense of self; teaching practices that are isolating or intimidating, and content that is excessively abstract or unrelated to the actual practice of law; and conceptions of law that suppress moral reasoning and creativity (references removed).[35]

[34] For an overview, see David Robotham and Claire Julian, 'Stress and the Higher Education Student: A Critical Review of the Literature' (2006) 30(2) *Journal of Further and Higher Education* 107. See also, for example, Rachael Field and James Duffy, 'Better to Light a Single Candle than to Curse the Darkness: Promoting Law Student Well-Being Through a First Year Law Subject' (2012) 12 *QUT Law and Justice Journal* 133; Rachael Field, 'Harnessing the Law Curriculum to Promote Law Student Well-Being, Particularly in the First Year of Legal Education' in Rachael Field, James Duffy and Colin James (eds), *Promoting Law Student and Lawyer Well-Being in Australia and Beyond* (Routledge 2016).

[35] Kennon M Sheldon and Lawrence S Krieger, "Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being' (2004) 22(2) *Behavioral Sciences & the Law* 261, 262

Whilst these studies concern the American educational system, the list provides a starting point to examine European practice. We have argued above that we have an ethical duty to examine our practice and design curricula and learning environments bearing in mind their potential to do harm. In this article, we use theories of positive psychology to provide a basis for understanding and addressing the problem, and we make a number of proposals which may provide practical (if partial) solutions.

Self-Determination Theory (SDT)

SDT is a complex theory developed by positive psychologists that seeks to explain the implications for wellbeing of holding intrinsic as opposed to extrinsic goals, values and motivations.

SDT underpins a growing body of research by legal academics across the world who are seeking to understand wellbeing and mental health in both law students and legal academics.[36] It has been chosen for our analysis because SDT has been validated by many empirical studies and applied across numerous fields of study. 'Self-determination theory is one of the most widely cited theories of human motivation'.[37]

This theory was also selected by Krieger and Sheldon in the late 1990s when they began to examine poor wellbeing in law students. The basis on which they selected the theory was that it could explain why a change in law student well-

[36] See foonotes 5, 6 , 34 and 35 for examples of outputs based upon SDT. Also see Caroline Strevens, Rachael Field and Nigel Duncan, 'Self-care as Professional Virtue for Lawyers' in Caroline Strevens and Rachael Field (eds), *Educating for Well-being in Law: Positive Professional Identities and Practice* (Routledge 2019) 14 – 26; Rachael Field and Jan H F Meyer, 'Threshold Concepts in Law: A Key Future Direction for Intentional Curriculum Reform to Support Law Student Learning Success and Well-Being' in Emma Jones and Fiona Cownie, *Key Directions in Legal Education: National and International Perspectives* (Routledge, 2020) Ch 10; Caroline Strevens, 'The Wrong Message: Law Student Well-Being in the Contemporary Higher Education Environment' in Emma Jones and Fiona Cownie, *Key Directions in Legal Education: National and International Perspectives* (Routledge 2020) Ch 9.

[37] For recent meta-analysis of this psychological theory see Christopher P Cerasoli, Jessica M Nicklin and Alexander S Nassrelgrgawi, 'Performance, Incentives, and Needs for Autonomy, Competence, and Relatedness: A Meta-Analysis' (2016) 40(6) Motivation and Emotion 781; and Shi Yu,Chantal Levesque-Bristol, and Yukiko Maeda, 'General Need for Autonomy and Subjective Well-Being: A Meta-Analysis of Studies in the US and East Asia' (2018) 19(6) *Journal of Happiness Studies* 1863 See also Richard M Ryan and Edward L Deci, 'Brick by Brick: The Origins, Development, and Future of Self-Determination Theory' (2019) 6 Advances in Motivation Science 111.

being was taking place and it provided credible empirical methods to test the change. SDT sets out to explain the importance, and link to levels, of wellbeing in relation to goal-setting, whether goals are intrinsic or extrinsic in nature and the motivations behind selecting a particular goal.[38] Sheldon and Krieger conducted empirical research and concluded that legal education could have a damaging effect upon the wellbeing of students by negatively influencing goals and motivation. They identified practice in law schools that encouraged extrinsic goals such as securing a summer internship in a highly regarded law firm. They also found practice that encouraged extrinsic motivation towards 'superficial rewards and image-based values'.[39] As a result, the student sense of being able to pursue their own personal values was evidenced as reducing which was consequently reflected in a reduction in their levels of wellbeing.

Self Determination Theory (SDT) is based upon the premise, formulated by Deci and Ryan in 1985,[40] that there is a link between high levels of wellbeing and being intrinsically motivated, wherein the reason for acting is for the enjoyment and sense of fulfilment it provides and is thus an end in itself. So, for example, a person chooses to study employment law, not in order to gain promotion, but due to a curiosity as to how the law balances the interests of employers and employees. This is contrasted with external motivation where the reason why a person has chosen to study employment law is because a line manager has told them to do so. As far as the law students studied by Krieger and Sheldon were concerned, where the law school encouraged them to study law in order to earn large salaries upon graduation and work for important and highly regarded firms, then the students were at risk of losing touch with their personal values and original reasons for studying law based upon intrinsic values such as helping others or natural curiosity.

Basic Psychological Needs Theory provides a unifying principle within SDT, and arguing that psychological well-being and optimal functioning is predicated on a person experiencing autonomy, competence, and relatedness. Many empirical studies have established that those with autonomous motivation experience higher levels of positive effect, better productivity and

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[38] Edward L Deci, and Richard M Ryan, 'The "What" and "Why" of Goal Pursuits: Human Needs and the Self-Determination of Behavior' (2000) 11(4) *Psychological Inquiry* 227.
[39] *Ibid* 264.
[40] Edward L Deci and Richard M Ryan, *Intrinsic Motivation and Self-Determination in Human Behavior* (Springer Science & Business Media 1985).

less burn out at work, greater understanding and higher subjective wellbeing.[41] The theory argues that all three needs are essential and that if any is thwarted there will be negative consequences such as " inner conflict, alienation, anxiety and depression".'[42] Autonomy can be described as experiencing the ability and opportunity to exercise choice. Competence can be described as being able to experience increasing mastery and relatedness can be described as experiencing trusting and trusted relationships with others. Wellbeing is linked to experiencing all three. Therefore, social contexts that support versus thwart these three needs should invariantly impact wellness.

SDT is not without its critics. Some have argued about the extent to which autonomy is a universal psychological need citing cultural differences of Eastern cultures.[43] According to Chao and Tseng[44] these cultures tend to emphasize values such as conformity, social harmony, and family interdependence over values such as individuality, uniqueness, and independence. The response to this is that autonomy should not be equated with individuality. According to Jang et al citing Chirkov, Ryan and Lynch,[45] individuals could be autonomously interdependent and act autonomously in accord with the communal good, and at the same time to embrace autonomously endorsed collectivistic values.

To experience autonomy people need to live a life true to their values, to feel that they are self-governed and act in a way which is congruent with their true beliefs, values and interests.[46] The need for autonomy requires 'autonomy-

[41] Edward L Deci and Richard M Ryan, 'Facilitating Optimal Motivation and Psychological Well-Being Across Life's Domains' (2008) 49(1) *Canadian Psychology* 14.
[42] Deci, E.L. and Ryan, R.M., 2000. 'The "what" and "why" of goal pursuits: Human needs and the self-determination of behavior'. *Psychological inquiry*, *11*(4), pp.227-268. 249
[43] Deci E.L. and Ryan R.M.,2008, 'Facilitating Optimal Motivation and Psychological wellbeing across life's domains', *Canadian Psychology* 2008 vol 49 14 – 23 at 18
[44] Chao R, Tseng V. 'Parenting of Asians' in: Bornstein M.H., ed. *Handbook of parenting, Vol. 4: Social conditions and applied parenting*. 2nd ed, Mahwah, NJ: Erlbaum; 2002. pp. 59–93.
[45] Hyungshim Jang et al, 'Can Self-Determination Theory Explain What Underlies the Productive, Satisfying Learning Experiences of Collectivistically Oriented Korean Students?' (2009) 101(3) *Journal of Educational Psychology* 644, 645. 5
[46] Christopher P Niemiec, Richard M Ryan and Edward L Deci, 'Self-Determination Theory and the Relation of Autonomy to Self-Regulatory Processes and Personality Development' in Rick Hoyle (ed), *Handbook of Personality and Self-Regulation* (Wiley-Blackwell, 2010) 169, 176.

supportive' learning conditions at law school.[47] Competence is what we all seek to develop in our students. Students need to feel capable of mastering the tasks and challenges that face them. We can support the development of student competence by providing well-structured affirming learning environments and avoiding environments that are 'chaotic and demeaning'.[48] Relatedness requires meaningful and reciprocal connection with significant other people. To support it we need to provide students with environments that are "warm and responsive" rather than 'cold and neglectful'.[49]

SDT provides us with guidance as to how to design our curricula, so that the learning and assessment experiences we provide for our students encourage them to relate to us and to each other. As noted above, Sheldon and Krieger are leading authorities in terms of understanding the mental health impacts of law school through the SDT lens. They have said:

> According to SDT, all human beings require regular experiences of autonomy, competence, and relatedness to thrive and maximize their positive motivation. In other words, people need to feel that they are good at what they do or at least can become good at it (competence); that they are doing what they choose and want to be doing, that is, what they enjoy or at least believe in (autonomy); and that they are relating meaningfully to others in the process, that is, connecting with the selves of other people (relatedness). These needs are considered so fundamental that Ryan[50] has likened them to a plant's need for sunlight, soil, and water.[51]

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[47] Maarten Vansteenkiste, Christopher P Niemiec and Bart Soenens, 'The Development of the Five Mini-Theories of Self Determination Theory: An Historical Overview, Emerging Trends and Future Directions' in Timothy C Urdan and Stuart A Karabenick (eds), *The Decade Ahead: Theoretical Perspectives on Motivation and Achievement* (Emerald Group Publishing 2010) 131–2.

[48] *Ibid*.

[49] *Ibid*.

This section draws on and is developed in Caroline Strevens, Rachael Field and Nigel Duncan, 'Self-Care as a Professional Virtue for Lawyers' in Strevens and Field (n 8) 14-26 at 16-18.

[50] Richard M Ryan, 'Psychological Needs and the Facilitation of Integrative Processes' (1995) 63(3) *Journal of Personality* 397.

[51] Kennon M Sheldon and Lawrence S Krieger, 'Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory' (2007) 33(6) *Personality and Social Psychology Bulletin* 883, 885.

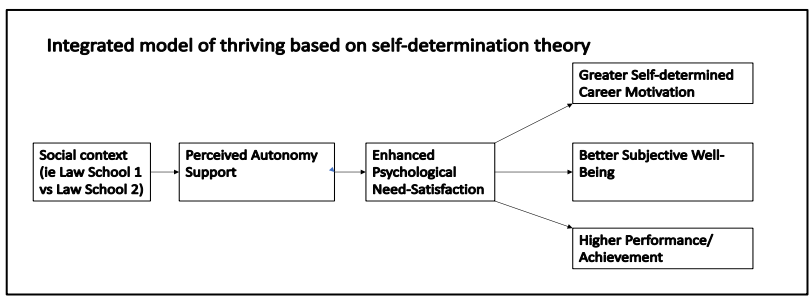
Thus, in order to assist our students to thrive we should be providing them with an environment that develops their competence at the tasks and challenges we set them, gives them a degree of autonomy in the choice of work and activities they undertake and encourages a supportive relatedness in their interactions with us and amongst themselves. In order to achieve these things, we might recall the distinction between intrinsic and extrinsic motivation. Krieger and Sheldon provide a helpful explanation.

'[M]otivation for behavior is distinguished based on the locus of its source, either "internal" (the behavior is inherently interesting and enjoyable, or it is meaningful because it furthers one's own values) or "external" (behavior is compelled by guilt, fear, or pressure, or choosing to please or impress others).'[52]

A consideration of motivation assists with the identification of factors which may be inimical to student wellbeing, as well as pointing to ways in which we might encourage student wellbeing. In the next section we propose approaches which might contribute to student wellbeing and limit the risk of our causing damage to their mental health through legal education.

A law school environment in which students can thrive

Sheldon and Krieger have developed an integrated model of thriving based upon SDT.[53]



Our position, as stated above, is that law academics (and law school leadership) have an ethical responsibility to do what is possible to provide law students

[52] Lawrence S Krieger and Kennon M Sheldon, 'What Makes Lawyers Happy? Transcending the Anecdotes with Data from 6200 Lawyers' (2015) 83 *George Washington Law Review* 554, 565.
[53] Sheldon and Krieger (n 51) 884

with an environment and learning experiences that promote thriving and avoid circumstances that are inimical to thriving.[54] In this section we propose some measures which may assist in this endeavour. The scope of this article, does not allow us to do justice to each area identified. However, references are provided for those who wish to explore each issue further. Nor do we assert that this is an exhaustive list of potential appropriate approaches. Indeed, we hope that this article may promote a discussion between colleagues from all European and other jurisdictions as to how the proposals suggested here might be further developed, added to and extended.

Marketing and recruitment

We focus elsewhere on the motivation of students. In this section we address the motivation of the institutions that provide legal education. One function of the growing neoliberal influence on our universities is increased competition for students. In most higher education systems each extra student brings in marginal funding. This has led to a growth of marketing activities by universities[55] which seek to present distinctive characteristics and positive images. 'There are, of course, many images of smiling students, sunny rooms, students walking around campuses, and students enjoying the nightlife. There are also images of students mooting, gowned and, in some cases, bewigged but few of students studying.'[56] On the basis of the evidence cited above, this is not representative, however, of the majority of student learning in law school. Hannah Fearn quotes a sixth-former saying: 'I struggled to find student comments [about law school], and if I did they were always good and never bad ones'',[57] and a teacher observing, 'Maybe students talking about problems they had and how the university supported them would also be helpful'.[58] It may be unrealistic to ask marketing departments to present anything other than

[54] Duncan, Field and Strevens (n 14).
[55] For an analysis of law school websites in the UK see Graeme Broadbent and Pamela Sellman, 'Great Expectations: Law Schools, Websites and the "Student Experience"' (2013) 47(1) *The Law Teacher* 44.
[56] *Ibid* 61.
[57] Hannah Fearn, 'Deciphering the Code' *Times Higher Education* (19 August 2010) 31-34, 31, quoted in Broadbent and Sellman (n 59) 59.
[58] *Ibid*, 34.

these rosy pictures, but the consequence is that students acquire an unrealistic impression of what their experience of learning law at university will be.[59]

A further consequence of the desire to increase the number of students is possibly a tendency to accept students with lower grades than might be preferred. This is a sensitive issue, as the perfectly legitimate desire to widen participation in university education may lead to a similar willingness to accept students who have not achieved standard admissions criteria.

If the goal is merely attracting as many students as possible to maximise income, there is a serious risk of setting individuals up for failure. Admitting students with a widening participation motive is entirely different, as the goal is not to receive the income that comes with their entry but to assist them to achieve their goals of benefitting from a higher education and achieving graduation.

We need to recall that 'social mobility projects inevitably generate tensions and identity dissonance'.[60] In our attempts to help students to learn from this dissonance, SDT reminds us that competence and autonomy are significant factors in ensuring that people thrive in their activities. Foundation programmes are designed to assist students to achieve the necessary competence to embark with confidence on higher legal education. What is more, the experience of well-designed programmes provides students with information and insight that enable them to exercise a more informed choice, thus enhancing their autonomy whether they decide to embark on a law career or go in a different direction. Therefore, these programmes and other measures of assistance to facilitate and enable such students to succeed are clearly justified and appropriate.[61] Such measures are, however, costly to provide and represent an example of the way in which neoliberal tendencies challenge desirable approaches in current higher education. We should be continuing to encourage diversity in our student intake, and ensuring that the students we recruit are well-prepared for the demands of study. Such an approach involves

[59] Caroline Strevens, 'The Wrong Message for Law Student Well-Being' in Emma Jones and Fiona Cownie (eds), *Key Directions in Legal Education: National and International Perspectives* (Routledge 2020).
[60] Hilary Sommerlad, (2007) 'Researching and Theorizing the Processes of Professional Identity Formation' (2007) 34(2) *Journal of Law and Society* 190, 201. This article provides deep insights into the experience of non-traditional students seeking to enter the legal profession.
[61] Lyn Tett, 'Widening Provision in Higher Education – Some Non-Traditional Participants' Experiences' (2006) 14(1) *Research Papers in Education* 107.

honest marketing and the provision of appropriate Foundation and Access programmes where necessary.

Curriculum design

Design of the curriculum lies at the core of most students' experience of learning. Recently significant attention has been drawn to ways in which curriculum design can contribute to student mental wellbeing. Advance HE (formerly the HE Academy) provides a useful resource[62] which includes ways of infusing awareness of mental wellbeing into the curriculum. This approach, adopted from work done in the USA,[63] 'aims to use the discipline to develop students' understanding of mental wellbeing and related issues. Where it draws on students' own lived experience, it can help to convey that academic staff value their students not only in their capacity as learners but holistically. This message may be particularly helpful in a large group, where getting to know each student individually may be difficult.'[64] The Advance HE report provides examples of how this can be achieved, although none come from law. It then suggests a variety of ways of promoting mental wellbeing through the curriculum,[65] and provides reflective tools for individuals and institutions to consider how to achieve improvements within their own departmental, disciplinary and institutional contexts.[66]

One important element of curriculum design for wellbeing is to ensure that it is genuinely progressive over the period of study. A scaffolded curriculum responds to students' growing competence at analysis and critique, thus reducing unnecessary stress and maximising the potential for learning. The introduction of optional modules in later stages of the degree provides greater scope for students to experience autonomy. These are characteristics of most law degree programmes.. However, this progression in subject-matter is rarely matched by a progression in learning experience. The words of Mary Keyes

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[62] Ann-Marie Houghton and Jill Anderson, *Embedding Wellbeing in Higher Education* (HE Academy 2017) <https://s3.eu-west-2.amazonaws.com/assets.creode.advancehe-document-manager/documents/hea/private/hub/download/embedding_wellbeing_in_he_1568037359.pdf> accessed 16 February 2020.

[63] Todd A Olson and Joan B Riley, 'Weaving the Campus Safety Net by Integrating Student Health Issues into the Curriculum' (2009) 14(2) *About Campus* 27.

[64] Houghton and Anderson (n 62) 18.

[65] *Ibid* 20-25.

[66] *Ibid* 26-29.

and Richard Johnstone writing in 2004 about Australian legal education, still have some relevance today:

> Students are taught the same type of material – a detailed analysis of common law rules – and are given the same kind of assessment – examinations testing mastery of the legal rules and their application to hypothetical problems – semester after semester, in much the same way … The only thing that changes between subjects and between semesters in the student's progression through the degree is the substantive rules which forms the content of the subjects.[67]

In civil law systems, the analysis of common law rules is replaced by an exegesis of Codes, but we suggest that the critique above remains true to a significant degree. Johnstone offers a further criticism of this traditional model: 'Repetitive, incoherent between years and without planned incremental development, and narrowly focused on doctrine rather than skills, theory, values or attitudes …'.[68] In the UK, there have been developments, with a revised Benchmark Statement in Law from the Quality Assurance Agency that introduces a number of skills and values that should be addressed in the law degree.[69] The explanatory note to the 2015 edition says:

> [A] law graduate is far more than a sum of their knowledge and understanding, and is a well skilled graduate with considerable transferable generic and subject-specific knowledge, skills and attributes. This is why the benchmark outcomes are titled 'A law student's skills and qualities of mind' and not, simply, 'Subject knowledge and understanding'. By qualities of mind, we mean the intellectual abilities and attributes of graduates in law, including but not limited to legal knowledge and understanding. Accordingly, we have kept references to knowledge and understanding from previous law Subject Benchmark Statements, but we

[67] Mary Keyes and Richard Johnstone, 'Changing Legal Education: Rhetoric, Reality and Prospects for the Future' (2004) 26(4) *Sydney Law Review* 537, 541.
[68] Richard Johnstone, 'Whole-of-Curriculum Design in Law' in Sally Kift, Michelle Sanson, Jill Cowley and Penelope Watson, (eds), *Excellence and Innovation in Legal Education* (Lexis Nexis 2011) 2, 3.
[69] Quality Assurance Agency, *Subject Benchmark Statement: Law* (2019) <https://www.qaa.ac.uk/docs/qaa/subject-benchmark-statements/subject-benchmark-statement-law.pdf?sfvrsn=b939c881_16> accessed 29 August 2019.

> have added references to self-management and academic integrity.[70]

This is a valuable extension in understanding and UK universities are developing their programmes accordingly. We are not aware of any research that explores whether similar developments are taking place in other European jurisdictions, but if this were the case it would be worth sharing that experience, and this journal may well be a suitable forum for such an exchange.

Achieving these goals in the design of a law degree is not easy. Individual module leaders are understandably concerned to maintain their academic freedom (or autonomy) to teach their subject in a way which they regard as most appropriate and may be unwilling to introduce specific wellbeing-focussed skills or values (or indeed learning methods) into their teaching. Indeed, the Benchmark Statement is clear that they do not wish to be prescriptive and wish to encourage diverse approaches. We endorse this, but also recognise that it may be difficult to ensure a progressive approach to the development of skills and the exposure to values without a degree of overall curriculum design.[71]

What is required is an application to the study of law of the principles underlying the concept of a spiral curriculum. This notion, developed by Jerome Bruner,[72] has three key features:

- The students revisit a topic, theme or subject several times throughout their … career;
- The complexity of the topic or theme increases with each revisit.
- New learning has a relationship with old learning and is put in context with the old information.[73]

Thus, curricula should be designed with a view to reiterations over time and in different contexts. This has been approached through the concept of a vertical curriculum, particularly in the context of medical education.[74] Davis and

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[70] Quality Assurance Agency, *Subject Benchmark Statement: Law* (2015) 4.
[71] Sally Kift, 'Lawyering Skills: Finding Their Place in Legal Education' (1997) 8 *Legal Education Review* 43.
[72] Jerome Bruner, *The Process of Education* (Harvard College, 1960).
[73] Howard Johnstone, *The Spiral Curriculum* (Education Partnerships Inc. 2012).
[74] See, Margery Davis and Ronald Harden, (2003) 'Planning and implementing an undergraduate medical curriculum: the lessons learned' (2003) 25(6) *Medical Teacher,*

Harden found that planning learning throughout the curriculum needed to be made explicit to staff and students, which was assisted by curriculum mapping.[75] This approach has been adopted in the context of law degrees in Australia, seeking to achieve a number of objectives:

A good law curriculum also needs to be congruent, integrating the teaching of skills, doctrine, theory and ethics and values, and coordinating the curriculum so that students can develop their knowledge, skills and values progressively or incrementally. In other words, the relationship *between subjects* in the curriculum needs to be congruent – both across the curriculum and through the curriculum.[76]

Success in such endeavours requires attention to ensuring that a specific issue has a home in each year of the degree and is built upon the learning of the subsequent year. Keyes and Johnstone demonstrate one example of this at the University of Technology, Sydney.[77] Michael Robertson explains the experience of developing 'vertical subjects' at Griffith University as follows:

> The vertical subject is a continuing one that would progress *throughout* the programme in a carefully structured way. It would intersect with and reside within various courses in each semester or year of the programme. The levels of understanding contained in ethics learning objectives would increase in complexity from one host subject to the next. Points of co-existence with other subject areas would be determined by the extent to which practice in those substantive areas unavoidably implicated enquiries about both the role of the lawyer and ethical decision-making in particular. Moreover, in each site in which the vertical subject co-existed with the traditional subject area, ethics learning objectives, teaching and assessment within the host subject would need to be carefully aligned.[78]

596, and for a critical view, L O Dahle et al, 'Pros and Cons of Vertical Integration Between Clinical Medicine and Basic Science within a Problem-Based Undergraduate Medical Curriculum: Examples and Experiences from Linköping, Sweden' (2002) 24(3) *Medical Teacher* 280.

[75] Davis & Harden (n 74) 602.

[76] Richard Johnstone (n 68) 14.

[77] Keyes & Johnstone (n 67) 17.

[78] Michael Robertson, 'Challenges in the Design of Legal Ethics Learning Systems: An Educational Perspective' (2005) 8 (2) *Legal Ethics* 222, 238.

Robertson is writing in the context of integrating legal ethics throughout the degree, but the principle could equally well be applied to ensuring that students develop a reflective practice towards their study, to their intellectual and moral development and to their continuing mental wellbeing. Activities should be embedded in a planned and intentional way into the curriculum so as to help students develop greater awareness of their own development, thus experiencing an opportunity to take greater responsibility for it. Thus, reflection on their own development is key to the success of this approach.

It may be that an all of curriculum design is unlikely to find favour in some law schools. This does not mean that the value of reflection on one's own development may not be introduced in other ways. Appropriately-designed modules that introduce a reflective element are managerially easier to introduce and can provide the basis, if introduced early in the curriculum, for an approach that will assist students' reflective learning throughout. Field and Duffy present the introduction of a 'Lawyering and Dispute Resolution' module which helps students to understand the nature of legal analysis and practice from a critical perspective, but, significantly, within a 'framework of hope' that allows reflection on their development and wellbeing as well as on the subject-matter of their study.[79] Their goal was student wellbeing but student responses suggest that the subject focus on dispute resolution informed students' study of other modules as well. This, we argue, has the capacity to contribute to their development of both competence and autonomy.

Assessment and Feedback

Another area where developments are taking place is in applying learning to how we assess our students. It is not within the scope of this article to look fully at this, but we introduce the topic briefly.[80]

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[79] Rachael Field and James Duffy, 'Better to Light a Single Candle than to Curse the Darkness: Promoting student Wellbeing through a First Year Law Subject' (2012) 12 *Queensland University of Technology Law and Justice Journal* 133. See also, Rachael Field, James Duffy and Anna Huggins, *Lawyering and Positive Professional Identities* (2nd ed LexisNexis 2020) Chapter 4, and Nickolas James, Rachael Field and Jackson Walkden-Brown, *The New Lawyer* (2nd ed Wiley 2019) Chapter 10.

[80] See, for example, Cordelia Bryan and Karen Clegg (eds), *Innovative Assessment in Higher Education: A Handbook for Academic Practitioners* (2nd ed, Routledge, 2019); Maria A Flores et al, 'Perceptions of Effectiveness, Fairness and Feedback of Assessment Methods: A Study in Higher Education' (2015) 40(9) *Studies in Higher Education* 1523; Kay Sambell, 'Assessment and Feedback in Higher Education: Considerable Room for

Assessment is a major source of stress for our students.[81] The introduction of new learning outcomes such as skills and values has led to a tendency to undertake more, and more diverse assessments. We have recognised that conventional closed-book unseen examinations fail to meet many of the goals of effective assessment, with the result that we have introduced coursework,[82] and a variety of alternative assessments.[83] New approaches to assessment in law school have significant improved the ability of law academics to assess the intellectual development of students with less reliance on memory and to assess other skills. Such approaches do not, as has been suggested, favour women over men, although they appear to enable all students, regardless of gender to achieve higher marks.[84] This may contribute to perceptions of 'grade inflation' as an unintended consequence of improvements to assessment methods in higher education.

Provision of greater diversity in assessment methods often leads to a larger number of assessments, even to regimes of 'continuous assessment'.[85] This approach risks adding to student stress by the sheer number of assessment events that students are required to surmount. It is key that such approaches are designed (and perceived) to be 'assessment for learning', rather than simply 'assessment of learning'. Assessment for learning requires effective feedback on the assessed work, so that its prime function is formative (whether or not it is also summative). Indeed, there is evidence that students who receive both a grade and feedback for their work tend to note the grade and ignore the

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Improvement?' (2016) 1(1) *Student Engagement in Higher Education* <https://sehej.raise-network.com/raise/article/view/392> accessed 13 December 2019; David Boud and Nancy Falchikov (eds), *Rethinking Assessment in Higher Education: Learning for the Longer Term* (Routledge, 2007).

[81] See, for example, Brian M Hughes, 'Study, Examinations and Stress: Blood Pressure Assessments in College Students' (2005) 57(1) *Educational Review* 21; Honor Nicholl and Fiona Timmins, 'Programme-Related Stressors Among Part-Time Undergraduate Nursing Students' (2005) 50(1) *Journal of Advanced Nursing* 93.

[82] John T Richardson, 'Coursework Versus Examinations in End-of-Module Assessment: A Literature Review' (2015) 40 *Assessment and Evaluation in Higher Education* 439.

[83] Sally Brown and Angela Glasner (eds), *Assessment Matters in higher Education: Choosing and Using Diverse Approaches* (SRHE and Open University Press, 1999).

[84] Ruth Woodfield, Sarah Earl-Lovell and Lucy Solomon, 'Gender and Mode of Assessment at University: Should we Assume Female Students are Better Suited to Coursework and Males to Unseen Examinations?' (2005) 30(1) *Assessment and Evaluation in Higher Education* 35.

[85] Rosario Hernandez, 'Does Continuous Assessment in Higher Education Support Student Learning?' (2012) 64 (4) *Higher Education* 489.

feedback,[86] which may suggest that most assessment should be formative only. There is a copious literature on feedback.[87] In this context we shall address one issue that may often be ignored: the emotional impact on students of receiving feedback on their work.

As we have already noted, students come to their university degree from different experiences of learning and of life. Many will not have been exposed to detailed constructive feedback on their work. Pitt suggests:

To attempt to change student's perceptions of and induct them into a new learning environment, we should enable them to experience:

- opportunities to reflect upon their previous assessment and feedback experiences from an emotional standpoint;
- opportunities to explore how their emotions underpin their approach to learning, assessment and feedback behaviours;
- situations in which we acknowledge their prior feelings by initiating dialogue right at the outset of their HE experience;
- a learning environment that is supported by an appreciation of the role that emotions play in their learning in order to mitigate misunderstanding;
- our commitment to develop their emotional literacy over time, in order to improve their subsequent feedback usage and assessment performance.[88]

Thus, by helping students to become self-aware of their emotional responses to the challenges that university presents them, they may develop greater resilience and come to use our feedback more effectively. Paula Manning has

[86] Pam Parker and Patrick Baughan, 'Providing Written Assessment Feedback that Students will Value and Read' (2009) 16 *The International Journal of Learning* 5.
[87] A good starting point is David Nicol and Debra Macfarlane-Dick, 'Formative Assessment and Self-Regulated Learning: A Model and Seven Principles of Good Feedback Practice' (2006) 31(2) *Studies in Higher Education* 199. More generally, see David Boud and Elizabeth Molloy, *Feedback in Higher and Professional Education: Understanding It and Doing It Well* (Routledge 2013).
[88] Edd Pitt, 'Developing Emotional Literacy in Assessment and Feedback' in Cordelia Bryan and Karen Clegg (eds), *Innovative Assessment in Higher Education: A Handbook for Academic Practitioners*, (Routledge 2nd ed 2019) 121.

written eloquently about the why and the how of supporting students' sense of competency through the provision of information and choice in feedback.[89]

We should also ensure effective constructive alignment between what we expect our students to learn, how we expect them to learn it and how we assess them on it. In other words, we should design assessments that enable students to demonstrate what they have been learning, using, as far as possible, the activities that they have been developing in their learning programmes. Thus, if they have been learning through reading, discussion and discursive writing this should, as far as possible, inform the nature of the assessments that are set. To be set a different type of assessment (multiple-choice examinations come to mind) must feel like being tricked.

Experiential Learning

One approach to addressing the challenge issued by Mary Keyes and Richard Johnstone more than 15 years ago that also addresses the requirements of a wellbeing-aligned curriculum,[90] is to introduce types of experiential learning to our degree programmes. The essence of all experiential learning approaches is to introduce a reflective element into students' learning. Again, there is a copious literature in this area and it is beyond the scope of this article to explore it.[91] Legal education offers unique opportunities for students to learn experientially through the developments introduced by clinical method.[92] Initially developed in common law jurisdictions, clinical legal education has spread internationally,[93] and is increasingly widely used across Europe.[94]

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[89] Paula Manning, 'Understanding the Impact of Inadequate Feedback: A Means to Reduce Law Student Psychological Distress, Increase Motivation, and Improve Learning Outcomes' (2012) 43 *Cumberland Law Review* 225.

[90] Keyes and Johnstone (n 67).

[91] David Kolb, *Experiential Learning: Experience as the Source of Learning and Development* (Pearson 2nd edn, 2014). Donald Schön, *Educating the Reflective Practitioner: Toward a New Design for Teaching and Learning in the Professions* (Jossey-Bass, 1987).

[92] Hugh Brayne, Nigel Duncan and Richard Grimes, *Clinical Legal Education, Active Learning in your Law School* (Blackstone 1998); Roy Stuckey et al, *Best Practices for Legal Education: A Vision and a Road Map* (Clinical Legal Education Association 2007); Linden Thomas et al (eds), *Reimagining Clinical Legal Education* (Hart 2018).

[93] Frank Bloch (ed), *The Global Clinical Movement: Educating Lawyers for Social Justice*, (Oxford University Press 2011).

[94] Maxim Tomoszek, 'Reflections on New Trends in Clinical Legal Education in Continental Europe', in Thomas et al (n 92).
See also, for example, the programme of the European Network for Clinical Legal Education Conference held at Comenius University, Bratislava in July 2019:

Although definitions of clinic vary, most would recognise three main strands. First, simulation, which can take place within the classroom setting or virtually, where students learn by undertaking realistic work; second, in-house clinics, where students, under supervision and often working in pairs or teams, take on real cases for clients; and third, externships, where students undertake placements in an office providing legal services outside the university.

The most effective programmes recognise a progressive approach to introducing clinical experience and this is one we would recommend. Students start with simulations which enable them to develop their insights and their skills in a safe environment where mistakes can lead to learning without causing damage to vulnerable clients. Traditionally simulations were developed in the classroom context,[95] but virtual environments have vastly expanded the scope for simulated clinical learning.[96] Indeed, free software is now available that enables universities to offer their students experience in virtual environments where they role-play realistic legal transactions.[97] An essential element to an effective simulation process is engaging students in a reflective approach to their work.[98] Reflection is key to ensuring deep learning

<https://www.northumbria.ac.uk/about-us/news-events/events/2019/07/ijcle-2019/> accessed 13 December 2019.

[95] Brayne, Duncan and Grimes (n 92) ch 5 and 220-229.

[96] Abdul Paliwala, 'Leila's Working Day: One of the Futures of Legal Education' (2000) 34(1) *The Law Teacher* 1; Paul Maharg, *Transforming Legal Education* (Routledge 2007) 283-292; Caroline Strevens, Richard Grimes and Edward Phillips (eds), *Legal Education: Simulation in Theory and Practice* (Ashgate 2014).

[97] Karen Barton, Patricia McKellar and Paul Maharg, 'Authentic Fictions: Simulation, Professionalism and Legal Learning' (2007-8) 14 *Clinical Law Review* 143; <https://simplecommunity.org/> accessed 13/12/2019.

[98] David Boud, Rosemary Keogh and David Walker (eds), *Reflection: Turning Experience into Learning* (Kogan Page 1985); Scott G Isaksen and Donald J Treffinger, 'Celebrating 50 years of Reflective Practice: Versions of Creative Problem Solving' (2004) 38(2) *The Journal of Creative Behavior* 75; Russell Rogers, 'Reflection in Higher Education: A Concept Analysis' (2001) 26(1) *Innovative Higher Education* 37; Filippa M Anzalone, 'Education for the Law: Reflective Education for the Law' in Nona Lyons (ed), *Handbook of Reflection and Reflective Enquiry: Mapping Ways of Knowing for Professional Reflective Enquiry* (Springer Science + Business Media 2010) 85; Mary Ryan, 'The Pedagogical Balancing Act: Teaching Reflection in Higher Education' (2013) 18(2) *Teaching in Higher Education* 144; Michele Leering, 'Conceptualizing Reflective Practice for Legal Professionals' (2014) 23(5) *Journal of Law and Social Policy* 83; Michele Leering, 'Integrated Reflective Practice: A Critical Imperative for Enhancing Legal Education and Professionalism' (2017) 95(1) *Canadian Bar Review* 47; Jodi S Balsam, Susan L Brooks and Margaret Reuter, 'Assessing Law Students as Reflective Practitioners' (2017) 62 *New York Law School Law Review* 49; Jenny Gibbons, 'Reflection, Realignment and Refraction: Bernstein's Evaluative Rules and the Summative

of the substantive law they are applying to the problems they encounter. It is also key to ensuring that their experience develops their intellectual and transferable skills to the greatest possible extent. Webb provides a theoretical basis for this approach and gives an example and practical guidance as to how it might be incorporated into an undergraduate law degree.[99] This approach has now become widespread in UK law schools, at least as an elective option available for interested students.

If students have undergone a series of simulated experiences in which they have had an opportunity to develop (and reflect upon) their skills, they should have developed a greater degree of competence as legal analysts.[100] From an academic point of view this will deepen their understanding of the law as it works for the people who are subject to it and thus develop their critical capacity. It will also contribute to their basic psychological needs[101] and thus, according to SDT, help them to thrive.

Where law schools have developed their clinical programmes to include experience with real clients, students may develop further from their involvement in simulations. According to Sullivan *et al*, '[i]n high-quality legal clinics, expert performance is modelled by supervising faculty, students enact a wide range of skills, and faculty coach them toward improved performance through continuous feedback.'[102] Sullivan *et al* were responding in 2007 to widespread critiques of US law schools as contributing to a malaise in the legal profession. They quote a third-year student saying, 'The model we are taught is intensely dehumanizing. You are taught to think of opinions without the people in them. That tells you a lot about the type of lawyers the school creates. The advantage of the clinic is that you interact with real people.'[103] A professor adds: 'Clinics try to re-sensitize students after being de-sensitized in law

Assessment of Reflective Practice in a Problem-Based Learning Programme' (2018) *Teaching in Higher Education* 1.

[99] Julian Webb, 'Where the Action is: Developing Artistry in Legal Education' (1995) 2(2-3) *International Journal of the Legal Profession* 187.

[100] Richard M Ryan and Edward L Deci, 'Self-Determination Theory and the Facilitation of Intrinsic Motivation, Social Development, and Well-Being." (2000) 55(1) *American Psychologist* 68.

[101] See text at n 41-2.

[102] William Sullivan et al, *Educating Lawyers: Preparation for the Profession of Law* (Jossey-Bass 2007) 145.

[103] *Ibid* 159.

school' and, as another student says, '[i]t reinforces my sense that I can serve people who really need my help. It saves my sanity when I want to drop out.'[104]

This is significant for the other basic psychological needs: relatedness and autonomy. Students engaged in clinical programmes will typically work in pairs or small groups. They will encounter clients, mostly from low-income backgrounds, whose life experience may be very different from their own. This engages them in collaborative work of very different kinds. They are short-term collaborations which are typical of much of a lawyer's work. They include work with colleagues to prepare advice for a client, but also the very different work with their clients, including some who may be heavily reliant on them, but also others who may make significant demands from a position of considerable knowledge.[105] In doing so they are 'relating meaningfully to others in the process, that is, connecting with the selves of other people'.[106]

Legal academics working in clinical contexts can assist students to develop competence in connecting with other people through the provision of simulated experiences of working in teams and of interviewing clients, but also by introducing students to theories of empathy, so as to help them to understand how to develop their professionalism through demonstrating empathy to their clients. As Wispé explains: 'Sympathy refers to the heightened awareness of another's plight as something to be alleviated. Empathy refers to the attempt of one self-aware self to understand the subjective experiences of another self. Sympathy is a way of relating. Empathy is a way of knowing.'[107] We believe that developing such ways of knowing can then, through reflection, impact positively on students' work and their developing capabilities, addressing their basic needs of relationality and competence and thus supporting student wellbeing.

How does this relate to the third basic psychological need of autonomy? All the clinical opportunities available to students share one characteristic: they meet the needs of individuals who find themselves requiring legal services but

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[104] *Ibid*.
[105] City Law School's Clinical Legal Education LLM, for example, offers students widely varying experience ranging from representing appellants against decisions to remove their disability benefits to company directors appearing in the Winding Up Court.
[106] Sheldon and Krieger (n 51).
[107] Lauren Wispé, 'The Distinction between Sympathy and Empathy: To Call Forth a Concept, a Word is Needed' (1986) 50(2) *Journal of Personality and Social Psychology* 314.

are unable to afford the market for legal services for which these pro bono services provide the only alternative. Students may, however, work with disabled persons or company directors, the victims of domestic violence, of discrimination at work or unfair dismissal, people who are homeless or who seek to appeal against a criminal conviction. Thus, there is a degree of autonomy involved in the intrinsically motivated choice of students to volunteer for clinical work, or to undertake assessed clinical modules and enact their values: through that autonomous choice to become involved with such work 'they are doing what they choose and want to be doing, that is, what they enjoy or at least believe in'.[108]

A safe learning environment

If it is desirable for students to develop their legal skills in the relatively safe environment of simulations before turning to work with real clients, we need to recognise our responsibility for ensuring that their learning environment feels as safe as possible for them. This applies as much to the conventional classroom as simulated clinical legal education contexts. In this section we suggest a few approaches that may reduce inappropriate stress on students and thus encourage constructive learning.

The first point is perhaps an obvious one: that we should avoid behaviour on our own part that might add unnecessary stress to students. One of us recalls an early experience in their first job in higher education.

I was due to take tutorials following lectures to be given by the module leader. I attended the first lecture and the lecturer asked a question and directed it to one student. The student's answer was incorrect (but not ridiculous). The lecturer said nothing but his lip curled in disdain and he moved on. I was appalled, but felt too inexperienced to challenge the lecturer. If I felt intimidated, I can only imagine what the impact on the student in question was.

If it had had any motivating effect (which we imagine the lecturer thought) it was an extrinsic motivation and, according to Deci and Ryan, probably damaging to intrinsic motivation and thriving.[109] We can do better. Students need to be actively engaged in our classes, but when they get things wrong we need to give feedback to explain what is wrong, to give credit, where possible,

[108] Sheldon and Krieger (n 51).
[109] Deci and Ryan (n 40).

for anything that was valid and always to give encouragement as to how they might improve. We should be able to model the mutual respect that is a hallmark of any empathic relationship.

One consequence of widening participation initiatives is that our student body is less homogeneous than it once was. Students who are the first in their family to enter higher education are unlikely to have received private schooling which can provide those whose parents could afford it with a veneer that gives an impression of intellectual development that may or may not be justified. These students may find themselves in groups with others whose educational experience gives them far greater confidence in speaking and responding. Others, particularly from low income or minority ethnic communities may have equal intellectual ability but find themselves uncomfortable in a university environment or be less able to express themselves with confidence.[110] There is a risk that these 'widening participation' students will be perceived as lacking in some way. This perspective should be resisted. Insight into a deeper perspective comes from Yosso's analysis,[111] developing and critiquing Bourdieu's concept of cultural capital.[112] Yosso points out how Bourdieu's approach starts from that of the white middle class and thus risks perceiving the cultural capital of other groups as somehow inferior.[113] She identifies several different types of capital on which students from different cultures and background may draw. Amongst these are:

- 'aspirational capital': 'the ability to maintain hopes and dreams for the future, even in the face of real and perceived barriers';[114]
- 'familial capital': 'cultural knowledges nurtured among … kin that carry a sense of community history, memory and cultural intuition';[115]
- 'social capital': 'networks of people and community resources';[116]

[110] See Hilary Sommerlad (n 60) for insight into the experience of students from such backgrounds.
[111] Tara Yosso, 'Whose culture has capital? A critical Race Theory Discussion of Community Cultural Wealth' (2005) 8(1) *Race Ethnicity and Education* 69.
[112] Pierre Bourdieu, 'The forms of capital' in John G Richardson (ed), *Handbook of Theory and Research for the Sociology of Education* (Greenwood Press 1986) 241.
[113] Yosso (n 111) 76.
[114] *Ibid* 77.
[115] *Ibid* 79.
[116] *Ibid*.

- 'resistant capital': 'knowledges and skills fostered though oppositional behaviour that changes inequality'.[117]

Recognising the potential of these strengths has informed research into the experience of 'first in family' students.[118] O'Shea recommends that our focus should be 'less on working upon the students to change or alter them in order to engender a "sense of fit" with the institution. Rather, we need to rethink how we consider the notion of integration within higher education organisations.'[119] We should 'reposition understanding of this group not as students "without" but rather as individuals "with"'.[120] Unfortunately, the neoliberal tendencies within the academy discussed above may be inimical to achieving this shift in perspective, as 'far from "opening out" law to increased diversity …there may in fact be reason to see these developments as potentially reinforcing ideas of law as a relatively closed professional practice.'[121]

In order to facilitate the most effective learning environment it is necessary for us to be aware of students' different approaches to learning. A major distinction has been drawn between Confucian learning culture and Socratic learning culture.[122] Tweed and Lehman identify the former as characterised by absorptive learning of essentials; respectful learning; collectivist learning; behavioural reform; pragmatic learning; effortful learning; and affinity for poetic ambiguity. The latter is characterised by tendency to question; tendency to evaluate; and esteem for self-generated knowledge.[123] This has led researchers who themselves come from the Western (Socratic) tradition to argue that students from Eastern cultures tend to be passive learners, to replicate what they are told and to engage in surface rather than deep learning.[124] Research into the learning approaches of eastern and western

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[117] *Ibid* 80.
[118] Sarah O'Shea, 'Avoiding the Manufacture of "Sameness": First-in-Family Students, Cultural Capital and the Higher Education Environment' (2015) *Higher Education* 59, 71-74.
[119] *Ibid* 76.
[120] *Ibid* 75.
[121] Richard Collier (n 17) 224. See the argument developed at 224-6.
[122] David A Watkins D and John B Biggs, *The Chinese Learner: Cultural, Psychological and Contextual Influences* (Centre for Comparative Research in Education & Australian Council for Educational Research, 1992).
[123] Roger G Tweed and Darrin R Lehman, D R (2002) 'Learning Considered Within a Cultural Context: Confucian and Socratic Approaches' (2002) 57(2) *American Psychologist* 89.
[124] Lixian Jin and Martin Cortazzi, 'Changing Practices in Chinese Cultures of Learning' (2006) 19(1) *Language, Culture and Curriculum* 5.

tradition students suggests that this stereotype is, at least, misleading.[125] Students from such a tradition may well also be studying in a second language. Research shows that their learning is often as deep as that of western students but that it takes place in informal discussions with peers in their own language.[126]

The learning in class is only the starting point for deep learning. For students from a Confucian tradition the very experience of volunteering to answer a question is challenging. It is even more difficult to ask a question, risking revealing a failure to understand something they think their colleagues do understand. This can lead to a lack of engagement and an impoverished learning experience. Drawing on the significance of relatedness identified by SDT, we can help with this by encouraging peer learning. As McKeachie *et al* have said:

> The best answer to the question, 'what is the most effective method of teaching?', is that it depends on the goal, the student, the content and the teacher. But the next best answer is, 'Students teaching other students.' There is a wealth of evidence that peer teaching is extremely effective for a wide range of goals, content and students of different levels and personalities.[127]

We still want to encourage active participation in our classes without undue stress. One way to assist with this is the use of audience response technology that allows the teacher to put questions to the student group and for them to answer by responding with their mobile devices.[128] This enables anonymous responses without the fear of being seen to fail. It is of great value to the teacher as, with well-designed questions, it becomes possible to see what errors students are making (rather than simply making assumptions about what they do or do not understand). This enables the teacher to direct explanations most appropriately. Recent research into the use of this technology in City Law School shows 65% of students strongly approving, 24% approving, 6% neutral

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[125] John Biggs, 'Approaches to Learning in Secondary and Tertiary Students in Hong Kong: Some Comparative Studies' (1991) 6 *Educational Research Journal* 27.
[126] *Ibid* 37.
[127] Wilbert J McKeachie et al, W J, *Teaching and Learning in the College Classroom* (NCRIPTAL 1986).
[128] David Banks (ed), *Audience Response Systems in Higher Education: Applications and Cases* (Information Science Publishing 2006).

and only 6% expressing any degree of disapproval. When asked about the effect on their learning experience the most popular responses were:

- Exploring right and wrong answers helps my understanding (175);
- I liked being able to vote anonymously (150); and
- They helped create a good class discussion on the topic (134).[129]

In focus groups, one participant said: '… it kind of takes the pressure off and you're actually discussing things and you get used to it, which is conditioning, I think and then you just learn to – to answer it and not feel so anxious about it anymore.'[130] This suggests that these technologies stimulate discussion and enable participation in a way that reduces the stress on students as they engage.

Students need effective sources of support whether academic, emotional or relating to their mental health, if they are to learn successfully at law school and navigate difficult times effectively. If personal tuition can be carried out by teachers who meet them on a regular basis in the course of their studies this may help to maintain contact and address any potential difficulties. However, many academics are not trained (and may be poorly equipped) to provide counselling beyond the academic. For this reason, universities have a duty not only to design curricula and pedagogy with student wellbeing in mind, but also to provide accessible and effective counselling and mental health services.[131]

Conclusion

This article introduces a number of ideas which law academics could consider incorporating into course design, approaches to learning and teaching and the way in which we interact and engage with our students. The treatment of the ideas in this article is necessarily brief. The references provided offer a starting

[129] Veronica Lachkovic, Snigdha Nag and Dominic Pates, 'Get Those Phones Out: Using In-Class Polling on a Large Scale Postgraduate Law Course' Conference poster Learning at City Conference 2019 City, University of London <https://www.city.ac.uk/__data/assets/pdf_file/0009/475353/Poster-9-Get-Those-Phones-Out-Learning-At-City-Conference-poster.pdf> accessed 13 December 2019.
[130] Snigdha Nag,Veronica Lachkovic and Dominic Pates 'Connecting students through In Class Polling' Learning and Teaching Workshop, University of London Centre for Excellence in Learning and Teaching Symposium 2019<http://bit.ly/UEL-CLS-PE> accessed 13 December 2019.
[131] Emma Broglia, Abigail Millings and Michael Barkham, 'Challenges to Addressing Student Mental Health in Embedded Counselling Services: A Survey of UK Higher and Further Education Institutions' (2017) 46(4) *British Journal of Guidance and Counselling* 441.

point for further exploration, further research and scholarship and cautious experimentation with the way in which we work with our students. The proposals are, however, chosen with the aim of addressing the insights drawn from self-determination theory and empirical research into the ways in which we can best help our students to thrive. Thus they seek to support student autonomy, competence and relatedness by: reducing unnecessary stress; assisting students to respond effectively to the stress which is inherent in legal education and to prepare for the demands of legal practice. This is a responsibility all legal academics share and the student wellbeing debate is one in which the authors encourage all legal educators to engage in further.

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Pro Bono Develops Pericles and Plumbers: the roles of clinical legal education in contemporary European law schools

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Abstract

Legal education is often thought of as divided between the 'clinical'/'functional'/'vocational' and the 'liberal'/'holistic', or even 'formalist'/'positivist'. Drawing on original data from students participating in pro bono work in a fairly typical European law clinic, we show that students do not appear to think such distinctions are particularly significant to their university learning journeys or their future career aspirations. Such distinctions may make sense at an *institutional* level, but at the level of *an individual student and their learning experience*, clinical/functional/vocational elements are not perceived as distinct from curricular learning in a liberal/holistic or even formalist/positivist mode.

Keywords: clinical legal education; liberal legal education; pro bono; roles of law schools.

Introduction

The first School of Law that appears in written history is Beirut University's Centre for the Study of Roman Law, mentioned in writings in the third century CE.[1] In Europe, the earliest universities were founded to teach the teaching of law.[2] But, in general, university legal education is relatively new as a

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[1] Andrew Lawler, 'Rebuilding Beirut' 64 (4) *Archaeology: The Journal of the Archaeological Institute of America* 2011 http://archive.archaeology.org/1107/features/beirut_lebanon_urban_archaeology.html: 'By the third century AD Beirut was the centre for the teaching of Roman Law, according to Gregory Thaumaturgus, a Christian writer of the time. … Within a century the chronicler Libalius praised the city as "mother of the laws"'.

[2] The doctorate was simply a qualification for a Guild, that of teaching law. Doctorate flows from the Latin *docere*, meaning to teach, and a doctorate was a license to teach. The medieval universities Padua and Bologna only granted doctorates, and to begin with they

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phenomenon. Until quite recently, most legal education happened as apprenticeship.[3]

The (apparent) tension between functional legal education (based on an apprenticeship model) and liberal or holistic legal education (based on the notion of a university degree) is neatly encapsulated in William Twining's metaphors of Pericles and the plumber. Is legal education about learning to become 'the law-giver, the enlightened policy-maker, the wise judge'?[4] In other words, is it about understanding the *principles* underlying a body of law;[5] about 'legal science', in a formalist or positivist sense? Or is it about mastering specialist knowledge ('the law') and technical skills of applying the law in practical situations, as a 'vocational' learning experience?[6]

In this article, we contribute to this broader discussion on the nature and purpose(s) of law schools with a reflection on clinical legal education, and in particular pro bono work, in the context of contemporary European law schools. Instinctively, clinical legal education seems to fit closely with the idea of functional or vocational legal education. Rather than abstract, formalist, or theoretical legal learning, university law clinics (often, though not always, associated with pro bono work) offer learning through engaging with real-life, concrete legal problems, as experienced by real human beings or legal persons.

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only granted doctorates in law. http://www.britannica.com/topic/degree-education#ref178086; John C. Moore *A Brief History of Universities* (1st edn, Springer, 2019) p 9-18.

[3] Steve Sheppard, 'Introduction to the Oxford edition' in Karl Llewellyn, *The Bramble Bush: The Classic Lectures on Law and the Law School* (Oxford edition OUP 2008) p XIII.

[4] William Twining, 'Pericles and the Plumber' An inaugural lecture delivered before The Queen's University of Belfast on 18th January 1967. See also Craig Collins, 'Pericles was a Plumber: Towards resolving the liberal and vocational dichotomy in legal education' in Ian Morley and Mira Crouch, eds, *Knowledge as Value: Illumination through critical prisms* (Rodopi, 2008).

[5] Justice, *Lawyers and the Legal System. A Critique of Legal Services in England and Wales.* (Cambridge: Justice Educational and Research Trust, 1997).

[6] Legal Education and Training Review (2013) Literature Review: 2. Legal Education, Professional Standards and Education, para 31. John Bell, 'Legal Education' in Peter Cane and Mark Tushnet, eds, *The Oxford Handbook of Legal Studies* (OUP 2003); Carel Stolker, *Rethinking the Law School* (CUP 2014); Richard Susskind, *Tomorrow's Lawyers: An Introduction to Your Future* (OUP 2013); Hilary Sommerlad et al, eds, *The Futures of Legal Education and the Legal Profession* (Hart 2015); David Howarth, *Law as Engineering: Thinking about what lawyers do* (Edward Elgar 2013).

Some have seen Western Europe (excluding the UK and Ireland) as laggards in a global movement towards clinical legal education.[7] But others point out a longer history in Western Europe, including late 19th century examples,[8] noting that clinical legal education in that context is perhaps less embedded in legal education than in other parts of the world.[9] Central and Eastern Europe has been a site for flourishing clinical legal education since the late 1990s, kick-started by international donor initiatives.[10] We are not able to conduct a comprehensive review of the literature on clinical legal education across Europe: we are not aware that such a review exists.[11] A 2015 literature review undertaken as part of an EU Commission funded project,[12] (ICT Law Incubators Network) found only two results[13] relating to European clinical legal education. A 2016 report,[14] commissioned and funded by MEP Cécile Kashetu Kyenge, found over 100 examples of clinical legal education across

[7] Richard Wilson, 'Western Europe: Last Holdout in the Worldwide Acceptance of Clinical Legal Education' (2009) 10 German Law Journal 823.
[8] Alberto Alemanno and Lamin Khadar, 'Introduction' in Alberto Alemanno and Lamin Khadar, eds, *Reinventing Legal Education: How Clinical Education is reforming law teaching and practice in Europe* (Cambridge University Press 2018), p 1-30; Maria Concetta Romano, 'A History of Legal Clinics in the US, Europe and around the world', Appendix A, in Clelia Bartoli, *Legal clinics in Europe: for a commitment of higher education in social justice*, Special issue of Diritto & & Questioni Pubbliche, May 2016, available in translation from https://www.academia.edu/34398554/Legal_clinics_in_Europe_for_a_commitment_of_higher_education_in_social_justice (The Bartoli report).
[9] Maxim Tomosek, 'Legal Clinics and Social Justice in Post-Communist Countries' in Chris Ashford and Paul McKeown, eds, *Social Justice and Legal Education*, (Cambridge Scholars Publishing 2018) 218-236.
[10] Richard Wilson, 'Western Europe: Last Holdout in the Worldwide Acceptance of Clinical Legal Education' (2009) 10 German Law Journal 823; Paul McKeown and Elaine Hall, 'If we could instill social justice values through Clinical Legal Education should we?' (2018) 5(1) Journal of International and Comparative Law 145-179, 151-152; Maxim Tomosek, supra n 9; Maxim Tomoszek, 'The Growth of Legal Clinics in Europe–Faith and Hope, or Evidence and Hard Work?' 21(1) International Journal of Clinical Legal Education (2014), 96; Philip M Genty, 'Reflections on US Involvement in the Promotion of Clinical Legal Education in Europe, in Alemanno and Khadar, supra n 8, p 31-45.
[11] A 2017 article describing a systematic review of clinical legal education literature in Europe does not list the literature found, see Rachel Dunn, 'A Systematic Review of the Literature in Europe Relating to Clinical Legal Education (2017) 2 International Journal of Clinical Legal Education 81-117.
[12] Ronan Fahy and Mireille van Eechoud, *Clinical Legal Education: A Review of the Literature* (ICT Law Incubators Network, 2015).
[13] Lawrence Donnelly, 'Clinical Legal Education in Ireland: Some Transatlantic Musings' (2010) 4 Phoenix Law Review 7; Wilson, supra n 10.
[14] The Bartoli report, supra n 8.

26 European countries. The European Network for Clinical Legal Education,[15] established in 2012, has held several conferences,[16] but does not publish its full conference proceedings. More recent book-length works include significant numbers of examples from Central and Eastern Europe, Western (continental) Europe, and the UK and Ireland.[17] One estimated over 50 new law clinics in Western (continental) Europe which were not operating 10 or even 5 years ago.[18] Many European law schools' clinics focus on domestic law, but some specifically concentrate on European law, and some arguably embody a distinctively 'European' identity.[19] We begin with an outline of the contours of clinical legal education, drawing on some published studies covering European jurisdictions, and locating them in the context of literatures on clinical and pro bono legal education globally. Perhaps predictably, we have been able to find significantly more published information about clinical legal education in England and Wales than in any other European jurisdiction. However, where possible, we highlight features of clinical legal education elsewhere in Europe.

Following a brief discussion of methods, the article then proceeds by presenting an analysis of an original dataset from a medium sized law school situated in the north of England. Sheffield Law School's clinical legal education offering, carried out through its voluntary pro bono schemes and a credit-bearing module on pro bono legal education, is, we argue, as far as we have been able to discern from the literature, in many respects illustrative of what is entailed where European law schools offer such a learning mode. Drawing from that analysis, in the contexts of broader European legal education, we present our conclusions about the nature and role(s) of pro bono

[15] http://www.encle.org/. Only six papers are available from the 2019 conference, which apparently attracted over 140 participants. Only two of those papers concern non-UK European clinical legal education (a paper on the significant impediments to clinical legal education in Hungary and one on the contemporary challenges to clinical legal education in Poland) see https://www.northumbria.ac.uk/about-us/news-events/events/2019/07/ijcle-2019/ijcle-papers/.
[16] See Ulrich Stege, 'Introduction', in the Bartoli Report, supra n 8, p 10.
[17] Alemanno and Khadar, supra n 8; Ashford and McKeown, supra n 9; Richard Grimes, ed, Re-thinking Legal Education under the Civil and Common Law: A Road Map for Constructive Change (Routledge 2018).
[18] Alberto Alemanno and Lamin Khadar, 'Introduction', in Alemanno and Khadar, supra n 8, p 10. The first Italian law clinic was established in 2009, see Marzia Barbera, 'The emergence of an Italian Clinical Legal Education movement: The University of Brescia Law Clinic, in Alemanno and Khadar, supra n 8, 57-72.
[19] Alberto Alemanno and Lamin Khadar, 'Conclusion' in Alemanno and Khadar, supra n 8, 320-321.

education in Europe, what they reveal about what (European) law schools are for, and suggest some directions for future research.

Our argument is, in brief, that, while such distinctions may make sense at an *institutional* level, at the level of *an individual student and their learning experience*, distinctions found in the literature between 'clinical'/'functional'/'vocational' and 'liberal'/'holistic', or even 'formalist'/'positivist', legal education do not bear much weight. Moreover, students themselves do not appear to think such distinctions are particularly significant to their university learning journeys or their future career aspirations.

Pro bono and clinical legal education

According to the European Parliament and Council,[20] all young people in Europe should experience education that allows them to develop key competences, equipping them for further learning and for their working life as adults. Young people on European law degrees, therefore, should experience legal education that meets those criteria. One way to achieve this objective would be to provide clinical legal education experience. However, although the *conversation* about the relationship between legal education and practice may have been opened up by the Bologna process,[21] as far as we are aware, no European jurisdiction *requires* clinical or pro bono legal education as part of the university stage of legal learning. By contrast, law schools in the USA approved by the American Bar Association require students to undertake a minimum number of hours of pro bono work in order to graduate,[22] and the New York State Bar requires applicants for admission to have carried out a minimum of 50 hours pro bono service prior to filing an application for

[20] Recommendation of the European Parliament and of the Council of 18 December 2006 on key competences for lifelong learning OJ L 394, 30.12.2006, p10-19. See also the Bologna Process, which encourages European higher education institutions to ensure students acquire not only knowledge, but also 'skills and competences' fitting to their futures, see European Commission *The European Higher Education Area in 2018: Bologna Process Implementation Report* (European Commission 2018), 47-92.

[21] Alberto Alemanno and Lamin Khadar, 'Introduction', in Alemanno and Khadar, supra n 8, p 27-28.

[22] Rachael Field et al, 'Reconsidering Pro Bono: A comparative analysis of protocols in Australia, the United States, the United Kingdom and Singapore' (2014) 37(3) UNSWLJ 1164, 1180.

admission.[23] In Europe, pro bono and clinical legal education is optional, not compulsory.

A very wide range of learning experiences fall within the broad umbrella of pro bono and clinical legal education.[24] A critical distinction is between clinical legal education, which is 'for-credit', that is to say, it counts towards the requirements for successful completion of the university degree or diploma[25]; and 'not-for-credit' pro bono legal learning, which is carried out by students alongside their formal studies[26]. Either can involve paid or voluntary work, although 'pro bono' usually means that the students offer their labour for free, and often, although not always, also means free labour from those supervising the students' work. In many instances where law firms offer free labour for such schemes, it is part of their 'corporate social responsibility' portfolio.[27]

[23] S 520.16 Pro Bono Requirement for Bar Admission, Part 520 Rules of the Court of Appeals State of New York for the Admission of Attorneys and Counselors at Law.
[24] See, eg, the Bartoli report, supra n 8, which maps over 100 law clinics. See, in the English context, the work of the LawWorks Clinics Network, which has carried out a number of very useful analyses of pro bono legal advice being done across its membership network, describing what clinics do. See eg Frank Dignan et al, 'Pro Bono and Clinical Work in Law Schools: Summary and Analysis' (2017) 4(1) Asian Journal of Legal Education 1, commenting on Damian Carney, et al, *The LawWorks Law School Pro Bono and Clinic Report* (2014); LawWorks Clinics Network Report April 2015-March 2016, (2016).
[25] 47% of the examples in the Bartoli report, supra n 8, p 50, are credit-bearing. See for example the credit-bearing nature of the 'Special Project: Pro Bono' module at The University of Sheffield, available at https://www.sheffield.ac.uk/programmeregulationsfinder/unit?code=LAW3049&org=SHEFFIELD&start=06-Feb-2017&loc=SHEFFIELD&cal=SPR%20SEM&year=2019 (last accessed 4th March 2020).
[26] See for example the law clinic offered at HHU Düsseldorf - where the law clinic is not credit bearing, 'Als freiwilliger Teil des Studiums' translating to 'as a voluntary part of [their] studies' http://www.jura.hhu.de/rechtsberatung-durch-jurastudierende/law-clinic-rechtsberatung-durch-jurastudierende.html (last accessed 4th March 2020) contrast this with the HU Berlin law clinic, focussed on constitutional rights conferred on the individual, and human rights more broadly, counts towards the law qualifying exams (Staatsexamen) and the MA in Gender Studies, overseen by the German Constitutional Court (BvfG) justice, Professor Baer https://www.rewi.hu-berlin.de/de/lf/ls/bae/humboldt-law-clinic/konzept/index.html (last accessed 4th March 2020).
[27] See for example Allen and Overy and DLA Piper offering a pro bono law service for children - https://www.lawsociety.org.uk/support-services/practice-management/pro-bono/case-studies/childrens-pro-bono-legal-service/ (last accessed 4th March 2020).

In European contexts, like in Asia[28], but unlike in North America, or Africa[29], universities provide legal education at both undergraduate and postgraduate levels. Pro bono legal education can therefore take place at either level. This means that students may be participating in pro bono schemes from quite a young age, even before reaching their 20s.

European law schools differ significantly in their scale. The largest European law schools have thousands of students, the smallest a few dozen. Obviously the scale of a law school determines the absolute numbers of students who can, at least in theory, experience pro bono or clinical legal education in that law school, but the scale of participation in such education also depends on its resourcing (especially staffing resource) relative to the student body[30]. Almost all examples of pro bono and clinical legal education that we were able to discover involve relatively small scale student participation.[31] Indeed some, such as Jeff Giddings,[32] define clinical legal education by reference to scale: 'an intensive *small group or solo learning experience* in which each student takes responsibility for legal or law related work for a client (whether real or simulated) in collaboration with a supervisor[33] (italics added). It is rare to find examples of pro bono or clinical legal education schemes with student numbers in the hundreds,[34] and we know of none with student numbers in the thousands.

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[28] Gary Bell et al, 'Legal Education in Asia' (2006) 1(9) Asian Journal of Comparative Law, ii, 4.

[29] David McQuoid-Mason et al 'Clinical Legal Education in Africa: Legal Education and Community Service' in Frank S Bloch, ed, *The Global Clinical Movement: Educating Lawyers for Social Justice* (1st edn., OUP, 2010) 23.

[30] See for example the concerns expressed in Lawrence Donnelly, 'Irish Legal Education *Ab Initio* : Challenges and Opportunities' (2008) 13 International Journal of Clinical Legal Education, 56, 83; the Bartoli report, supra n 8, p 48-50; for an example where national resourcing contributed to the scale of law clinics, see Katarzyna Ważyńska-Finck, 'Poland as the Success Story of Clinical Legal Education in Central and Eastern Europe. Achievements, Setbacks and Ongoing Challenges', in Alemanno and Khadar supra n 8; for an earlier discussion of Poland see Izabela Krasnicka, 'Legal Education and Clinical Legal Education in Poland', (2008) 12 International Journal of Clinical Legal Education 47-55.

[31] See for example Richard Lewis, 'Clinical Education Revisited', available online at http://orca.cf.ac.uk/27655/1/CLINICED.pdf (last accessed 27th February 2020) 4, Roger Burridge et al, 'The First Wave of Modern Clinical Legal Education The United States, Britain, Canada and Australia' in Frank S Bloch, ed, *The Global Clinical Movement: Educating Lawyers for Social Justice* (1st edn., OUP, 2010) 6.

[32] Jeff Giddings, *Promoting Justice through Clinical Legal Education* (1st edn. Justice Press , 2013).

[33] Giddings, supra n 32, 14.

[34] One example is the Student Law Office in Northumbria Law School, UK, with 198 students in 2014-15, see Elaine Campbell, 'Taking Care of Business: Challenging the Traditional Conceptualization of Social Justice in Clinical Legal Education, in Ashford

In Europe, pro bono and clinical legal education involves small scale cohorts: 60% of the clinics in the Bartoli report have 30 or fewer students participating per year.[35]

Pro bono schemes vary in terms of the scope of what is being offered to clients. There is obviously variation in scope of the substantive areas of law in which pro bono schemes operate. It would appear that the areas of law offered are generally at least in part determined by the interests of the founding academics, since in many smaller law schools, they are established by individuals rather than schools or universities themselves.[36] In the UK, most commonly pro bono services are provided in employment, family and social security law clinics.[37] Across all of Europe, human rights, migration, discrimination, criminal and consumer protection law are a common focus for clinics.[38] For example, German universities have proliferated law clinics to assist incoming asylum seekers in the wake of the increase in migration[39] from the Middle East and North Africa.[40]

Legal advice outside of the context of litigation seems to be the most common service offered,[41] but this is only one aspect of a range of approaches. At least arguably, at one end of the scale, legal education can involve virtual clinics, where clients are not real human beings or legal entities.[42] Similarly, clinical

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and McKeown, supra n 9, p 169-184. Some law clinics in Poland operate with student numbers over 150, such as Opole and Lublin in 2018/19, see http://www.fupp.org.pl/kliniki-prawa/publikacje/raporty, and discussion in Tomoszek supra n 9, p 224.

[35] The Bartoli report, 2016, supra n 8, p 50.

[36] See for example the discussion in Dubravka Aksamovic and Phillip Genty, 'Challenges, Successes and Setbacks for Clinical Legal Education in Eastern Europe' (2014) 20(1) International Journal of Clinical Legal Education 427.

[37] Dignan et al, supra n 24, 5.

[38] See the Bartoli report, supra n 8, p 53; Alemanno and Khadar supra n 8; for migration examples, see, eg, Carlo Caprioglio, *Rethinking Legal Education In Times Of Crisis*, 2019 http://romatrepress.uniroma3.it/wp-content/uploads/2019/12/RETHINKING-LEGAL-EDUCATION-IN-TIMES-OF-CRISIS-Some-remarks-from-the-case-of-the-Roma-Tre-Migration-and-Citizenship-Law-Clinic.pdf (last accessed 20 April 2020) .

[39] See Heaven Crawley et al., *Unravelling Europe's 'Migration Crisis': Journeys Over Land and Sea* (1st edn. Policy Press, 2018).

[40] Georg Dietlein and Jan-Gero Alexander Hannemann, 'The Development of Refugee Law Clinics in Germany in View of the Refugee Crisis in Europe' (2018) 25(2) International Journal of Clinical Legal Education 160. See also Caprioglio, supra n 38.

[41] See the Bartoli report, supra n 8, p 54.

[42] See for instance, Francine Ryan, 'A virtual law clinic: a realist evaluation of what works for whom, why, how and in what circumstances?' (2019) The Law Teacher, 4; and see the discussion in Romano, in the Bartoli report, supra n 8, pp 35-36.

legal education can include where students respond to live legal issues, such as ongoing group litigation in the form of amicus briefs, or governmental consultations about law reform, where there is no interaction between the student and a live client. At the other end of the scale, students on pro bono schemes would take on and run either or both of transactional or litigation work for a human being or legal person client, as if the student were a qualified legal professional.[43] In between those two extremes there is scope for many variations. Students may give advice without offering representation or transaction management. Students may support legal work without giving legal advice, for instance by offering research services. Students may simply observe legal work, perhaps taking notes for files.[44] And so on. Most European pro bono legal education sits somewhere in the middle of the range of possibilities in terms of the scope of provision to clients, inasmuch as we are able to describe such a position.

Likewise, there is variation in the extent of the responsibility that students take. This variation in experience would appear to have been present from the very genesis of clinical legal education.[45] At one extreme, students appear in courts and tribunals on behalf of a client. In some instances, pro bono legal learning takes place through student-led structures such as through a student union society.[46] At the other extreme, students merely sit in on advice being given by others, and potentially take notes. Within that range, there are models where legally qualified professionals work within a law school clinic, and students

[43] We have not found examples of that model in its pure form in the UK context. Even Nottingham Law School Legal Advice Centre which was the first 'teaching firm' is largely advisory rather than transactional or representational. It will prepare documents and will offer representation for small claims but this is a long way short of the full service that a traditional firm would offer. However, we have been unable to review clinics across the whole of Europe, and, as noted above the literature offers only an incomplete review.

[44] A role that merely involves observing the actions of others falls outside some definitions of clinical legal education as it lacks the 'learning by doing' elements of a student's own action and, following reflection and conceptualisation, experimentation in the real world, see David A Kolb, '*Experiential Learning: Experience as the source of learning and development*', Englewood Cliff, NJ, Prentice Hall. See in particular the ENCLE definition of a legal clinic as requiring experiential learning: http://encle.eu/about-encle/definition-of-a-legal-clinic, (last accessed 31 March 2020). However, it may permit exposure to a wider choice of legal areas, variety of skills and greater exposure to professional ethics than a University-based clinic; see Romano, supra n 8.

[45] See Burridge et al, supra n 31, 8 see also Aidan Evans et al, *Australian Clinical Legal Education* (1st edn, ANU Press, 2017) 63 et seq.

[46] Durham University Pro Bono Society appears to be an example, although the website refers to the law firms CMS Cameron McKenna Nabarro Olswang and Clifford Chance, https://www.dur.ac.uk/law/undergraduate/societies/dups/ (last accessed 6th March 2020).

become involved in one or more parts of that work[47] (such as preparing letters with legal advice), or where cases are pre-vetted by staff before they reach students[48], or where an appointments system is used to filter clients before students take on responsibilities, or where there is an open drop-in system for clients, and students have to do the filtering, for instance if clients present with legal problems in areas which cannot be supported by the clinic for regulatory or capacity reasons, or if there is a conflict of interest (especially in the case of a student or staff member seeking to bring a legal claim against the university). There are obvious variations in terms of how much time students spend on pro bono work.[49]

All pro bono schemes within European university law faculties[50], and elsewhere, involve students fostering skills of self-reflection[51], associated with professionalism.[52] Equally, pro bono schemes also include elements of learning designed to help students to develop ethical awareness.[53]

A different type of ethical element of pro bono schemes associated with clinical legal education involves the provision of legal services to those who otherwise

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[47] An interesting example in a European context is ECAS' EU Rights Clinic - in collaboration with the University of Kent, where PG students work on EU law queries from individuals with the aid of lawyers - see https://ecas.org/focus-areas/eu-rights/eu-rights-clinic/ (last accessed 5th March 2020).

[48] Sarah Blandy, 'Enhancing Employability through Student Engagement in Pro Bono Projects' (2019) 29(1) International Journal of Legal Education 1, 12.

[49] The Bartoli report, supra n 8, p 51, notes up to 450 hours of study and training,

[50] See, eg, the Bartoli report, supra n 8, p 52; Barbera, in Alemanno and Khadar, supra n 17; Kamil Mamek et al, 'The Past, Present and Future of Clinical Legal Education in Poland' (2018) 25(2) International Journal of Clinical Legal Education 89, Dubravka Aksamovic and Phillip Genty, 'Challenges, Successes and Setbacks for Clinical Legal Education in Eastern Europe' (2014) 20(1) International Journal of Clinical Legal Education 427, Burridge et al, supra n 31, 5.

[51] Richard Lewis, 'Clinical Education Revisited', available online at http://orca.cf.ac.uk/27655/1/CLINICED.pdf (last accessed 27th February 2020).

[52] Donald Schön: *The Reflective Practitioner: How Professionals Think in Action*. (1st edn. Basic Books, 1984); Timothy Casey 'Reflective Practice in Legal Education: The Stages of Reflection' (2014) 20 Clinical Law Review 317; Karen Hinett (2002) *Developing Reflective Practice in Legal Education* (UK Centre for Legal Education).

[53] Jonathan Herring begins his textbook with the observation that it is 'astonishing that a student can go through his or her training with little or no understanding of professional ethics' Jonathan Herring, *Legal Ethics* (OUP 2014), v. This observation obviously pertains to the legal education system in England and Wales; other jurisdictions take different approaches to professional ethics education of lawyers. See further Julian Webb and Donald Nicolson 'Institutionalising Trust: Ethics and the Responsive Regulation of the Legal Profession' (1999) 2(2) Legal Ethics 148, Allan Hutchinson, *Fighting Fair: Legal Ethics in an Adversarial Age* (1st edn. CUP, 2015).

would not be able to access justice. Access to justice (which even at its narrowest, means the securing of vested rights through courts and tribunals[54]) is enshrined in Article 6 of the European Convention on Human Rights. Further, law clinics have been associated with social justice more broadly defined as fairness in terms of access to public goods, such as health, housing, welfare or education.[55] The social and economic value of pro bono work is a key aspect of the USA context[56], where legal aid and access to justice irrespective of socio-economic class as understood in Europe has never been part of the professional legal landscape. In England and Wales, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 increased the need for this kind of contribution of university law schools to their local communities, as an ethical and civic duty.[57] The social justice aspects of clinical legal education are a key motivator across European jurisdictions.[58]

Finally, some clinical legal education and pro bono schemes emphasise the specifically *legal* skills that students are developing. Others will focus more on *generic* aspects of the work entailed: team working, time management, information gathering, communications skills and so on.[59] Relatedly, the content of pro bono and clinical work may be connected to the substantive legal

[54] Janneke H Gerards and Lize R. Glas, 'Access to Justice in the European Convention on Human Rights System' (2017) 35(1) Netherlands Quarterly on Human Rights, 11, 13.
[55] See, eg Jeremy Cooper and Louise Trubek, eds, *Educating for Justice: Social Values and Legal Education*, (Dartmouth, 1997); David McQuoid Mason, 'Teaching Social Justice to Law Students through Community Service' in *Transforming South African Universities - Capacity Building for Historically Black Universities* (Philip F. Iya, Nasila S. Rembe, & J.Balorodo eds 1999) 89; Frank Bloch, ed, *The Global Clinical Movement Educating Lawyers for Social Justice* (Oxford University Press, 2010); Donald Nicholson, 'Our Roots Began in (South) Africa: Modeling Law Clinics to Maximise Social Justice Ends' (2016) 23 International Journal of Clinical Legal Education, 87-136; Ashford and McKeown, eds, supra n 9.
[56] Deborah L. Rhode, 'Cultures of Commitment: Pro Bono for Lawyers and Law Students', (1999) 67 Fordham Law Review 2415 . Also Alpheran Babacan and Hurriyet Babacan, 'Enhancing Civic Consciousness through student pro bono in legal education', (2017) 22(6) Teaching in Higher Education, 672.
[57] See Mavis Maclean and John Eekelaar 'The Student Contribution: Clinical Legal Education' in M Maclean and J Eekelaar, *After the Act: Access to Family Justice after LASPO* (1st edn, Bloomsbury, 2019) 118; Elaine Campbell and Victoria Murray, 'Mind the Gap: Clinic and the Access to Justice Dilemma', (2015) 2(3) International Journal of Legal and Social Studies 94, 100; Elaine Campbell, 'Recognising the Social and Economic Value of Transactional Law Clinics: A View from the United Kingdom' (2016) 65 Journal of Legal Education, 580.
[58] See, eg, Ashford and McKeown, eds, supra n 9; Alemanno and Khadar, supra n 8.
[59] See Dignan et al, supra n 24; Babacan and Babacan, supra n 56, 676.

topics that students have already studied or are studying alongside, or it may be entirely disconnected from that substantive legal learning.

In short, 'clinical legal education' and 'pro bono legal learning' take a very wide variety of forms. However, whatever the form, it would seem that such aspects of European legal education place those law schools which offer them very much in the 'clinical'/'functional'/'vocational' approach to legal education, rather than a 'liberal'/'holistic' or 'formalist'/'positivist' approach. In the remainder of this article, we explore this assumption by moving the focus away from what *law schools* are 'for', and onto how *students* experience their legal education. To do so, we combine analysis of data from a small pilot project with broader reflection on the landscape of clinical and pro bono legal learning in Europe, as reported in the extant literature.

Method

In order to investigate student experiences and perceptions of pro bono legal education, we designed and implemented a small pilot study involving an on-line questionnaire.[60] The questionnaire is found in the Appendix. Rather than beginning with a formal hypothesis, we began with a series of questions about the nature of pro bono legal education, and its relationships with both university education as 'liberal' legal education, and with professional formation, or the 'functional' legal education mode. We operationalized our questions into two broad categories of investigation: how students perceived the relationship between their pro bono work and (i) curricular learning on the law degree on which they were enrolled; and (ii) the 'competences' of a newly qualified solicitor, as articulated by the Solicitors Regulation Authority (the regulatory body for the solicitors' profession in England and Wales) in the context of the competence statement (comprising a statement of solicitor competence, the relevant threshold standard and a statement of legal knowledge) that defines the continuing competences required of all solicitors. The latter data is not the subject of this article, and will be discussed in a later publication. Here, we

[60] The project was ethically approved by Sheffield Law School's ethics review procedure. The University of Sheffield's Research Ethics Committee monitors the application and delivery of the University's Ethics Review Procedure across the University. On questionnaire design in general, see Alan Bryman, *Social Research Methods*, (5th edn, Oxford University Press, 2015) 159-206.

focus on the former. In the context of a 'Russell Group'[61] law school like Sheffield, the curricular content of law degrees at undergraduate level, and to some extent at postgraduate level,[62] is understood as falling squarely within the 'liberal' mode of legal education. Our data also includes responses from students on the postgraduate 'Legal Practice Course', which is the vocational stage of training for students who want to become solicitors in England and Wales. The inclusion of this data in our dataset compromises the extent to which we are able to make claims about the relationships with 'liberal' modes of legal education. However, this deficiency in the dataset was unavoidable as, in order to be able to maintain anonymity with the small numbers involved, we could not ask for details of the programme on which each respondent was enrolled.

In terms of questionnaire design, the questions concerning 'competences' used the wording of the Solicitors Regulation Authority's 'day one' competence statement but there was obviously no direct equivalent for the questions on relationships to curricular learning. The Quality Assurance Agency (QAA), the external body responsible for overseeing quality in Higher Education provision in England, sets out the 'skills and qualities of mind' of law graduates, but this provides only loose guidance. Therefore, some of the questions on relationships between pro bono and curricular learning were developed from data supplied by the students themselves. In their applications to join the pro bono schemes, students were asked *inter alia*, to explain what they hoped to gain from the experience. The questions on students' objectives in taking part in pro bono work drew from the wording used by the students in those letters of application, in an inductive and thematic approach. The questions in the section in the questionnaire about pro bono work and students' curricular learning were developed from QAA standards as articulated in Sheffield Law School's programmes' curricular content. They were articulated through a loose mapping of themes in the curricular assessment criteria and learning objectives applicable to the School's taught programmes. These criteria are, obviously, shared with students, so will have been familiar to our respondents.

The questions asked sought to elicit indications of students' perceptions of the relationships between pro bono learning and the 'liberal' legal education they

[61] The *Russell Group* is a self-appointed group of 24 research-intensive, UK universities, mostly located in major urban settlements, see https://russellgroup.ac.uk/about/our-universities/ (last accessed 4th March 2020).
[62] Although not on the Legal Practice Course.

were experiencing in the rest of their studies. By asking about a range of aspects related to the broad concept in which we are interested, we increased the data's reliability, although obviously in a pilot study there is a limit to how reliable the data is through time, with different cohorts of students experiencing the same pro bono schemes. However, the reliability of the themes emerging is also strengthened by the similarity with themes emerging from an earlier study seeking to determine links between pro bono engagement and employability.[63]

Further, we acknowledge that reliability is compromised by the nature of the research design involving a student survey. Students, who by definition have not yet graduated from the programme they are on, and are far from being experts in the learning objectives of the degrees or diplomas which they are following, are unlikely to be the best judges of whether being exposed to a pro bono experience will allow them to develop skills or legal knowledge that is being assessed as part of their degree or diploma. In other words, putting it in the words of the Johari window,[64] our student respondents do not know what they do not know. We seek to minimise the effects of this inevitable limitation of our method by focusing our analysis on *student perceptions* of their learning, rather than objective or positivist claims about student learning. A more holistic study would include comparative data on students' academic attainment (represented in their examination results) pre- and post-pro bono experience, and data from academic staff.

A simple 3 or 5 point Likert scale was used to gather responses. To compensate for the limitations of quantitative data alone, as a measure of the social, as opposed to the natural, world,[65] free text boxes were included to allow respondents to elaborate on their answers or introduce new factors, or both. This introduces a qualitative element to the research design.

The questionnaire was administered through 'google forms' to around 200 students enrolled in Sheffield Law School's various pro bono schemes (outlined further below), between 14 April and 14 June 2018. Students were contacted through their university email accounts, with a hyperlink to the questionnaire included in the email. Reminder emails were sent to encourage

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[63] Blandy, supra n 48.
[64] Joseph Luft et al, 'The Johari window, a graphic model of interpersonal awareness' (1955) *Proceedings of the Western Training Laboratory in Group Development*.
[65] Alfred Schutz, *Collected Papers I: The Problem of Social Reality*. (Martinus Nijhof, 1962), cited in Bryman, supra n 60, 30.

responses. Responses were anonymous and could not be linked to the student respondent or their email account. The student body in Sheffield Law School totals around 1200 students, which includes around 830 undergraduate students enrolled on seven 'Qualifying Law Degrees'; around 300 students on LLM programmes and two postgraduate programmes which are 'conversion' options for students with another degree who want to become lawyers; and around 70 students on the 'Legal Practice Course'. The 200 students to whom the questionnaire was sent thus represent around 16% of the whole student body. The questionnaire response rate was 30%, relatively low for questionnaires, but nonetheless yielding 60 responses which form our modest pilot dataset.

Obviously in a pilot study of this nature we have not been able to randomly generate a probability sample of students experiencing learning through pro bono schemes in law schools across European jurisdictions. Rather, we seek to make tentative claims about the generalizability of our data in our 'convenience sample',[66] by reference to the extent to which Sheffield Law School's pro bono schemes represent, in many respects, a median point in the various ranges of approach that can be offered by law schools' pro bono schemes, as indicated in the literature discussed above.

Analysis

Sheffield Law School's pro bono schemes

The six pro bono schemes in Sheffield Law School reflected in the data[67] include some internal to the Law School; and some with external partners. The schemes have grown organically and to some extent opportunistically, so do not follow a particularly logical structure. Internal schemes are the general legal clinic, *FreeLaw*; a specialist commercial law clinic, *CommLaw*; and the *Miscarriages of Justice Review Centre*. *FreeLaw* and *CommLaw* operate on a shared model, which involves drop-in or pre-booked appointments sessions with members of the public (including, but not limited to, university staff and students). Each client meets with a group of students, without a member of staff present. Students are responsible for filtering out clients whose needs they cannot meet, for instance because a legal claim is time-critical, or there is a conflict of interest. Students issue a client care letter and privacy statement, ask

[66] Bryman, supra n 60, 201-202.
[67] There were a further five pro bono schemes with external partners at the time the data was gathered, but the data does not represent these examples.

questions, and take notes of the discussion. Immediately following the meeting, students prepare a formal attendance note and write a letter to the client, with further client care information, but also setting out the legal issues that the students intend to review. There is an opportunity for the client to confirm or refine those legal issues. That letter and the meeting note are reviewed by a qualified solicitor employed by Sheffield Law School for this purpose (as part or all of their contract of employment). Within 14 days, students must research and prepare a letter of advice on the law, have it approved by the qualified solicitor, who also reviews their research, and send it to the client. This model does not involve the immersive experience of responsibility for a client entailed in legal professional practice. But otherwise, in some senses, it is close to such practice. In particular, for these students, it is the first time that they have applied their learning to a real-life client and taken some responsibility in relation to that application.

In the *Miscarriages of Justice Review Centre*, students act on cases where a convicted prisoner maintains their innocence. The students review and compile evidence that could be put in a letter to the Criminal Cases Review Commission in an attempt to satisfy the statutory test for referral of the case to the Court of Appeal[68]. The work is supervised by two qualified lawyers in the School. The *Criminal Justice Initiative* is the external version of the *Miscarriages of Justice Review Centre*. A coordinator within Sheffield Law School liaises with a specialist firm of solicitors, who supervise the students' work.

The pro bono immigration appeals work with the external partner *South Yorkshire Refugee Law and Justice* operates in a similar way. It provides legal advice to individuals who need help to support their claim for asylum and who are unable to use the services of a solicitor. Students also carry out research into the country a person has fled from, to explain to the appropriate tribunal why they cannot return, to support an asylum claim[69].

The sixth pro bono scheme involving external partners on which our data reports is *Support through Court. Support through Court* is a charity that supports people facing court proceedings without a solicitor to advise and

[68] Section 13, Criminal Appeals Act (1995).
[69] See Rule 353 of the Immigration Rules, https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-12-procedure-and-rights-of-appeal (last accessed 4th March 2020) cited in *R (on the application of ZO (Somalia) and others) v Secretary of State for the Home Department* [2010] UKSC 36 [20] (*Lord Kerr*).

represent them. The charity does not offer legal advice. Instead, it offers emotional support, help with form-filling, and procedural advice (where this does not constitute giving legal advice (such as, for instance, in the case of a choice of which form to fill in)). This example is thus the furthest from experience of the responsibilities entailed in legal practice, although it does involve students engaging directly in the court system.

All undergraduate students who are participating or have participated in any of the School's internal or external pro bono schemes are eligible to choose a final year 20 credit *pro bono module*, as part of the 120 credits required in each year of their degree programme. Around 30 students elect to follow this module each year. The module involves lectures and seminars on the theory and practice of pro bono work, and is assessed by three components: a standard academic essay, the overriding theme of which must concern pro bono advice and/or issues relating to access to justice, and which critically analyses either the context, regulatory environment or relevance of professional ethics and values to pro bono work; a presentation on skills developed through the student's pro bono work; and a self-reflective portfolio on that work. Although the questionnaire does not explicitly ask about experience on this module, it represents part of the suite of pro bono learning available for (some) students in Sheffield Law School.

To summarise, Sheffield's pro bono schemes all involve around 4 hours a week, in term time, of 'not-for-credit' voluntary work from both undergraduate and postgraduate students. Some supervision on the schemes is offered on a pro bono basis, but mostly supervision is undertaken by paid staff, either in the university, or in one of the external partner organisations. In the case of the partner law firms, the work is pro bono for the firm, although the individual supervisor is a salaried member of staff. Other external partners are charities. Some credit-bearing student learning takes place on the pro bono module. Sheffield Law School represents a medium-sized law school by European standards. The scale of its pro bono schemes is small, as is generally the case, with around 200 students engaged across 11 schemes, so an average of just under 20 students on each scheme. In terms of the scope of what is done for or with clients, Sheffield's position is in the middle of the range of possibilities: Sheffield students give advice on the law in the context of a real client's circumstances, but this does not usually result in representation or transaction management for them. In the case of *Support through Court*, which represents 12.1% of the questionnaire data, no legal advice is given. In terms of the range

of responsibilities taken by students, the Sheffield Law School clinics are student-led. Students are organised into groups led by a student with more experience. They engage with clients largely without direct staff involvement, although specialist staff are available to students at their request. All correspondence with clients is supervised by someone who is legally trained.

The pro bono work in Sheffield Law School represented in this data[70] does *not* include court representation; amicus work for courts or quasi-judicial bodies such as international human rights organisations; responses to governmental inquiries or law reform proposals; virtual clinic experience; 'street law' legal education activities, such as in community centres or schools[71]; work experience with legal entities of various sorts, including law firms, the police, or local government; or working with other disciplines such as architecture, education, health and medicine to offer holistic advice. This is obviously a non-exhaustive list of types of pro bono work that take place in European contexts, but draws on the data available to us to the best of our abilities.

Nonetheless, the types of pro bono work undertaken in Sheffield Law School, seen in the context of the review of literature on pro bono and clinical legal education, suggest that the dataset from our pilot could, to some extent at least, be conceptualised as representing a 'median' or, maybe, even in some senses 'typical' European law school offering pro bono legal education. It is from that position that we draw our more general analytical conclusions.

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[70] Sheffield Law School does have one scheme where students are being trained to represent clients in court: an external scheme with *Advice Sheffield* (formally, the Citizens Advice Bureau) with Personal Independence Payment appeals under the *Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013/381* but this scheme is not represented in the data.

[71] Street Law is a phenomenon with origins linked to Georgetown University, Washington, see Suraya Rostami et al, 'Promoting Citizen Rights through Street Law Projects' (2014) 10(4) Asian Social Science, 273-278, and indeed the clinic still functions today - see https://www.law.georgetown.edu/experiential-learning/clinics/dc-street-law-program/law-student-faq/.
Students in street law clinics give on the street advice in the truest sense, but the practice has spread all over the world. See, for instance, Tereza Krupova and Marek Zima, 'Street Law and Legal Clinics as Civic Projects: Situation in the Czech Republic' (2017) 7(8) Onati Socio-Legal Series, 1647-1660; David McQuoid-Mason 'Street Law as a Clinical Program' (2008) 17 Griffith Law Review, 27-51. A fuller review of its principles and its practice can be found in David McQuoid-Mason et al 'Street Law and Social Justice Education' in Frank S Bloch, ed, *The Global Clinical Movement: Educating Lawyers for Social Justice* (1st edn., OUP, 2010) 226.

The questionnaire results: respondents' objectives

The questionnaire data comprises 60 responses. The response rates for each scheme are shown in Table 1.

Table 1: Response rates for each pro bono scheme

Scheme	**All respondents (N=60)**	**Total number of students on scheme in 2017-18**
General legal clinic	17 (29.3%)	84 (20.2% responded)
Miscarriages of Justice work	13 (22.4%)	38 (34.2% responded)
Specialist commercial clinic	12 (20.7%)	33 (36.4% responded)
Court-based work*	8 (13.3%)	14 (57.1% responded)
Miscarriages of Justice work (external supervisor)	7 (11.6%)	7 (100% responded)
Immigration appeals work*	3 (5.2%)	6 (50% responded)

These show a relatively even spread between the School's internal pro bono schemes, and smaller response rates for the externally supported pro bono schemes. The Immigration appeals work is an outlier at just over 5% of the total sample, and just three responses. Obviously, to reiterate, the small numbers of responses in this pilot study must be taken into account when drawing any general analytical conclusions (see further above).

Of the respondents, 66.6% (40 out of the 60) had been involved for one academic year or less. The remaining 33.3% (20 out of the 60) had been involved in pro bono for more than one academic year. 14 were in a team leader or student manager position: students tend to stay in the same scheme and attain seniority, though a small number may change schemes.[72] Among the potential respondents to the survey (206), some 61 were 'returners' from the previous year, or from the year before that (because they had been on a year abroad). Thus 29.6% of our 206 students were, potentially, students whose experience of pro bono was disproportionately positive (in that they chose to return to pro bono work for a second year), and could potentially skew our results. However, the difference between 33.3% and 29.6% is not particularly significant.

[72] For example, in the academic year in which the data was obtained, of our potential sample of 206 students, three students are known to have moved from one scheme to another and two further students were involved in two schemes although this is not formally permitted.

The first set of questions focused on students' objectives in taking part in a pro bono scheme. This section of the questionnaire was designed to seek to discover what students felt that they had hoped to learn when they began taking part in pro bono work. Students were asked this question around 6 months or 18 months after they had originally applied to the pro bono schemes, so there is some scope for students' memories to skew the results[73], as compared to what they might have answered had we asked them before they began their pro bono work. As explained above, the questionnaire asked about a list of possible reasons that students may have had when they applied for pro bono work, based on the students' own applications from autumn 2017. Students were also given an opportunity to add their own reasons, if they did not see them listed.

Table 2: Objectives in taking part in a pro bono scheme

	Very important	Quite important	Neutral	Less important	Least important
Help others	39 (65%)	15 (25%)	4 (6.6%)	0	2 (3.3%)
Improve my CV/employability	41 (68.3%)	16 (26.6%)	0	1 (1.6%)	2 (3.3%)
Develop my professional ethics	29 (48.3%)	22 (36.6%)	5 (8.3%)	2 (3.3%)	2 (3.3%)
Learn more about a particular area of law or legal practice	26 (43.3%)	17 (28.3%)	12 (20%)	4 (6.6%)	1 (1.6%)
Develop my legal skills through practical experience	50 (83.3%)	5 (8.3%)	3 (5%)	0	2 (3.3%)
Other objective[±]					

[73] See Geoffrey and Elizabeth Loftus, *Human Memory: The Processing of Information* (1st edn. Psychology Press, 1976; 5th edn. 2019), Jackie Andrade, ed, *Working Memory in Perspective* (1st edn., Psychology Press, 2001).

[±] 7 responses to this question.

A very high proportion of students (90%) felt that, in engaging with a pro bono scheme, the aim of helping others was important. Professional ethics development also scored highly (85%) as an important aim. Neither of these relate to the development of skills or knowledge associated with learning in the 'liberal' or 'holistic' mode of legal education, although learning about legal ethics in a broader sense[74] could be said to be part of such legal education. Only seven respondents added their own objectives (several of these added more than one objective). Two of these additions referred to the networking opportunities associated with pro bono work, and generic skills development. Another suggested that pro bono work was an opportunity to discover whether a legal career is really of interest to the respondent. A fourth wanted to 'give back' what they had learned in the previous year of engagement with pro bono schemes, and a fifth sought greater meaningful responsibilities. Again, none of these relate to 'liberal'/'holistic' legal learning.

However, all of the other aims at least potentially relate to those types of learning. Learning more about a particular area of law or legal practice (important to nearly three quarters of the respondents (71.6%)) may (although need not necessarily) relate to university studies in the 'liberal'/'holistic' education mode. As a good degree is key to employability, the importance of the aim of improving CVs and students' prospects of employment (95%) also potentially relates to 'liberal' or 'holistic' legal learning. The aim most students felt to be of the highest importance (83.3%, with a further 8.3% responding it was of some importance, a total of 91.6%) - develop my legal skills through practical experience - can also be interpreted to be related to both 'liberal'/'holistic' legal education and 'clinical'/'functional'/'vocational' aspects of legal education. Although the objective refers to 'practical experience', which suggests the latter type of legal education, 'legal skills' are also associated strongly with the former.

Recall, moreover, that these objectives were drawn from the students' own application data. Students' accounts of their aims in engaging in clinical legal education through pro bono schemes, as expressed in their applications to those schemes, did not distinguish sharply between different aspects or types of legal education. This insight is further reflected in the small number of responses in

[74] See Julian Webb and Donald Nicolson 'Institutionalising Trust: Ethics and the Responsive Regulation of the Legal Profession' (1999) 2(2) Legal Ethics 148, Allan Hutchinson, *Fighting Fair: Legal Ethics in an Adversarial Age* (1st edn. CUP, 2015).

the 'other objective' category in the questionnaire, which included 'honing linguistic skills' and 'developing legal skills'. These objectives also relate to both types or modes of legal education. Even generic skills development (such as team working, organisation, time management and professional style of communication) at least arguably relate to the skills associated with good university law school learning in a non-vocational sense.

Table 3: Objectives met through taking part in a pro bono scheme

	Definitely achieved	Achieved	Neutral/ don't know	Not achieved	Definitely not achieved
Help others	28 (46.6%)	19 (31.6%)	7(11.6%)	5 (8.3%)	1 (1.6%)
Improve my CV/employability	37 (61.6%)	18 (30%)	3 (5%)	0	2 (3.3%)
Develop my professional ethics	25 (41.6%)	26 (54.3%)	7 (11.6%)	0	2 (3.3%)
Learn more about a particular area of law or legal practice	30 (50%)	22 (36.6%)	6 (10%)	1 (1.6%)	1 (1.6%)
Develop my legal skills through practical experience	39 (65%)	14 (23.3%)	3 (5%)	3 (5%)	1 (1.6%)
Other objective[‡‡]	4 (23.5%)	4(23.5%)	8(47%)	0	1 (5.8%)

In general, the vast majority of students felt that all objectives we asked about in the first set of questions had been achieved, with only 10% of students reporting that they felt 'helping others' had not been achieved; 6.6% that they felt they had not developed their legal skills through practice experience; 3.3% that they felt improving their CV and/or employability had not been achieved (perhaps reflecting a very specific career goal, such as securing a 'training contract', the next stage of their legal qualification journey); and the same percentage felt that they had not developed their professional ethics, or learned

[‡‡] N is not 60 because only 17 responses to this question.

more about a particular area of law or legal practice. As we noted above, several of these objectives are associated with both 'liberal'/'holistic' legal education and with 'clinical'/'vocational' legal education, and the students whose views we report here feel that pro bono clinical legal education helped them to achieve these objectives.

The free text responses give some qualitative insights into the reasons behind the students' beliefs about the effects of the learning that they experienced in the pro bono schemes in Sheffield Law School. Some border on the altruistic, explaining how students feel about notions of the responsibilities of a civic university to its local communities:

> […] many of the people we help ... are vulnerable and disadvantaged. I am an international student and this position allows me to give back to the community which has been very nice to me since I moved here.

Many of these free text responses refer to generic graduate and professional skills, such as timekeeping, communication (one specifically mentions 'answering the telephone', perhaps reflecting an awareness of a generational gap in terms of comfort with different types of communication), teamwork, presentational skills, and leadership. Others refer to specifically legal professional skills, such as client interviewing, form filling and understanding of court processes. But several refer to skills associated with 'liberal' legal learning, especially legal research and legal analytical skills. Some respondents draw a distinction between the 'practical' learning in the pro bono context and the more 'abstract' learning associated with their 'liberal'/'holistic' legal education:

> [...] I learned more about efficient legal research and the practical implications of legal decisions than I have in my traditional modules.

In many instances, respondents see a *uni-directional* relationship between their 'university' ('for-credit') learning, and what they are able to offer to the pro bono scheme:

> Essentially, I have been able to apply my studies of law directly to my judgement on how to advise clients, catering for my understanding of that topic.

> To be placed in a position of real life scenarios, in real court rooms with judges who are giving judgements on real life cases. I have learnt so much and also put what I have learnt before into play.

> It has shown me how to work within a legal team for real life clients, allowing me to apply what I have learnt theoretically to real life situations.

These responses suggest that students feel that there is a direct, but one-way, relationship between the knowledge, understanding, skills and competences they have gained through their 'liberal' or 'holistic' learning on their law degrees, and the knowledge, understanding, skills and competences associated with 'vocational' or 'functional' legal training. The students who responded to our questionnaire do not experience the distinction between those different modes of legal education in as strong a form as some of the literature discussed above implies.

Furthermore, in some instances, respondents see a *mutually reinforcing* learning process, where their learning as part of their 'liberal' or 'holistic' legal education supports their contribution to the service they are able to offer clients pro bono, but *at the same time* the learning on the pro bono scheme reinforces their credit-bearing learning as part of their degree programmes:

> [...] helped me to understand how to research areas of law that I have not studied and has helped me with my law [degree] work.

Asked what would have improved their experience, many respondents could not think of anything, several wanted more clients and greater marketing or advertising efforts along with extended opening hours of the clinic to secure those, and several suggested greater law school resourcing, either in terms of equipment, physical space, or staff time, or all three. However, one respondent suggested that a better link to 'credit-bearing' learning would be an improvement, and noted that they intended to follow the optional pro bono module the following academic year.

Although 17 respondents reported in response to this question that they had another objective in mind, of those only seven had reported that objective in the free text space, in response to the earlier question. All of those seven

reported that their objective had been achieved. It is not possible, however, to draw further conclusions from the other 10 respondents who reported another objective, of whom one felt their other objective(s) had been achieved, one felt that/those objective(s) had definitely not been achieved, and the rest were neutral/don't know. Learning from this pilot, in future iterations therefore, the questionnaire needs to be adjusted so that only those respondents who give details of one or more other objectives are able to report on whether that/those objectives have been met.

The questionnaire results: pro bono work and curricular learning

The second set of questions sought to elicit respondents' views on whether involvement in pro bono work had helped respondents to become 'better learners' on their degree programmes. We asked whether respondents felt that pro bono work had had any effect on their ability to carry out a range of tasks and skills associated with law degree programmes, and their learning objectives and assessment criteria.

Table 4: Pro bono work and your curricular learning

	Increased my ability	No effect	Decreased my ability
Develop your understanding of complex issues	48 (80%)	12 (20%)	0
Apply law to facts	51 (85%)	9 (15%)	0
Carry out accurate and well organised research	49 (81.6%)	11 (18.3%)	0
Use a range of legal material	45 (75%)	15 (25%)	0
Structure and develop an argument	30 (50%)	30 (50%)	0
Develop your writing style	36 (60%)	24 (40%)	0

The most striking aspect of this part of the dataset is the fact that no respondents felt that their pro bono work had had a *detrimental* effect on their curricular learning, and most respondents felt that it had had a positive effect on almost all aspects of that learning. A very high proportion of respondents felt that their

engagement with one of the School's pro bono schemes had had a positive effect on their ability to apply law to facts (85%); to carry out accurate and well organised research (81.6%); and in the development of their understanding of complex issues (80%). All of these are qualities associated with 'liberal' or 'holistic' legal education. That said, some are problematised in that context: in particular, the distinction between 'law' and 'facts';[75] and the nature of 'legal research'.[76] In particular, there is an ongoing discussion across European law faculties and schools about the extent to which legal research is only a descriptive and expository pursuit, sometimes denoted 'legal science', or the extent to which legal research includes empirical and theoretical/conceptual scholarship. In the former mode, university scholarship involves describing what the law is, and systematising that account.[77] In some jurisdictions, those 'academic' accounts in effect take on the quality of law, as in the case of authoritative commentaries on civil or criminal codes. Clinic work, particularly a drop-in clinic, certainly exposes students to the expository aspects of legal research: students will be faced with clients presenting with legal problems in areas of law which students have not studied in class, and of which they have no prior knowledge. Examples in Sheffield Law School's clinics include complex regulatory issues such as food safety and vehicle recall on safety grounds. Students must use general disciplinary research skills in terms of discerning and finding the correct 'black letter' law without the 'handrails' of lecture notes or even textbooks to support their applied learning.

On the application of law to facts and development of understanding of complex issues, we may be seeing that students perceive mutually reinforcing learning processes between pro bono and curricular work, or a process by which pro bono learning helps curricular learning. Small group learning and assessments in English law schools typically include 'problem questions' to which students must provide a legal response. But these are carefully edited and crafted fictitious scenarios, designed to elicit a response on predictable legal topics, usually with some moot points included.[78] These sanitized

[75] See, eg William Twining, 'Taking Facts Seriously' in Neil Gold, ed, *Essays on Legal Education* (Butterworths 1982) 51-76; Karl Llewellyn, *The Bramble Bush*: *The Classic Lectures on Law and the Law School* (1st edn, OUP, 2008) 34-36.
[76] See, eg, Jan Smits, *The Mind and Method of the Legal Academic* (Edward Elgar, 2012).
[77] Smits, supra n 76, p 13, 15-16, 17 cites the examples of the *Münchener Kommentar zum Bürgerlichen Gesetzbuch*; or Eduard Meijers (1903) Dutch Civil Code; or Peter Birks' (1985) description of the English law of restitution.
[78] For a description, see Emily Finch and Stefan Fafinski, *Legal Skills* (5th edn. OUP 2015), Chapter 15: Answering problem questions; Sharon Hanson, *Learning Legal Skills*

learning spaces are far from the way a client in a law clinic explains their situation, in a way that makes sense and highlights what is important to them. Such lay explanations may include information on which the client her/him/themself is confused, has misunderstood, or is legally speaking irrelevant. The information may be given by a combination of written and oral communication. In a law clinic, the student must unravel, question, assess and sift this information to arrive at an understanding of the situation to which they subsequently attempt to discover the relevant legal or practice point, and then apply it sensibly, to give clear advice. Returning to the less 'messy' world of curricular 'problem question' scenarios is almost inevitably going to seem easier than before the pro bono learning experience, hence the perception that pro bono work increases respondents' ability to apply law to facts and understand complex issues in their curricular work.

By testing and stretching these skills at the unstructured edges that pro bono work involves, we would expect a student to understand that they have an advantage when transferring them to the 'tidied up' examples found in decided cases, textbook accounts, and simulated facts of their curricular learning and assessments. This is what our dataset suggests.

It is also notable that half the respondents to our questionnaire felt that there had been no effect on their ability to structure and develop an argument. Legal argumentation is claimed to be a distinctive feature of legal education, in both its 'liberal' and its 'vocational' modes.[79] This is therefore an instance where we would expect to see mutually reinforcing learning loops between pro bono clinical learning learning and curricular learning on a university law degree in a 'liberal' or 'holistic' context. However, if that mutual reinforcement is taking place, the respondents to our questionnaire have not reported that they are aware that this is the case.

It may be that our respondents see a distinction between different *types* or *forms* of legal argument, some of which are valued in the 'liberal' legal education context, and others of which are valued in clinical legal education contexts and

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and Reasoning (4th edn. Routledge, 2016), Chapter 22,; Nicholas J. McBride, *Letters to a Law Student* (4th edn. Pearson International, 2018) 281

[79] See, eg, Karl Llewellyn, *The Bramble Bush*: *The Classic Lectures on Law and the Law School* (1st edn, OUP, 2008), 42-52; Emily Finch and Stefan Fafinsky, *Legal Skills* (9th edn. OUP, 2019) 253-271 ; James Holland and Julian Webb, *Learning Legal Rules: A Students' Guide to Legal Method and Reasoning* (10th edn, OUP, 2019) 109; Sharon Hanson, *Learning Legal Skills and Reasoning* (Routledge 2016).

indeed in legal practice. This interpretation would explain the relatively low numbers of respondents seeing improvement in their abilities to structure or develop an argument *in the context of what they perceive to be valued as legal argumentation in their university studies and assessments*. Particularly in the case of written legal argument, in the context of an institution like Sheffield Law School, emphasis is placed within marking criteria and assessment feedback on students developing what they may perceive as an 'academic' writing style. This perception would therefore explain why our respondents may not perceive learning to write in a simpler and more direct, lay client-friendly style as helpful in their academic development, or vice versa.

Finally, we asked respondents whether their involvement in the School's pro bono schemes had had any effect on their *interest* in their curricular learning. This question was based on the sense that an enhanced interest in curricular learning would have a positive effect on that learning, as enthusiastic learners are more successful learners. We asked respondents to consider their answer in relation to their studies overall, rather than focusing on any particular substantive module that they might be studying or have studied, such as company or family law. This focus was to seek to elicit *general* effects on enthusiasm for curricular learning in Sheffield Law School, rather than any more specific effect.

Table 5: Effect on your interest in subjects you are studying on your law degree

Effect	Increased my interest	No effect	Reduced my interest
	45 (75%)	13 (21.6%)	2 (3.3%)

Three quarters of respondents felt that their pro bono engagement had increased their interest in their curricular studies. Only 2 (3.3%) reported a reduced interest. This latter might be explained by respondents discovering through the experience of pro bono engagement that they do not wish to become lawyers, and so their interest in a law degree dwindles; or discovering an interest in, say, criminal law, and then experiencing decreased interest in civil or commercial law subjects; or discovering an interest in an area of law that is not available to study on their programme, such as immigration law, or any other area of law not offered in Sheffield Law School's taught programmes that emerged in the all-service clinic.

Unfortunately, although there is a section at the end of the questionnaire for any further comments respondents may wish to make, there is no free-text section that specifically asks for respondents to reflect on the questions concerning interactions between pro bono and curricular learning. Learning from this pilot, in future iterations therefore, the questionnaire needs to be adjusted so that respondents are invited to reflect on these questions, which would generate further qualitative data allowing insights into the reasons that sit behind student perceptions on relationships between pro bono and curricular learning.

Conclusions

There is obviously significant scope for future research on European clinical legal education. While the literature on clinical legal education is well-developed in North America and in Australasia, an important starting point in European contexts would be a comprehensive mapping exercise of clinical and pro bono legal education in European law schools. Which European law schools offer such education? What forms does it take? Are there countries in which it is not on offer at all? To what extent, and if so how, does clinical and pro bono legal education differ between common and civil law jurisdictions? Are there differences between Nordic states, Central and Eastern European states, southern European states? Who is leading the field? Where is research taking place on the effects, strengths and weaknesses of clinical legal education in Europe?

While further studies would be necessary to test our conclusions, what emerges from the data from our pilot project, which has been gathered in a context that is typical in many respects of European clinical and pro bono legal education, includes the following observations. Students join pro bono schemes for a range of reasons, not only related to professional legal practice aspirations. Some of these reasons are related to curricular learning in a 'liberal'/'holistic' legal education sense. While some students see a uni-directional development from their learning in the safe, structured context of their university studies to the messy realities of a law clinic, others, in common with the authors of this paper, perceive mutually reinforcing learning processes between the two types or sites of legal education. To put this a different way, it seems that, while some do, many students do not understand at least some aspects of the links between learning in the context of law clinics and learning in a liberal, research-led law

school. This lack of understanding seems to be the case particularly in terms of learning research skills, legal argumentation and especially legal writing.

Further, we suggest that, even if students are not conscious of the links, the increased interest in their 'liberal' curricular studies that students experience once they have engaged in pro bono schemes is explained by the deep links between the different types of learning that are noted in some of the literature on clinical legal education. Noting the mutual reinforcement loops of the types of learning, and that each may be more effective at fostering certain types of learning associated with effective law graduates and legal professionals, we are tempted to go further, and make a more normative argument both for clinic in so-called 'liberal' legal education environments and liberal legal education in so-called 'clinical' law schools.

In general, however, probably our most important conclusion is that students do not articulate the two different types of learning as strongly differentiated or demarcated one from the other. At the level of an individual student, the distinction between 'liberal' and 'clinical' legal education simply does not hold water. Although we did not directly ask our respondents this question, we would tentatively argue that the data we have discussed above suggests that students themselves do not think in terms of a distinction between 'liberal'/'holistic' legal education and 'functional'/'clinical'/'vocational' legal education, or, if they do, that distinction is not particularly significant to the way in which they understand their learning and how it is developing them for future legal professional practice.

To return to the Pericles versus a plumber debate, with which we began, we would agree with Craig Collins[80] that legal education is (obviously) neither solely about teaching students to be masters of theories of law and justice nor solely about creating legal technicians. Rather, over time, technical legal proficiency and the skills of an enlightened judge, administrator or policy-maker, involving engagement with legal principles and values, become entwined in any given individual (successful) law student. Our analysis of the developing self-awareness of a group of contemporary students in a European law school suggests that not only does pro bono experience help students with future career aspirations in law (the 'functional', 'clinical' or 'vocational' approach to legal education), which one would expect, but also that it also helps

[80] Collins, supra n 4.

students with their broader academic skills development (the 'liberal' or 'holistic' approach to legal education). Although our data does not involve a law school where much teaching is in the 'formalist' or 'positivist' mode, we infer that clinical legal education would help with skills associated with those types of legal education too. We agree with those like Neil Gold who have found (in the Canadian context) that clinical legal education involves much broader learning than a narrow 'vocational' approach implies;[81] with those like Lucy Yeatman who argue (in a UK context) that clinical legal education can (and should) be brought into the heart of liberal law degrees;[82] with those like Carlo Caprioglio who argue (in an Italian context) that, while law schools may advertise clinic as 'vocational', what is happening with student learning is better understood as 'liberal' or 'holistic' legal education;[83] and with those like Alberto Alemanno and Lamin Khadar (across the European context) who see clinical legal education as fundamental to the relevance of contemporary holistic legal education in a Europe of repeated crises.[84] Most fundamentally, our data suggests that students do not see the distinction between 'theory' and 'practice' in as stark a way as some narratives about clinical legal education imply: we recognised that this is far from a new insight into the purposes of legal education,[85] but it is worth reiterating that *students* share this insight.

It follows that law schools that may be worried that offering clinical legal education will be perceived as diluting their commitment to legal science or doctrine as a 'pure' academic pursuit, or to law schools as a place for theoretical or conceptual learning (and associated research) need not be concerned about such perceptions *from students*. (How academics might perceive clinical legal education in European contexts is a different question altogether.) In short, pro bono schemes, like those on offer in Sheffield Law School, allow students to develop as both Pericles and plumbers.

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[81] Neil Gold, 'Clinic is the basis for a Complete Legal Education: Quality Assurance, Learning Outcomes and the Clinical Method' (2015), 22 International Journal of Clinical Legal Education 1.
[82] Lucy Yeatman, 'Law in the Community and Access to Justice: Linking Theory and Practice' in Chris Ashford and Paul McKeown, eds, *Social Justice and Legal Education*, (Cambridge Scholars Publishing 2018), 128-140.
[83] Caprioglio, supra n 38, 335, 336 and 338.
[84] Alemanno and Khadar, supra n 8, p 24.
[85] Jerome Frank, 'A Plea for Lawyer Schools' Yale Law Journal 56 (1947) 1321.

Appendix

Assessing the impact of pro bono work on students' development as learners and as potential future professionals

Information about the project

You are being invited to take part in a research project. Before you decide it is important for you to understand why the research is being done and what it will involve. Please take time to read the following information carefully and discuss it with others if you wish. Ask us if there is anything that is not clear or if you would like more information. Take time to decide whether or not you wish to take part.

Thank you for reading this.

The project aims to investigate whether participation in an extra-curricular University pro bono project enables participating students to develop certain skills and attributes, including:

1. A sense of professional ethics and awareness of professional relationships such as the solicitor-client relationship.
2. 'Core' learning skills such as critical analysis, research skills, understanding of the law and ability to apply that law to given facts.
3. Attributes that the Solicitors Regulation Authority has identified as being necessary to qualification as a solicitor.

You have been selected to be invited to take part in this survey because you currently volunteer for a pro bono project that is either run by the University of Sheffield Law School or by an external agency that recruits volunteers through the Law School.

It is up to you to decide whether or not to take part. If you do decide to take part you will be given this information sheet to keep (and be asked to sign a consent form) and you can still withdraw at any time without it affecting any benefits that you are entitled to in any way. You do not have to give a reason.

Whilst there are no immediate benefits for those people participating in the project, it is hoped that this work will enable the Law School to gain a better understanding of the benefits, challenges and opportunities of pro bono work for our students and their development. This information will be used for an article on learning and

teaching and may be used in the future for similar research projects. We also hope to use the information to assess and improve the learning experience for students of taking part in such pro bono projects.

All the information that we collect about you during the course of the research will be kept strictly confidential. You will not be able to be identified in any reports or publications.

This project has been ethically approved the Law School's ethics review procedure. The University's Research Ethics Committee monitors the application and delivery of the University's Ethics Review Procedure across the University.

Consent Form

4. I confirm that I have read and understand the information about the project explaining the above research project and I have had the opportunity to ask questions about the project.
5. I understand that my participation is voluntary and that I am free to withdraw at any time without giving any reason and without there being any negative consequences. In addition, should I not wish to answer any particular question or questions, I am free to decline.
6. I understand that my responses will be kept strictly confidential. I give permission for members of the research team to have access to my anonymised responses. I understand that my name will not be linked with the research materials, and I will not be identified or identifiable in the report or reports that result from the research.
7. I agree for the anonymised data collected from me to be used in future research
8. I agree to take part in the above research project.

I give my consent to the 5 points above.

About you

1. How long have you been involved in pro bono work?
    a. One academic year or less
    b. More than one academic year
2. Which pro bono group are you involved in?
    a. Freelaw
    b. Miscarriage of Justice Review Centre
    c. Criminal Justice Initiative
    d. CommLaw
    e. Personal Support Unit

    f. Citizen's Advice Bureau
    g. South Yorkshire Refugee Law and Justice Centre
    h. Witness Service
    i. Victim Support
    j. Other
3. Are you in a position of responsibility in your pro bono group (eg group leader, student manager etc)
    a. Yes
    b. No

Your objective in taking part in pro bono work

This section is designed to find out what you hoped to learn when you started taking part in pro bono work. We have set out below a list of possible reasons that you may have had when you applied for pro bono work. It is based on students' applications for pro bono work in Autumn 2017. There is also an opportunity to add your own reason, if you do not see this listed below.

1. Please categorise the reasons below from 1 to 5 with 1 being the most important to you and 5 being the least important to you:
    a. Help others
    b. Improve my CV/employability
    c. Develop my professional ethics
    d. Learn more about a particular area of law or legal practice
    e. Develop my legal skills through practical experience
    f. Other objective (if applicable)
2. If you have answered 'other objective' above, please give details
3. Have your initial objectives been achieved?
4. Please give an answer for all the objectives set out, including those that are less important to you than others.
5. Please categorise your achievements below from 1 to 5 with 1 being definitely achieved and 5 being definitely not achieved.
    a. Help others
    b. Improve my CV/employability
    c. Develop my professional ethics
    d. Learn more about a particular area of law or legal practice
    e. Develop my legal skills through practical experience
    f. Other objective (if applicable)

We are interested in your thoughts here. It would be helpful to have a sentence or two or short paragraph giving your thoughts on the questions below.

6. Which part of your pro bono work has most helped you to achieve your learning objectives?
7. Which part of your pro bono work has been least helpful to you in achieving your learning objectives?
8. Do you have any suggestions for how pro bono work can be improved to help you meet your objectives?

Pro bono work and your curricular learning

In this section we would like your views on whether your involvement in pro bono work has helped you to become a 'better learner' on your degree.

1. Has pro bono work had any effect on your ability to carry out the following tasks:
    a. Develop your understanding of complex issues
    b. Apply law to facts
    c. Carry out accurate and well organised research
    d. Use a range of legal material
    e. Structure and develop an argument
    f. Develop your writing style
2. Options: Increased my ability/ No effect/ Reduced my ability
3. Has your involvement had any effect on your interest in the subjects that you are studying on your law degree? Please consider this in relation to your subjects overall.
4. Options: Increased my interest/ No effect/ Reduced my interest
5. Has your involvement had any effect on your ability to set and achieve your own learning objectives, independently of Law School staff?
6. Options: Increased my independence/ No effect/ Reduced my independence

Pro Bono and Qualification as a Solicitor

The Solicitors Regulation Authority (SRA) propose that from September 2020, persons who wish to qualify as a solicitor must (amongst other things) complete a period of qualifying work experience of not less than two years. Qualifying work experience must give the candidate the opportunity to develop various competences. The SRA propose to allow time spent in a University legal clinic to qualify for the period of qualifying work experience. In this section, we hope to understand how many of the competences you believe that you have been exposed to in your experience of pro bono work. In practice, the SRA will test whether a candidate has in fact developed the competences through an

assessment, which will be known as the Solicitors Qualifying Exam Stage 2 Assessment.

Please note that the question that you are being asked is whether you have been given the OPPORTUNITY to develop the relevant competence, and not whether you have ACTUALLY developed the competence.

Options: Yes, a lot/Yes, a little/ Don't know/ No, not much/ No, not at all

1. Has your pro bono work exposed you to:
    a. The way a solicitor works in practice?
    b. Clients?
    c. Ethical problems?

A Ethics, professionalism and judgement

2. Has your pro bono work given you the ability to develop the following competences?
    a. Act honestly and with integrity, in accordance with legal and regulatory requirements and the SRA Handbook and Code of Conduct
    b. Maintain the level of competence and legal knowledge needed to practise effectively, taking in account changes in your role and/or practice context and developments in the law.
    c. Work within the limits of your competence with the supervision which you need.
    d. Draw on a sufficient detailed knowledge and understanding of your field(s) of work and role in order to practise effectively.
    e. Apply understanding, critical thinking and analysis to solve problems

B Technical legal practice

3. Has your pro bono work given you the ability to develop the following competences?
    a. Obtain relevant facts
    b. Undertake legal research
    c. Develop and advise on relevant options, strategies and solutions
    d. Draft documents which are legally effective and accurately reflect the client's instructions
    e. Undertake effective spoken and written advocacy
    f. Negotiate solutions to clients' issues
    g. Plan, manage and progress legal cases and transactions

C Working with other people

4. Has your pro bono work given you the ability to develop the following competences?
    a. Communicate clearly and effectively, orally and in writing
    b. Establish and maintain effective and professional relations with clients
    c. Establish and maintain effective and professional relations with other people

D Managing yourself and your own work

5. Has your pro bono work given you the ability to develop the following competences?
    a. Initiate, plan, prioritise and manage work activities and projects to ensure that they are completed efficiently, on time and to an appropriate standard, both in relation to your own work and work that you lead or supervise
    b. Keep, use and maintain accurate, complete and clear records
    c. Apply good business practice

Further comments

If you have any further comments on your pro bono experience, please add them here.

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Creating Legal Writing Opportunities in the Digital Era

Mary Catherine Lucey*

Abstract

This article argues there is a need to provide law students with greater opportunities to conduct research based legal writing which develops their skills around critical thinking, reflection, review, and communication. Such skills risk being neglected if law programmes become unduly oriented towards assessing students by means of multiple-choice questions or closed book examinations of very short duration. This article hopes to encourage law teachers, with the assistance of appropriate technology, to introduce legal research writing activities into substantive/doctrinal modules. In this way, legal writing is not confined to stand alone dissertation modules but is embedded more throughout the whole law programme.

Keywords: Technology Enhanced Learning, Scholarly Writing

Introduction

This article argues in favour of providing law students with multiple opportunities to engage in legal writing which develops their skills around critical thinking, reflection, review, and communication. These skills risk being neglected if law programmes become unduly oriented towards assessments in the shape of multiple-choice questions or closed book examinations of very short duration. The focus of this article is placed on academic programmes offered by law faculties (typically within a university context) to undergraduate and/or postgraduate students. It hopes to encourage law teachers, with the assistance of technology, to create fresh opportunities for students to undertake meaningful writing activities in modules which are not wholly devoted to writing a dissertation.

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The connotation of 'legal writing' is first explored before reflecting on the extensive variation in the design of law programmes on offer. After explaining why it is unrealistic to expect every law student to enrol in a course/module dedicated to legal writing, this article explores how legal writing might be embedded more throughout a whole programme. The discussion, then, turns to considering the support which may be provided by appropriately selected digital teaching and learning tools.

'Legal Writing'

At the outset, it is important to elaborate on the connotation of 'legal writing' for the purposes of this article. Clarification is required because the readership of this journal comprises members of law faculties in many European jurisdictions and further afield whose familiarity with legal education models is far from uniform. In order to appeal broadly, this article intentionally is not rooted in any one regime of legal education.

The label of 'legal writing' can be borne by a wide range of modules with quite differing contents and ambitions. As Rosenbaum points out, 'Advanced Legal Writing' courses in the United States may include ones which teach drafting litigation and/or transactional documents; grammar as well as courses which teach what some have termed 'scholarly' writing.[1] This article is not concerned with legal writing in the form of drafting legal documents or learning grammar. However, it is reluctant to adopt the tag of 'scholarly writing' because of a concern that such a label may convey a misleading impression. That said, this article recognises and endorses the ambition of those 'scholarly writing' modules which confer on students 'a greater mastery of doctrine in a particular area and greater sophistication in thinking than provided by any final exam.'[2] The legal writing esteemed in this article is writing which develops within a process of analysis, reflection, reasoning, critical thinking and, indeed, rethinking. The latter element is prompted by the exhortation from the Head of

[1] Rosenbaum, J., 'Brutal Choices in Curricular Design: New Directions in Advanced Legal Writing' (2011) 19(2) Perspectives: Teaching Legal Research and Writing, 134.
[2] Kelly, C. 'An Evolutionary Endeavour: Teaching Scholarly Writing to Law Students.' (2006) 12 Legal Writing J. Legal Writing Instit, 285, 285. Kelly acknowledges the influence of Elizabeth Fajans & Mary R. Falk, *Scholarly Writing for Law Students: Seminar Papers, Law Review Notes and, Law Review Competition Papers* (3rd ed ., Thomson/West 2005) as well as Eugene Volokh, *Academic Legal Writing: Law Review, Articles, Student Notes, Seminar Papers, and Getting on Law Review* (2d ed., Found. Press 2005).

Research Instruction and Lecturer in Legal Instruction at Yale, Julie Graves Krishnaswami, to students to rethink 'your issue, your process, your sources, your approach and your search terms.'[3] For shorthand, this type of writing is described in this article as research based legal writing.[4]

Research based legal writing lends itself to being taught within a structured iterative process. Early and interim drafts can be enhanced or 'spurred by constructive criticism and collaboration.'[5] Kelly's model of teaching a scholarly writing class entails students editing the background sections of the drafts of fellow students' research on various topics. In that teacher's experience, the editing task is a much more valuable one for the student editor than for the student author. This is because the editors identify not only negatives ('.. they are struck by how annoying rambling musings become, how confusing gaps are, and how important roadmaps and topic sentences are') as well as the positives ('[A]lmost universally, the students took what they learned through editing someone else's work and applied it to their own papers.').[6] The structure allows peer review skills to be practiced in a concrete context and that experience, in turn, enhances the valuable skill of self-review. Other striking elements of Kelly's model are communication and reflection as the students get the space to articulate their ideas to other students.

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[3] Graves Krishnaswami, J. 'Strategies for Seeing the Big Picture in Legal Research' (2016) 25 (1) Perspectives: Teaching Legal Research and Writing, 15.

[4] 'Research Skill Development' (RSD) from Willison and O'Regan offers a useful conceptual framework for enhancing students' autonomy as researchers. Its stated aim is to facilitate the explicit, coherent, incremental, and cyclic development of the skills associated with research, problem solving, critical thinking and clinical reasoning. The model sets out six stages which comprise: (i) 'Embark and Clarify' where students initiate research and clarify what knowledge is required; (ii) 'Find and Generate' is where students use appropriate methodology to find and generate the needed information/data; (iii) 'Evaluate and Trust' entails students determining the credibility of their sources, information and making their own research processes visible; (iv) 'Organise and Manage' involves organising information & data to reveal patterns/themes; (v) 'Analyse and Synthesise' is where students analyse information/data critically and synthesise new knowledge to provide coherent individual understandings and, (vi) 'Communication and Apply' is when students discuss, listen, write, respond. Willison and O'Regan recommend that RSD be deployed as part of a learning routine. RSD is available at https://library.uwstout.edu/teachingresearch/rsd accessed 8 May 2020.

[5] Kelly, C. 'An Evolutionary Endeavour: Teaching Scholarly Writing to Law Students.' (2006) 12 Legal Writing J. Legal Writing Inst, 285, 286.

[6] Kelly, C. 'An Evolutionary Endeavour: Teaching Scholarly Writing to Law Students.' (2006) 12 Legal Writing J. Legal Writing Inst, 285, 290.

Engaging in legal writing which is connected to research offers students the chance to acquire and practice a range of valuable competences. These not only include writing skills but also analytical competences around critical judgment and reflection. Moreover, legal writing assignments offer occasions for interaction with others (for example, in peer-review and group collaboration).

Why don't students choose standalone legal writing modules?

It is enlightening to consider why it is unrealistic to expect every law student to enrol in a module which is wholly dedicated to legal writing. This entails taking a closer look at how law programmes are designed or constructed and the position of standalone legal writing modules in the programmes.

In recent decades, it is increasingly common for law programmes to offer students an extensive 'menu' of modules. The range of modules may correspond to the research interests of the law faculty. The offering may be in response to the perceived demands of the 'market', especially, at Masters level where specialisation is seen as enhancing employability. Law programmes may include some non-law modules as options. Other law programmes are designed with a prescribed interdisciplinary component where the non-law dimension may range from being a Minor (comprising one third of the total) to a joint Major (where it is half of the total). Interdisciplinary (or trans-disciplinary) programmes with law are found not only at undergraduate level. The postgraduate level offering may be designed as an LLM or as a MSc programme which accept graduates who did not study law. No discussion of ambitious law programmes can omit dual legal qualification degrees where students need to acquire competency in two legal systems and, often, in two different languages.[7]

When exploring the composition or design of law degrees it is appropriate to make a short detour to touch on the debates on the shape of legal education in England and Wales. It has been suggested that 'arguments around the purpose

[7] See Bosch, G., ' The 'internationalisation' of law degrees and enhancement of graduate employability: European dual qualification degrees in law' (2009) 43 (3) Law Teacher 284 for a detailed discussion of European dual legal degrees in the form of 'UK based law programmes where the graduate is awarded an LLB (for the UK law part) and another qualifying degree from a partner institution teaching in a language other than English (for the non-UK law part), after completing on a programme of study at both universities within four or five years', fn 3.

of law degrees have crystallised into liberal versus vocational dichotomy'.[8] At the risk of oversimplification, some educators favour law being taught in the mode of 'liberal education'- which conveys a style of education which is not designed to prepare students for a particular profession.[9] Proponents of a more vocational orientation favour inculcating competences which have been described in terms such as 'employability' and 'professionalism'. Employability and professionalism, as concepts, are not uniformly defined.[10] Turner, Bone and Ashton have summarised most interpretations of 'employability' as tending to point to 'the skills and attributes that make graduates more likely to gain employment' and most interpretations of 'professionalism' as appearing 'to encompass shared norms, high standards of competency, conduct and public obligation.'[11] Some argue that legal educators need to adapt their provision of legal education to produce graduates who are ready for employment as professionals (not only as lawyers).[12] To that end, some law programmes are intentionally designed to include (to a greater or lesser extent) 'clinical' or, more broadly, 'experiential' modules. While experiential learning may be defined in a number of ways, a frequent feature is that students get to practice law, often in the form of clinics (or simulations) where they exercise skills such as client interviewing, negotiation or mooting.[13]

The variation in the types and orientations of law programmes explain the abundance of modules on offer to students. One direct consequence of such a

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[8] Ashford and Guth, J. 'The Legal Education and Training Review; Regulating Socio-Legal and Liberal Legal Education?' (2014) 48 Law Teacher 5, 7. See also Webb, J., Ching, J. and Sherr, *Setting Standards: the Future of Legal Services Education and Training Regulation in England and Wales* -Legal Education and Training Review, (LETR) (2013) available at http://letr.org.uk/the-report/index.html accessed 20 May 2020.

[9] Ashford and Guth, J. 'The Legal Education and Training Review; Regulating Socio-Legal and Liberal Legal Education?' (2014) 48 Law Teacher 5,7.

[10] Rigg, D., ' Embedding Employability in Assessment: Searching for the Balance Between Academic Learning and Skills Development in Law: A Case Study' (2013) 47(3) Law Teacher 404.

[11] Turner, J., Bone, A. and Ashton J., 'Reasons why law students should have access to learning law through a skills-based approach' (2016) 52 (1) The Law Teacher 2, 3. They refer, inter alia, to Baron, P and Cohen, L 'Thinking like a Lawyer/Acting Like a Professional: Communities of Practice as a Means of Challenging Orthodox Legal Education (2012) 46(2) Law Teacher 100.

[12] Dagilyte, E. and Coe, P. 'Professionalism in Higher Education: Important Not Only for Lawyers' (2014) 48(1) Law Teacher 33, 34.

[13] See, for example, Hall, J. and Kerrigan, K. 'Clinic and the Wider Law Curriculum' (2011) 15 International Journal of Clinical Legal Education 25 and Maharg, P. *Transforming Legal Education: Learning and Teaching in early Twenty-first Century* (Aldershot, Ashgate, 2007).

rich choice is the creation of a rather full menu from which students are allowed to make only a limited choice.[14] Moreover, the squeeze on a student's selection may be exacerbated by the need to complete certain 'core' modules which are either required for a degree to be recognised by a professional body or ones which assist university graduates subsequently pass entrance tests to professional schools which confer professional qualifications to practice law.

There may well be other, less tangible, and less verifiable, reasons why students eschew stand-alone legal writing modules. It is possible that some students may believe that specialising in certain substantive modules (for example areas which are commercially lucrative) will make them more attractive to certain employers. There may be a perception from the titles (such as 'Academic Writing' or 'Scholarly Writing') that the material is too challenging or too dull. It seems that some students do not hold legal writing modules in high esteem. Tiscione and Vorenberg go so far as to claim that some

> law schools send subtle messages to students that despite what they have heard from practitioners about the importance of their legal writing and research courses, it is not as important as their other courses[15]

and, in support, they assert that legal research and writing courses are 'often under-credited, particularly at higher –ranked schools and its faculty usually have lesser titles.'[16] In their view '... the perception that teaching legal research and writing is unintellectual 'women's work' continues as part of the social fabric of law schools.'[17] Their observation raises an interesting point (which cannot be pursued here) about the challenges faced by teachers of legal writing in some US law schools where some have claimed that legal writing professors

[14] In Europe, it is common for an undergraduate programme delivered over three to four years to consist of 180-240 ECTS and a postgraduate programme of one to two years duration to contain between 90-120 ECTS.
[15] Tiscione, K. and Vorenberg, A. 'Podia and Pens: Dismantling the Two Track System for Legal Research and Writing Faculty' (2015) 31 Colum J. Gender & L 47, 58. They explain that in the title of the article, 'podia' denotes teaching traditional doctrinal classes while 'pens' denotes teaching legal research and writing.
[16] *Ibid.*
[17] Tiscione, K. and Vorenberg, A. 'Podia and Pens: Dismantling the Two Track System for Legal Research and Writing Faculty' (2015) 31 Colum J. Gender & L 47,47. After the phrase 'women's work', they footnote a reference to Stanchi, K 'Who Next, the Janitors? A Socio- Feminist's Critique of the Status Hierarchy of Law Professors' (2004) 73 UMKC L. Rev 467, 477.

'remain lower-status as compared to so-called "doctrinal" (or "case book" or "podium") professors.'[18]

The inescapable conclusion from this discussion is that, for various reasons, some students will not choose to undertake modules which are wholly dedicated to writing a dissertation. This reality, then, raises a concern around the adequacy of legal writing opportunities which are made available to law students.

Across the curriculum

This article suggests that any paucity of opportunities to engage in legal writing for those who do not enrol in standalone legal writing modules may be addressed by creating legal writing activities in other modules. The proposal is to embed legal writing assignments or projects throughout a law programme. It resists the

> rhetoric adopted by many law schools faculties that identifies certain courses (e.g. torts, constitutional law, property) as 'doctrinal' or substantive' and legal research and writing as 'skills' [because that] encourages the view that legal writing does not teach doctrine or substance. To the contrary, teaching the substance of law – including doctrine, statutory construction and common law analysis- is central to every legal writing course.[19]

Inspiration for embedding legal writing throughout a law programme is found in McCrehan Parker's model of teaching writing, as she puts it, 'across the law school curriculum'.[20] Alluding to the shift that occurred in the attitude of US law schools to legal writing, she says it was not so long ago that 'the prevailing notion concerning law school writing curricula was that writing is writing and

[18] See further Christopher, C. M. 'Putting Legal Writing on the Tenure Track: One School's Experience (2015) 31 Colum J. Gender & L 65, 68 citing Syverud, K. D. 'The Caste System and Best Practices' (2001) Legal Education 1. J. Assn Legal Writing Dirs 12, 14.

[19] Tiscione, K, and Vorenberg, A. 'Podia and Pens: Dismantling the Two Track System for Legal Research and and Writing Faculty' (2015) 31 Colum J. Gender & L 47, 58. They cite Edwards, L.H. 'The Trouble with Categories: What Theory Can Teach us about the Doctrine- Skills Divide' (2014) J. Legal Educ 181, 194-5.

[20] Mc Crehan Parker 'Writing is Everybody's Business; Theoretical and Practical Justifications for Teaching Writing Across the Law School Curriculum' (2006) 12 The Journal of Legal Writing Institute 175.

anybody who can get into law school, should already know how to do it.'[21] These days, the more informed and modern position is that the 'instrumental view of writing has begun to give way to an understanding that *legal writing is inextricably linked to legal thinking* – and only rarely will entering law students already know how to do that.'[22] In her view, writing practice throughout the curriculum 'can help students internalize the structures of legal thought and develop more conscious and efficient processes for analyzing legal problems and communicating analysis.' [23]

While Kelly's 'scholarly writing' model (discussed above) was conceived as a stand- alone legal writing course it may be deployed to teach other modules. Kelly offers, as an example, *International Business Transactions*, a module which deals with several topics which are only linked by the possibility of being encountered by international business lawyers. Organised as a seminar, it offers, at the outset, a variety of loosely related topics (for example international sales, foreign sovereign immunities, carriage of goods at seas and the like) and, thereafter, the syllabus tracks according to students' choices of project.[24] The wide range of topics from which students choose to research and write lead Kelly to calling it a 'buffet' course. This example may offer some inspiration to law teachers who are unaccustomed to setting legal writing assignments.

One reason why this article assiduously avoids using the labels such as 'academic writing' or 'scholarly writing' is the wish to avoid any suggestion that research centred legal writing is confined to modules in law programmes which are designed along the lines of 'liberal education'. Legal writing rooted in research may be incorporated into clinical or 'experiential' modules without detracting from their orientation towards professional practice. It is easy to imagine how writing a reflective piece of research would find a place in a module on Professional Ethics. Moreover, modules such as Mooting; Negotiation or Arbitration provide excellent venues for students (singly or

[21] Mc Crehan Parker 'Writing is Everybody's Business; Theoretical and Practical Justifications for Teaching Writing Across the Law School Curriculum' (2006) 12 The Journal of Legal Writing Institute 175,176.
[22] *Ibid* (emphasis added).
[23] Mc Crehan Parker 'Writing is Everybody's Business; Theoretical and Practical Justifications for Teaching Writing Across the Law School Curriculum' (2006) 12 The Journal of Legal Writing Institute 175, 179.
[24] Kelly, C. 'An Evolutionary Endeavour: Teaching Scholarly Writing to Law Students.' (2006) 12 Legal Writing J. Legal Writing Instit, 285, 292.

collaboratively) to undertake research and writing. Indeed, that such modules typically encourage collaboration and communication creates a conducive environment for peer-review of drafts and debate. Offering students opportunities to engage in legal writing helps refine skills and competences which align with the 'employability' and 'professionalism' ambitions of law programmes which pursue (what some describe as) a 'vocational' vision of legal education.

It is important to stress that legal writing can be integrated into an existing module without undertaking a complete redesign of an existing syllabus. The format of the legal writing activity can be tailored to the learning outcomes of the module or, more broadly, the law programme. Thus, depending on the orientation of the modules, students may be asked to produce a literature review; a critique of a journal article; a case-note; a contribution to a debate or moot; a position paper, or a submission in response to a (simulated or real) public consultation by a public institution. Writing assignments may be undertaken either individually or by a group. In either situation, it is desirable to allow occasion for pre-submission review by peers and time for revision and editing. That there is flexibility of the format of the written piece is important as that facilitates its incorporation, without undue disruption, into modules that previously did not offer opportunities to students to write up their own research.

Technology

How technological tools may facilitate the teaching and learning of research based legal writing is next considered. It starts with a brief overview of digital learning landscape in order to demystify the terminology.

There is a broad range of digital teaching and learning models. At one end of the spectrum, there are wholly online models which have no required on-campus activity and, thereby, accommodate 'distance learners'. Other models combine online activities with varying degrees of face-to face activities. As one moves along the spectrum (away from wholly online offerings) the models are fundamentally classroom courses which use technology on occasion. These may variously be described in terms of the 'flipped classroom'; hybrid/ blended online courses and web enhanced courses.

Law Schools across the globe have embraced e-learning and technology enhanced learning (TEL) to varying degrees.[25] That engagement is not a story of unbridled success. Concerns have been expressed, in particular, about the wellbeing, connectedness and engagement with peers and teachers of students who are not physically on-campus.[26] Moreover, some have voiced the ned for law schools to appreciate and understand that 'generating and maintaining online resources requires a considerable investment of time, energy and expertise on the part of law teachers, who should be provided with appropriate training, guidance, support and workload recognition.'[27]

Using technology to create opportunities for research and legal writing will not succeed if the law teacher chooses inappropriate digital tools.The importance of considering 'pedagogy before technology' is emphasised in a collaboration between UNSW and the Australian Learning and Teaching Council (ALTC) which specifically cautions against getting carried away with the technology offering and urges teachers to ensure that online dimensions remain relevant to learning and are not 'gimmicks'.[28] It advises teachers, firstly, to identify the perceived learning need/aim before selecting the technology which fits. The literature on pedagogy and technology identifies several 'learning through' scenarios. Laurillard discusses learning through i) *acquisition* where activities are designed with the assistance of technology (for example, screencasts, PowerPoint with audio, clickers); ii) *inquiry* where brainstorming, information

[25] See further, Pistione, M. 'Law Schools and Technology: Where we are and Where we are Heading ' (2014) 64 Journal of Legal Education 586; Colbran, S. and Gilding, A. 'E-learning in Australian Law Schools' (2013) 23 (1/2) Legal Education Review 201; Pywell, S., 'Bridging the gap: online materials to equip graduate entrants to a law degree with essential subject knowledge and skills' (2018) 52(2) Law Teacher 154,168-9.

[26] This particular concern was examined in recent research from an Australian Law School which found that making recordings of classes available is likely to lead to a significant decrease in student attendance- Skead, N., Elphick, L., Mc Gaughey F., Weeson, M., Offer, K. and Montalto M. 'If you record, they will not come- but does it really matter? Student attendance and lecture recording at an Australian Law School' (2020) Law Teacher 2, 16. As they note, recording classes may be motivated by commendable desires to accommodate students who are unable to attend lectures; provide an alternative study tool, and/or to support students with disabilities or who are from English speaking backgrounds. The authors cite Gosper, M et al '*The Impact of Web-Based Lecture Technologies on Current and Future Practice in Learning and Technology*' (2008) https://researchrepository.murdoch.ed.au/id/eprint/12120/1/ce6-22_final2.pdf. See also Hess, G 'Heads and Hearts: The Teaching and Learning Environment in Law School' (2002) 50 J Legal Ed 75.

[27] Emphasis added.

[28] UNSW and Australian Learning and Teaching Council (ALTC) (2013) '*Planning your on-line class*.' Available at http://online.cofa.unsw.edu.au/learning-to-teachonline/lttoepisodes?view=video&video=219 accessed 8 May 2020.

gathering and critique can be assisted by technologies; iii) *practice* where applying the learned material is enhanced by technologies which simulate real world scenarios; iv) *production* having recourse to technology which produces concept maps or posters or animations; v) *discussion* by interacting online asynchronous or Synchronous Discussion (virtual classrooms and web conference technology); vi) *collaboration* using technology to produce an artefact.[29] Teaching research based legal writing can be pursued as learning through (at least) inquiry, discussion, production and collaboration.

Technology can extend and deepen the classroom experience. In particular, support can be provided by technological intervention by connecting students and teachers in ways which are more flexible than traditional face to face encounters. This is especially true for the development of ideas and written drafts which can be discussed/reviewed by peers and teacher interacting (asynchronously or synchronously), in, for example, virtual classrooms, discussion forums, web conferences, wikis, blogs and vlogs.

How technology can facilitate international and intercultural knowledge exchange and collaboration is convincingly demonstrated by a recent project undertaken in the field of International Intellectual Property Law.[30] The project involved Master's level students (from British, European, American and African backgrounds) in a UK institution debating online with students from diverse backgrounds enrolled in a university in Egypt. The written arguments debated the role of Intellectual Property in respect of access to medicine and were described as 'detailed, thoughtful and well structured.'[31] Even more notable are the positive results which can flow uniquely from the *online* nature of the venue for the legal writing activities. The project leaders highlight how technology opens up the possibility of student exchanges in the shape of 'exchanges of knowledge much more widely' than other (often market-led) mechanisms of internationalization (for example attracting fee paying international students to UK universities or establishing branches of UK

[29] Laurillard, D., *Teaching as Design Science: Building Pedagogical Patterns for Learning and Technology* (Routledge: London, 2012). Also see Bugden, L., Redmond, P. and Greaney, J. 'Online collaboration as a pedagogical approach to learning and teaching undergraduate legal education' (2018) 52 (1) Law Teacher 85.
[30] Jones, B., Gadallah, Y. and Lazem, S., 'Facebook Debate: Facilitating International, Intercultural Knowledge Exchange and Collaboration in the field of Intellectual Property law' (2019) 53 (3) Law Teacher 279.
[31] Jones, B., Gadallah, Y. and Lazem, S., 'Facebook Debate: Facilitating International, Intercultural Knowledge Exchange and Collaboration in the field of Intellectual Property law' (2019) 53 (3) Law Teacher 279, 296.

universities abroad). [32] Digital media facilitated this project which, in the project leaders' view, counters the adverse image of internalisation by promoting 'approaches that contribute to mutual rather than one-sided benefit'.[33] They draw attention to how technology not only makes meaningful international engagement possible for students who are not in a position to study abroad but, additionally, provides opportunities for what may be seen as, 'more culturally inclusive pedagogy.'[34] In their view :

> [D]istance and foreignness contribute to the persistence of the legacies of post-colonialism and orientalism in both unconscious and conscious bias. *But by harnessing freely available online technology, students in different parts of the world, from different legal systems, who would never otherwise meet, were able to encounter each other and address important issues through collaborative learning, discussion and debate*.[35]

The International Intellectual Property Law project is very encouraging for this article. It illustrates the peculiar support which inexpensive (or free) technology can afford to legal writing projects in (what some may describe as) a 'doctrinal' module which can produce far reaching benefits for the students by enabling an international and intercultural experience beyond what is realisable within the confines of the traditional face to face classroom setting.

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[32] Jones, B., Gadallah, Y. and Lazem, S., 'Facebook Debate: Facilitating International, Intercultural Knowledge Exchange and Collaboration in the field of Intellectual Property law' (2019) 53 (3) Law Teacher 279,281. The authors cite Robson, S. 'Internationalization: A Transformative Agenda for Higher Education' (2011) 17 Teachers and Teaching 619 and also Wihlborg, M. and Robson S., 'Internationalisation of Higher Education: Drivers, Rationales, Priorities, Values and Impacts' (2018) 8 European Journal of Higher Education, 8.

[33] Jones, B., Gadallah, Y. and Lazem, S., 'Facebook Debate: Facilitating International, Intercultural Knowledge Exchange and Collaboration in the field of Intellectual Property law' (2019) 53 (3) Law Teacher 279, 281. They cite Robson, S. 'Internationalization: A Transformative Agenda for Higher Education' (2011) 17 Teachers and Teaching 619.

[34] Jones, B., Gadallah, Y. and Lazem, S. 'Facebook Debate: Facilitating International, Intercultural Knowledge Exchange and Collaboration in the field of Intellectual Property law' (2019) 53 (3) Law Teacher 279, 281. In respect of the phrase 'culturally inclusive pedagogy' the authors cite Robson, S. and Turner Y., 'Teaching is a Co-Learning Experience: Academics Reflecting on Learning and Teaching in an 'Internationalized' Faculty' (2017) 12 Teaching in Higher Education 619, 620

[35] Jones, B., Gadallah, Y. and Lazem, S., 'Facebook Debate: Facilitating International, Intercultural Knowledge Exchange and Collaboration in the field of Intellectual Property law' (2019) 53 (3) Law Teacher 279, 282 (emphasis added)

Conclusion

This article argued in favour of creating increased opportunities for law students enrolled in law programmes in academic law faculties to practice legal writing which is connected to research (rather than drafting documents or teaching grammar). It favoured embedding legal writing activities in modules throughout the whole law programme rather than limiting them to stand alone legal research/dissertation modules which students may choose not to undertake. A well-founded motivation for extending legal writing opportunities within a greater number of modules is to afford more students the chance to acquire and exercise a range of research, analytical and communication competences. The contours of particular legal writing activities may be adapted in the pursuit of the particular attributes desired by any law programme for its graduates.

In this digital era, law teachers may avail themselves of digital learning tools which support legal writing and research activities. Where the technological intervention is carefully thought through and responds to genuine learning needs there are potential benefits for students (and teachers).

The potential benefits of technology assisted legal writing activities are not confined to mastering (substantive) knowledge and skills/competences. Indeed they may extend far further to also include more inter-cultural benefits as a consequence of meaningful interaction with persons located outside the physical classroom.