Journal of Commonwealth Law and Legal Education

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JOURNAL OF COMMONWEALTH LAW AND LEGAL EDUCATION

Journal of Commonwealth Law and Legal Education

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EDITORIAL

THE TENTH ANNIVERSARY ISSUE

This is a special issue for those of us involved with the *Journal of Commonwealth Law and Legal Education*. This is my second issue as Lead Editor, others involved in its production have been with the journal since its inaugural issue and this is their tenth anniversary with the journal. When approaching this issue, I took some time to review how we got to this point and I felt it might interest you to consider how the Journal *of Commonwealth Law and Legal Education* reached this tenth anniversary issue.

The proposal for the *Journal of commonwealth Law and Legal Education* was initially made in 2000 in Adelaide, Australia at a meeting of the Commonwealth Legal Education Association (CLEA). The proposed journal was to promote the work of CLEA and to devote itself to commonwealth law and the way that legal education is undertaken in the Commonwealth.

The inaugural issue of the *Journal of commonwealth Law and Legal Education* was published in October 2001, making this the tenth anniversary issue.

Additionally, this issue is published as the Commonwealth Legal Education Association (CLEA) celebrates its fortieth anniversary. Therefore to celebrate both these anniversaries The Open University School of Law is pleased to announce that the *Journal of Commonwealth Law and Legal Education* will be published as a free to access online journal from this issue.

The *Journal of Commonwealth Law and Legal Education* will remain the official journal of the Commonwealth Legal Education Association. Both the Commonwealth Legal Education Association and the *Journal of Commonwealth Law and Legal Education* have many values and principles in common, including disseminating information regarding legal education and promoting debate that informs and encourages principles and policies relating to the law and systems of law within the Commonwealth countries.

In recognising this partnership, the aims of the *Journal of Commonwealth Law and Legal Education* remains the same as that of its inaugural edition, ten years ago: to encourage the sharing of best practice in legal education across the member states of the Commonwealth. It also seeks to promote the sharing of scholarship, legal research, points of view, and innovation in legal education.

As a federation of many different jurisdictions, all of which share a common legal heritage, the Commonwealth represents a corpus of legal thinking that affects the daily lives of more people than are affected by any other legal system or network of legal systems. Legal educators, scholars, and practitioners, within the Commonwealth have a great deal to learn from one another. In ordinary language a 'commonwealth' is a system involving the sharing of riches or resources. The purpose of the *Journal of Commonwealth Law and Legal Education* continues to be to create a commonwealth of knowledge, analysis and reflection on any legal matters or themes that have relevance to legal practice, legal policy and legal scholarship in Commonwealth jurisdictions.

The *Journal of Commonwealth Law and Legal Education* will continue to feature informative, challenging and enlightening articles that will be as varied and diverse in terms of their subject matter as they will be in regards of the profession and location of their authors. The high standard and academic rigour of articles, case commentaries, book reviews, as well as proceedings from Commonwealth meetings, will be maintained. As will the applicability and significance of the journal's contents.

The *Journal of Commonwealth Law and Legal Education* continues to welcome a range of contributions. Short opinion or experience-based articles are as welcome as longer more detailed contributions. Pieces of an innovative, imaginative or unconventional nature are considered as potentially as valuable as traditional academic articles.

The *Journal of Commonwealth Law and Legal Education* remains committed to representing contributions from those in Commonwealth jurisdictions which have traditionally been under-represented in journals of legal practice and scholarship. Those who consider themselves as primarily teachers of law, those who are primarily researchers or scholars, and those whose main work is in legal practice or judicial responsibilities are all equally welcome. The *Journal of Commonwealth Law and Legal Education* values the richness and

stimulation of diversity. The *Journal of Commonwealth Law and Legal Education* encourages new writers and provides a peer support process that assists writers with their contributions.

All articles published in the *Journal of Commonwealth Law and Legal Education* will continue to undergo peer review and editorial screening.

The *Journal of Commonwealth Law and Legal Education* will continue to be published twice a year in April and October, edited by members of staff of the Open University School of Law in the United Kingdom.

In this anniversary issue the focus is on legal education, with articles examining the history of legal education, the experiences of legal academic and the experiences of students using an e-learning approach to their legal education, as well as the approach to legal education in Africa.

The issue starts with a brief review of the Commonwealth Legal Education Association at age forty, from Professor David McQuoid-Mason, President of the Commonwealth Legal Education Association.

This is followed by an article from Professor Slapper which provides an interesting and informative account examining the history of legal education. It is significant to note how the early law schools did not get the most promising of starts, although now law has become "the most popular undergraduate subject in the United Kingdom" according to Professor Slapper.

Continuing the examination of legal education, Professor Ian Ward's article focuses on the experiences of legal academics who are at an early stage of their academic career.

Dr Jare Oladosu then provides an account of the philosophy of law and legal education in Africa. Using Nigeria as its focus, the article assesses how the experience of law students can be enriched through exposure to legal philosophy.

Although Breda & Langton also focus on the law student, their focus is on how students perceive e-learning and what value they place on this approach to legal education.

The articles in this issue demonstrate the commitment of the *Journal of Commonwealth Law and Legal Education* to continue to provide thought provoking informative and interesting articles on Commonwealth law and legal education. I hope you find them interesting and informative.

We are pleased to accepted contributions to the *Journal of Commonwealth Law and Legal Education* at the following e-mail address: jclle@open.ac.uk

Dr Marc Cornock
Editor
October 2011

THE COMMONWEALTH LEGAL EDUCATION ASSOCIATION (CLEA): 40 YEARS ON

Professor David McQuoid-Mason

President, Commonwealth Legal Education Association,

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When Commonwealth Legal Education Association (CLEA) was formed in 1971 more than 40 years ago the Commonwealth consisted of 31 countries.[1] The Southern African countries of Zimbabwe, South Africa, Namibia and Mocambique were still under white minority rule. The Cold War divided countries into eastern and western blocs. The ideology of socialism and communism influenced the political structures of many countries. The modern concept of globalization had not been heard of. And, the twin towers of the World Trade Center in New York had just been completed. Pocket calculators were introduced for the first time in 1971. Fax machines, cell phones, personal computers, i-pods and i-pads, emails, Kindle books, the Internet, Google, Skype, Facebook, Twitter and the like were a distant dream.

Forty years later by the year 2011, another 21 countries had joined and remained in the Commonwealth.[2] In Southern Africa, Zimbabwe, South Africa, Namibia and Mocambique are no longer under racist minority rule. The Cold War has disappeared and the Arab Spring is emerging. The ideology of socialism and communism has departed from the political structures of many countries. Globalization is the modern buzzword. The twin towers of the World Trade Center in New York were destroyed in the terrorist attack on 11 September 2001 that has changed the face of safety and security in democratic countries. Today millions of people own

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[1]   Australia, Barbados, Botswana, Canada, Cyprus, The Gambia, Ghana, Guyana, India, Jamaica, Kenya, Lesotho, Malawi, Malaysia, Malta, Mauritius, Nauru, New Zealand, Nigeria, Pakistan, Sierra Leone, Singapore, Sri Lanka, Swaziland, Tanzania, Tonga, United Kingdom, Uganda, Western Samoa, Trinidad and Tobago and Zambia.

[2]   For instance, Antigua and Barbuda, The Bahamas, Bangladesh, Belize, Brunei Darussalam, Cameroon, Dominica, Grenada, Kiribati, Maldives, Mocambique, Namibia, Papua New Guinea, St Kitts and Nevis, St Lucia, St Vincent and Grenadines, Seychelles, Solomon Islands, South Africa, Tuvalu and Vanuatu. Fiji and Zimbabwe have been suspended from the Commonwealth and Zimbabwe has since withdrawn its membership..

cell phones, i-pods and i-pads. Millions more have access to personal computers, the e-mail and a deluge of electronic information, as well as opportunities to indulge in global socializing on the Internet.

Situational analysis

What are the consequences of the above for CLEA? Firstly the 21 new Commonwealth members have added at least 61 new law schools to CLEA's institutional membership. This is apart from the increasing numbers of new law schools established in the countries originally represented by CLEA. Secondly, the liberation of Southern Africa from white minority rule has opened the door for the Commonwealth law schools in the region to interact with each other in terms of students, staff and resources. Thirdly, the end of the Cold War has meant that the Commonwealth countries in the developing world are no longer drawn into the ideological battles of the former superpowers. It is now much easier for law schools to reach out towards each other and to law schools in other countries across the political divide. Fourthly, the collapse of communism and socialism in many countries has led to a resurgence of demands for democracy, human rights and accountability in governance. This has opened a window of opportunity for Commonwealth law schools to educate a new generation of lawyers who will uphold these values, particularly in the developing world. Fifthly, the challenges of globalization require Commonwealth law schools to become internationally competitive. At the same time they must produce students who can not only protect the interests of their home countries but also hold their own in the international arena. Sixthly and finally, the destruction of the World Trade Center and its consequences has graphically illustrated how interdependent the countries of the world are in terms of economic, political and legal relationships. The events of 11 September 2001 have posed a major challenge to Commonwealth and other law schools to create national and international legal mechanisms that can simultaneously deal with the threats of terrorism and the need to preserve the Commonwealth core values of democracy, human rights and accountability.

Technological changes

How do the technological changes since 1971 impact on Commonwealth law schools? Certainly personal computers have made life a lot easier for calculating examination marks. There are few university teachers who do not use them for this menial but important task. They are also used for a host of other purposes such as preparing budgets and compiling statistics for applied legal research and the like. The cell phone is often regarded as a bane rather than a benefit by law teachers. This is particularly so when the phones are used by students in the classroom. However, a new generation of cell phones allows them to operate like personal computers. This is happening with 'tablet computers' such as i-pads. Very few law schools in today's world can function without the use of personal computers - even in developing countries. The e-mail enables us to keep in touch with colleagues throughout the world, especially in those countries where the use of the telephone and fax machine is not always reliable. The Internet has provided us with free telephone calls (e.g. Skype) and previously undreamt of access to information. It is virtually impossible for modern legal academics to do credible research without it. The result of the technological revolution is that it is increasingly possible to place large volumes of legal literature on compact disks. It is also possible to provide students with access to materials on the Internet, rather than spending large amounts of money on books for law libraries. In a modest way CLEA attempts to facilitate access to information technology for those Commonwealth law schools that lack these resources. To this end the CLEA website is being developed to assist Commonwealth law schools with access to information about law curricula, legal education initiatives, academic research and the Commonwealth Law Reports.

The next 40 years

What do the next 40 years hold for CLEA and Commonwealth law schools? Hopefully with the

increasing availability of information technology and social networking there will be many more opportunities for Commonwealth law schools to interact with each other in terms of curriculum development, research and resources. CLEA is producing a number of model curricula for Commonwealth countries such as the Human Rights and Transnational Crimes curricula. These and the development of other model curricular may lead to greater articulation and recognition of credit for courses completed at sister Commonwealth law schools in the same way that the Bologna Process applies to European countries. There may also be scope for shared distance learning programmes mounted jointly by Commonwealth law schools in the same or different countries. The dramatic developments in the efficacy of information technology will make it increasingly easier for Commonwealth law schools in different countries to enter into joint research projects. Finally, as more and more law school libraries go on line, and more and more law journals and books are available electronically, it will be easier for Commonwealth law schools to obtain access to comparatively cheap resource materials and electronically to share their resources. CLEA's *Journal of Commonwealth Law and Legal Education* in now available on line, as is the CLEA *Newsletter*.

New initiatives to develop global universities and virtual law schools will continue to occur. However, as long as legal disputes in the courts are resolved through questioning and argument by lawyers and due deliberation by judicial officers, rather than through data processing by computers, there will always be scope for traditional law schools that provide students with >flesh and blood= legal education and training. It is for this reason that CLEA has in recent years been encouraging Commonwealth law schools to include clinical legal teaching techniques in their education programmes.

If the last 40 years have seen exciting developments in legal education at Commonwealth law schools undoubtedly the next 40 will see even more. The challenges are enormous but there is no doubt that CLEA will still exist 40 years hence and will continue to assist Commonwealth law schools to meet the challenges of the 21st Century.

THE HISTORY OF LEGAL EDUCATION

Professor G J Slapper,

Professor of Law, The Open University, UK; door tenant 36 Bedford Row, Chambers of Frances Oldham QC.

Today, a law degree is the most versatile of academic qualifications, and the most popular undergraduate subject. There is really just one career for a graduate of dental surgery but for law graduates there are multifarious paths to success.

Many law graduates proceed to become solicitors or barristers but, equally, many others use the qualification to become successful in commercial life, academic research, the media, the civil service, corporations, local government, teaching, campaign organisations, and politics - over 80 MPs, for example, have law degrees. A law degree can prepare someone for work at the highest levels – Barack Obama used to be a legal academic and 11 British Prime Ministers have been lawyers. Having studied law, some people such as Gandhi and Nelson Mandela, move on to benefit the world in other ways.

There are now 70,500 people studying law in the UK, with around 15,500 graduating each year.[1] A significant number do not go on to become practising lawyers. In England and Wales, about 4,500 training places in firms and organisations are now being offered for prospective solicitors each year[2] and about 460 pupillages for barristers[3]. So, many who take the Legal Practice Course or the new Bar Professional Training Course will not go directly into standard practice but will move into legal work that is not reserved for fully-apprenticed lawyers. Additionally, many law graduates glide directly into other occupations as the employment rate for law degree holders is exceptionally high. Research conducted at Warwick and Kent showed that law graduates earn more than graduates in other subjects[4], and the latest data from the High Education Statistics Agency[5] show that 92.7 per cent of

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[1]   Higher Education Statistics Agency, 2011 statistics, www.hesa.ac.uk accessed 4th July, 2011
[2]   'Be warned: painting too gloomy a picture of the legal profession will deter the best' Nigel Savage, Richard Moorhead, *The Times*, 14th April, 2011
[3]   'The best still beat the bottleneck', Frances Gibb, *The Times*, 26th May, 2011
[4]   Labour Market Trends Volume 111 No3 March 2003, Professor Ian Walker, Dr Yu Zhu.
[5]   www.hesa.ac.uk statistics accessed 4th August, 2011.

law graduates were employed six moths after leaving university (in contrast, for example, to computer science graduates only 84.7 per cent of whom were employed at the same point).

Law governs every facet of human life so there is something in the discipline for everyone, including the law related to science, technology, sport, entertainment, business, politics, finance, criminal justice, the family, employment, property, cars, medicine, and international affairs. Law graduates show prowess in many of the abilities in which employers now require accomplishment. A university legal education equips students with a formidable library of knowledge and a magnificent portfolio of skills. Law degrees certify that their holders have high levels of literacy, communication skill, rigorous powers of analysis, numeracy, IT skill, argumentative and evaluative skill, advanced problem-solving capability, research proficiency and presentational expertise.

If you play chess or cricket, football, or Monopoly it is a great advantage to know the rules well. The law is the rulebook applicable to the entire canvas of life. It is a rulebook rich in history, intrigue, thrills, cunning, comedy, and tragedy. Those who are expert in its contents are indispensable. As a matter of social health, there should be law graduates everywhere to guard against the danger observed by John le Carré: "it's always wonderful what a lawyer can achieve when nobody knows the law".

The early days of legal education

Organised legal education did not get off to an auspicious start. It was condemned as unlawful and shut down not long after it was launched in London. The monarch considered it would not be conducive of good order to have people prying into the law and spreading opinions about its contents.

The law schools set up in London in the early thirteenth-century were suppressed in 1234 by a writ of Henry III. The writ said:

> "…Through the whole city of London let it be proclaimed and wholly
> forbidden that anyone who has a school of law in that town shall teach the

laws…and if anyone shall conduct a school of that nature there, the Mayor and the Sheriffs shall put a stop to it at once".

Today, by contrast, Law is the most popular undergraduate subject in the United Kingdom, and legal scholarship and practice are regarded in high esteem. The history of this change caries many points of relevance for today's debates.

Law schools, following the period in which they were regarded as unlawful, later came to be accepted, and regarded as lawful by the 14th century. Systematic legal education organised by the Inns of Court and Chancery was then established and continued through to the 17th century, although much of it had deteriorated by the early 18th century. By then, the education consisted of little more than "keeping terms", a phrase originally covering regular attendance at readings, and participating in moots, but eventually concerned with little more than eating dinners. This system was not substantially changed until the systematic use of examinations in the nineteenth-century.

The Inns of Court were frequently referred to in 16th and 17th century literature as "the legal university" and there was at that time no systematic teaching of English law at Oxford or Cambridge. Even by the early 19th century, being called to the Bar consisted *de jure* in the ability to eat and drink and to sign one's name. *De facto* it involved, according to one contemporary description quoted by Joseph Napier QC in 1854 (Gower, 1950:139): "going into a pleaders' office for two or three years to learn to tell a plain story in very unintelligible language".

It is sometimes thought that the wilder distractions from legal scholarship began to take their toll from the 1960s and 1970s onwards. The problem of debauchery among law students though appears to have had an earlier origin. One writer in 1874 (Campbell Lives of the Chief Justices Vol. 3 page 186, cited in Gower, 1955: 40) suggested that:

> "In regard to the great mass of students entering a learned profession, it is necessary by institution and discipline, to guide in experience, to stimulate indolence, to correct the propensity to dissipation …"

Assessing law students by formal written examination is not many centuries old. The first legal examination for admission as a solicitor was introduced in 1836, and was made a statutory requirement in 1843. The Inns of Court did not introduce exams until 1844 and made them a uniform requirement only in 1852.

In 1846 the report of a Select Committee on Legal Education was severely critical of the state of play and said that (Gower, 1950: 141):

> "[T]he present state of legal education, both professional and unprofessional, is extremely unsatisfactory and incomplete and in striking contrast and inferiority to such education in all the more civilised States of Europe and America"

This report shares a volume with a report called *The Disposal of Metropolitan Sewage Manure*. By 1922 the Law Society and The Bar Council had established independent law schools in London providing instruction by lectures and classes for their separate professional examinations. Those classes for the Law Society examinations were compulsory for one year.

The establishment of an academic discipline

Sir William Blackstone, arguably the first great English academic lawyer, tried, as holder of the Vinerian Chair at Oxford (1758), to establish English law as a distinct subject. Canon and Roman law had been taught at the universities for centuries but courses on English law did not exist. In the event, it was the disciples of Jeremy Bentham who established the first degree in English law, at University College London (UCL) in 1826. The first graduating class of three was in 1839. It was at UCL that Professor Amos, among the first London legal academics, began to have informal discussions with his students following lectures and so perhaps may be regarded as the father of the seminar classes which play such an important part in legal education today.

The academic quality of law teaching developed slowly. The title of A.V. Dicey's inaugural lecture, delivered at All Souls College, Oxford on 21st April, 1883 was "Can English Law Be

Taught at the Universities?" He noted at the outset that if the question whether English law can be taught at the Universities could be submitted in the form of a case to a body of eminent counsel, there would be no doubt about what would be their answer:

> "They would reply with unanimity and without hesitation, that English law must be learned and cannot be taught, and that the only places where it can be learned are the law courts or chambers."

Even once English law was established at several British universities it was not regarded in high esteem by academics from other faculties. In the dry observation of Professor A W B Simpson "the law school was treated as the appropriate home for rowing men of limited intellect". The discipline of law was not seen as presenting an especially difficult challenge. In 1970, six out of ten solicitors were not graduates, and most judges had read not Law but rather subjects like Classics or History.

Undeterred, Dicey identified certain merits in legal scholarship. Students at university could, and should be "taught to regard law as a whole and to consider the relation of one part of English law to another", something impossible in the throes of daily legal practice. University education could also provide "what from the nature of things can never be learnt in chambers - the habit of analysing and defining legal conceptions."

The aims of legal education

According to the distinguished legal academic and then Vice-Chancellor of Oxford, W T S Stallybrass, (1948: 160):

> "[A] university education should be education in the Law and not only, or possibly not even primarily, education for the Law"

Stallybrass said that the Law Schools at the Universities should turn out people who were not merely professional lawyers but people of "general ability and acceptance".

Similar points have been made by other distinguished scholars. In his inaugural lecture at London, Professor L.C.B. Gower said (1950: 169)

> "[O]nly a fraction of the lawyers that we will train will go into private practice; the rest (an increasing proportion) will become central or local government servants, advisers to public corporations and companies, business executives, politicians, teachers, magistrates or magistrates' clerks. Clearly these need something very different from a narrow training in legal technique and there is fairly general recognition, in theory, that the Universities should attempt something wider and in particular that they should emphasise the sociological purposes of law and relate it to the other social sciences."

Later, Professor C. J. Hamson, in his inaugural lecture at Cambridge, said (1955:11):

> "A number of my former pupils actually at the Bar are small. More continue to practice as solicitors or are in some kind of legal service, local, colonial and civil … it may well be that the law school no more specifically provides for legal practitioners than the history school does for school masters and civil servants."

On area of debate running through the history of legal education has been the extent to which university education in law should be directly related to legal practice. In his history of UCL, published in 1929, H. Hale Bellot noted (1929: 97) that the new great school of law aspired to be a place where:

> "Academic studies would be invigorated by contact with legal practice, and legal practice would benefit by the scientific analysis of its tacit assumptions".

This is a point which resonates strongly in current debate about how law schools should operate. It is ironic that today that some legal academics who oppose such cross-fertilisation believe that the older law schools were, from their geneses, ill-disposed towards such cross-fertilisation. The issue was expressed by Jackson in the Machinery of Justice in England first published in 1940 (1967: 278)

> "[I]f the Universities say 'the professional bodies are so severely practical that to get a balance we must continue to be theoretical', the professional bodies say 'the universities are so woolly and wide of the mark that we must insist on something useful'"

Professor C E S Wade was expressing an idea on the same subject when, in 1947, in his inaugural lecture, he said that law should be taught in the Universities:

> "not as an exercise in professional technique but in relation to its place in the world in which we live"

Similarly, Professor S P Simpson, in the Harvard Law Review in 1936 noted (as with Wade, cited in Gower, 1950: 161):

> "Competence in the practical pursuits of the law is promoted far more by an understanding of the law's underlying purposes and theories than by acquaintance with tricks of the trade"

The growth of legal subjects

Legal subjects develop largely in response to social developments. A society of computers and the internet, for example, gives us books on courses on computer law. In fact, however, large parts of the common subjects of today's law (like contract, tort, family law) have developed in quite recent history. As late as 1900, most of the academic subjects we have now either did not then exist or had very different syllabuses from courses with the same name today. As society changes, so the law has to adapt to such change, and, consequently so does legal scholarship, legal education, and training. For example, in the United Kingdom European law is now a core subject on law degrees and of great importance whereas a mere 25 years ago it was a fringe specialist subject. Today areas of study and practice like sports law, media law, intellectual property law, immigration and asylum law, and international criminal justice are very important, whereas they did not exist as significant compartments of knowledge and jurisprudence, or courses, and were not the subject of legal literature, as recently as fifty years ago.

But for a long time, until not so long ago, Law was seen as a rather dull and unimportant subject. The Parliamentary Select Committee on Legal Education of 1846, referred to above, urged that Law be taught more animatedly and more widely. But five years after that report was published another committee discovered that not only had no one done anything about the proposal, no-one had even read the report. There was literally dust on the pages of a report saying that Law was a dusty subject. A major study in 1967 concluded that, among university faculties, Law usually "lacked prestige".

Law in different contexts

It is difficult to overstate the importance of law in the closely-integrated 21-century world. Professor William Twining QC, of University College London, in a vivid study of legal education, notes the importance in this way (1994:3):

> "Law as a discipline is constantly fed with practical problems and materials from the 'real world': actual rather than hypothetical cases; proposals for legislative reform; and social problems from domestic violence and crime to world peace and environmental survival."

With the growth of e-learning, the expansion of legal study is likely to continue to address and absorb its thinking from a widening range of people. Traditionally, legal study has required access to expansive and expensive law libraries. That required a great deal of on-campus study and therefore excluded many people enthusiastic about legal scholarship but unable to live on campus or attend night school twice a week. Today, institutions can bring the law library to people's homes.

Writing in 1967, the author Herbert Marshall McLuhan noted the epoch-changing significance of the "Electronic Environment". He said, "in the nineteenth-century the level of knowledge was higher in the classroom than outside. Today it is reversed." Thus, as knowledge becomes common and cheap, the pressure is on those who purport to teach: become inspiring or extinct. And McLuhan's perspicacity was expressed when only about half the population owned a television, and twenty years before the Internet became

properly established. Even by 1984 there were only 1,000 computers linked to the Internet. By 1993 connections had risen to just over one million. Today, there are an estimated 1,733, 993,741 internet users (http://www.internetworldstats.com/stats.htm as at September, 2009). It seems clear that in a world progressively concerned about the rules by which we are governed, about human rights, and social governance, legal education will expand both on campus and on line.

The materials used by law students have not always been widely praised. In 1657, not long before he became Master of the Rolls, Sir Harbottle Grimstone, said this in what is auspiciously titled An Address to the Students of the Common Laws of England (Allen, 1964: 227):

> "A multitude of flying reports…have of late surreptitiously crept forth. We have been entertained with...unwanted products *infelix lolium et steriles avenae* (infelicitous weeds and fruitless stems) which not only tends to the depraving of the first grounds and reason of our students at the Common Law and the young practitioners thereof, who by such false lights are mislead…but also to the contempt of the Common Law itself and divers of our former grave and learned Justices and Professors thereof."

By contrast, Law courses today are generally composed with great care and professionalism. Sir Harbottle would now be suitably impressed with the quality today's legal materials. In many courses, the law is looked at in its social, historical, economic and anthropological contexts. In 1963, a leading British legal academic, Professor K W Wedderburn, noted (Abel-Smith and Stevens, 1967: 374) that if law is taught "In isolation from other social studies, it can become a game of exciting but arid rules". He also noted that teaching law in a social context does not necessarily entail "jettisoning the special and valuable technique of the Law". What it does, he said, is to "elevate it from instruction to education". Learning to see law from the viewpoints of other walks of life, and other frames of mind, is an important part of legal education."

There is thus a good case for law teaching being neither solely legalistic nor solely contextual. Karl Llewellyn was the first law teacher to advocate this particular approach: He noted (1945: 346) in a paper for the American Association of Law Schools that:

"Technique without ideals may be a menace, but ideals without technique are a mess, and to turn ideals into effective vision, in matters of law, calls for passing those ideals through a hard-headed screen of effective legal technique".

That, to be good, undergraduate legal education should aim to contextualise 'black letter law' (a phrase, taken from the old historical law report practice of putting key legal propositions in print darker then that used for the more discursive parts of a report) is now widely accepted. In the latest Subject Benchmark Statement for Law (2007), the Quality Assurance Agency suggests that (4.6):

"A student should be able to demonstrate an understanding, as appropriate, of the relevant social, economic, political, historical, philosophical, ethical, cultural and environmental contexts in which law operates, and to draw relevant comparisons with some other legal systems"

Expansion

During the last century legal education has undergone a profound transformation in both its scale and its style. In 1909 there were 109 university teachers of law in Britain, today there are over 3,000. Academic legal literature has expanded during the same time from something that could have been fitted on to a few shelves to something requiring to be housed in a large building. In 1960, there were 3,000 law students in the UK, today there are over 70,000.

In 1963, in a polemical book entitled *Law Reform Now* Gerald Gardiner QC and Andrew Martin argued for a thorough overhaul of the legal system including institutions of law reform and legal education. When Gardiner became Lord Chancellor in 1964, he appointed a committee headed by the High Court Judge Mr Justice Ormrod to conduct a major review of legal education. The purpose of the Committee was to "advance legal education in England and Wales by furthering cooperation between the different bodies now actively engaged upon legal education". As Twining observed (1994), none of these objectives was achieved. The Committee recommended a rigid three stage structure (academic,

professional, and continuing professional development) which defined and further entrenched three separate spheres of influence. However, Twinning cogently demonstrates that several benefits flowed from the Ormrod report. It made legal education the focus of greater public attention, established the idea that the legal profession should become a graduate profession (at the time only 40% solicitors were graduates) and it encouraged the study of law in its social context. This "reinforced the trend towards assimilation of law schools into the academy as liberal arts departments rather than professional schools" (Twining, 1994: 37)

In the early 1900s very few women read law at university or for the Bar. Fewer than 1 per cent of entrants were female whereas today 50 per cent of entrants are female. Tales of great courage and pioneering spirit are to be found in the lives like that of Ivy Williams (1877-1966) who became the first woman barrister in England when she was called at the Inner Temple on 26th January, 1922.

Since the Ormrod report in 1971, another key development has been the profusion in law courses outside the law degree such as those for post-graduate qualifications like MAs and LLMs. Institutions offering the Bar and Law Society courses and in non-degree level legal education such as A Level Access courses and Continuing Professional Development have also burgeoned, as has study for legally-related doctoral theses.

Visionary thinking

It is always good to have people who include a visionary element in their thinking. In his seminal article *English Legal Training* Professor Gower said (1950: 919) said that while the use of films was in its infancy in the United States and unknown in the United Kingdom it should become an important way for legal teaching to be made more effective and interesting. Gower spoke prophetically about the way that parts of cases could be depicted in film in a way which would make their human drama very memorable and said 'nor I hope would he forget the effect of the judgement which, suitably cut, he could see and hear the court delivering'. This is pretty much what happens now in a great many of the 130 law schools across the United Kingdom as part of their multi-media delivery. Gower said "in the middle ages the judges allowed the apprentices to sit on the Bench; by the aid of film we

can go one better and bring the Bench into the classroom." That he said this at a time when most people in Britain did not own a television set is remarkable. What ever else we can say about legal education in 2007 one thing is clear: it is a lot more systematic and professional than it was at some early stages in history. W T S Stallybrass told this story (1948: 162)

> "When I went into Chambers with Mr Montague Shearman, he told me that he could teach me no law, but he could give me one bit of advice which would be worth a great deal more for me than any amount of law that I might acquire elsewhere, and that was 'when you get a case for opinion, read it through very carefully, then read it through again very carefully, then write down what you think is the common sense of the matter, and then inform your client that that is the law.' He said that of course once in a hundred times you will make a howler but this is much less often than most barristers!"

Part of the common sense of legal education of the future will be that it is not a subject only for an élite. As with mathematics, in which society requires a proportion of its members to be expert exponents but in which everyone is taught all the basic knowledge, so too with Law. We require lawyers, but in a democracy all citizens need a basic education in Law. The first 700 years of legal education in the UK are the story of its birth and initial development. The next 700 will be of its pervasion.

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RUMOURS ONCE HEARD

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This article moves around a small empirical study into the experiences of one cohort of early career academics at one UK law school. The research was derived, primarily, through a series of semi-structured interviews, what are commonly termed 'conversations with purpose'. The findings were then analysed in the context of existing literature on the subject of early career academic experience. Much of this literature, discussed in the first part of the article, paints a bleak picture; of a generation of dis-orientated academics struggling to make sense of academic life in an age of 'supercomplexity'. The findings from this research suggested that whilst the potential for dis-orienation was certainly present, in fact this generation appears to be adopting an enviably pragmatic approach to their survival and career development. However, it became apparent that the absence of a clear sense of direction, whilst not inhibiting in any significant sense, left a number of interviewees troubled by the thought that there might be something else out there, some deeper purpose to their academic lives. Such a concern is, perhaps, a variation on the familiar 'expectations gap' in higher education. A degree of frustration, albeit mild, remains, with a number of interviewees finding it difficult perhaps to resign themselves to the simple reality that academic life, like indeed any other aspect of life, can progress, quite happily indeed, without deeper purpose or clear direction.

When you turn my pages…

I enlarge you as I lose myself, word by word.

I am part of a story you invent

Like a rumour you once heard

And decided to make your own.

The lines are from Thomas Kennelly's poem 'The Book' (1990: 67). I share its sentiment, the acuity of which has come home to me yet again in a rather unexpected way; in a brief encounter with the 'discipline' of qualitative empirical research.[1] My own intellectual background lies far away in the slippery realm of literary criticism and jurisprudence; very different, or so I thought. My particular project, conducted during the summer of 2009, had a simple aspiration; to get a closer sense of the experience of Early Career Academics (ECAs)

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[1] I use the term 'discipline' in the familiar Foucauldian sense of a discursive strategy designed to furnish, maybe mask, political and cultural practice with a degree of normative stability.

in one UK Law School (LS). But in time it became something rather more, because representing these reflective experiences proved to be, for me as well as those who agreed to participate in this project, as frustrating as it was fascinating. For this reason, what follows has an indulgent even schizophrenic aspect; a 'descriptive' research project embedded within a 'narrative', essentially testamentary, report (Bassey, 1999: 86-7).

The challenges for those presently embarking upon an academic career in what has famously been termed our present age of 'supercomplexity' are many (Barnett, 2000: 75-7). The 'collegial academy' has been laid to rest, consigned to nostalgic memory, whilst Higher Education (HE) is beset by a critical lack of 'confidence' (Rowland, 2002: 52). It struggles to deal with what Taylor terms 'discontinuous change'; assailed not just by the necessary tensions of 'massification', of ever-decreasing resources intended to facilitate the education of ever-increasing numbers of students, but by the demands of ever-closer audit and ever-more intense intra-academic competition (Taylor, 1999: 2; Barnett, 2000: 5, 13-15: Becher and Trowler, 2001: 5-8). These pressures are felt across the academy, resulting in higher levels of stress and a degree of professional disillusion which impacts adversely on staff morale and retention; and the modern law school is certainly no exception (Collier, 2002: 31-2; Bradney, 2003: 17). It is reasonable to assume that such pressures will impact especially amongst ECAs, legal or otherwise (Cownie, 2004: 47; James, 2009). Equally, it is clear that, regardless of these pressures, a career in the academy retains its attractions, even if many who pursue this aspiration do so, it seems, with often misaligned expectations (Whitt, 1991: 184-5; Sorcinelli, 1994: 474, 477; Taylor, 1999: 65).

The following two parts of this article comprise the 'descriptive' project, addressing in turn the critical literature on ECAs, and then presenting qualitative interview data with a small cohort of eleven ECAs in one institution. The idea that any such project, no matter how it is designed, ultimately can only ever present 'fuzzy generalizations', is familiar (Bassey, 1999: 3, 52). The third part of the article, the 'narrative', essentially testamentary, commentary, will explore the deeper implications of this concession.

Images

The last two decades has witnessed a notable increase in literature on ECA experiences; even if the principal writings have appeared across the Atlantic, and even though virtually none of it speaks to the more particular experiences of young legal academics. The critical literature generally presumes that most ECAs are cast adrift in a state of 'reality shock' (Whitt, 1991: 178-80). The 'incoherence' of the academic life surprises, the fact that its reality is more 'often dystopian than utopian' disappoints (Angelique et al. 2002: 195). Cultures, and discourses, of 'productivity' and 'performativity' are pervasive (Austin, 2002: 94-5; Becher and Trowler, 2001: 5-6). And Law Schools are no exception (Cownie, 2004: 102-3, 110), are no exception. Early American studies suggested that many ECAs experience 'feelings of loneliness, isolation, lack of social and intellectual stimulation' (Sorcinelli, 1994: 474-5). The apparent demise of collegiality is supposed to be a common factor (Whitt, 1991: 182-4; Austin and Rice, 1998: 745-6; Sorcinelli, 1992: 31-2). So too is an apparent disjunction between the aspirations of ECAs and the often opaque expectations of University managers (Rowland, 2002: 53; Austin, 2002: 112; Austin and Rice, 1998: 740; Staniforth and Harland, 1999: 142-9; Nir and Zilberstein-Levy, 2006: 546). Critics identify another fuzziness; this time 'goal fuzziness' (Knight and Trowler, 2000: 73). ECAs too easily drop through an ever widening expectations 'gap' (Taylor, 1999: 47). Collateral anxieties regarding workload and time management assume a critical inevitability. For this reason, accordingly, literature on ECAs has tended to focus more closely on related issues of identity-formation, role-perception and environmental orientation; each of which, it can be immediately noted, imports a measure of contingency (Taylor, 1999: 41; Henkel, 2005: 173; Valmaa, 1998: 120-1). Identity-formation is a narrative process, every bit as much subject to emotional as to rational reflection (Sikes, 2006: 566; Valmaa, 1998: 131-2; Lee and Boud, 2003: 188-9). In an attempt to coral the contingencies, this same literature commonly identifies three variables; the professional, the environmental and the personal.

Whilst the importance of professional identity might seem self-evident, research suggests that ECAs are often 'uneasy' when asked to define what the notion really means (Whitt, 1991: 190; Sorcinelli, 1992: 30). Two constituent factors appear to create confusion. A first relates to discipline. As Becher (1994: 151) famously noted, academic affinities tend to oscillate towards particular disciplinary 'tribes'. Cownie (2004: 8, 11) has observed the same in the closer context of the legal academy. Here again, it might be surmised that generic

strategies of 'trainability' will be of limited consonance (Beck and Young, 2005: 186, 191). A second factor is expectation. Academics are generally beset by a range of expectations, all critically disaggregated. ECAs, as often as not, are left to read the runes; dependent on trying to make sense of particular environmental and cultural discourses, which might or might not, at any given moment, privilege research, or teaching, or engagement with that newest of idols before which we must all abase ourselves, the external 'stakeholder' (Austin, 2002: 104; Taylor, 1999: 95-6, 104-5; Warhurst, 2006: 119). In general terms, nodding obediently to RAE exercises, 'research intensive' universities make a particular fetish of pursuing 'internationally leading' research; whilst carefully evading saying what it is, why it matters, or indeed just how much more it might matter than anything else (Cownie, 2004: 136-7; Bradney, 2003: 105). Law Schools embedded within these universities are supposed to follow suit, and make the best sense of it they can.

It might be thought that expectation is something which generic induction and training courses should be able to clarify. Such programmes are themselves the subject of considerable critical attention. Much is written by academic developers, and so most is supportive; a fact that may be coincidental, but which is probably not. Some, however, express greater misgivings regarding what they perceive to be a further instance of creeping 'credentialism' (Lee and McWilliam, 2008: 67-8; Blackwell and McLean, 1996: 81). Certainly, as a means for promoting environmental or disciplinary orientation, the value of generic programmes presents obvious limitations (Trowler and Knight, 1999: 182-3; Boud and Middleton, 2003: 194; Rust, 2000: 254, 260; Brand, 2007: 13-14). No two Law Schools are the same. If 'academic identities' are indeed 'forged, rehearsed and remade in local sites of practice', then localised practices of orientation and enculturation, of 'belonging, experience, doing and becoming', assume defining importance (Warhurst, 2006: 114; Lee and Boud, 2003: 118; Bell, 2001: 31; Angelique et al. 2002: 204-5; Sullivan-Catlin and Lemel, 2001: 72-3; Kram and Isabella, 1985: 124-5; Manoucheri, 2002: 716-17, 734). The virtues of peer groups or 'communities of practice' are commonly recommended (Warhurst, 2006: 116-18; Pickering, 2006: 232; Lucas, 2007; 26-7). Less formally, critics contemplate aspects of academic 'folk psychology' and 'Implicit apprenticeship' (Lee and Boud, 2003: 187; Manoucheri, 2002: 716). It is suggested that it is here, in nothing more rigorous than 'how things are done' chats, that the 'real substance' of ECA orientation is fashioned (Trowler and Knight, 1999: 184, 189-91; Haigh, 2005: 4). And like the rest of us, it is reasonably assumed, ECAs want to feel wanted, they want to converse, to feel trusted and appreciated, and part

of something (Lee and Boud, 2003: 198; Bottery, 2003: 253). Whilst it might be thought that such cravings resonate with the lost idylls of 'collegiality', it is more probably a reflection of the more prosaic fact that ECAs are human too (Lee and Boud, 2003: 194; Haigh, 2005: 4). As Haigh (2005: 12) has argued, as 'a means for sharing norms and values, developing trust and commitment, sharing tacit knowledge, facilitating learning and generating emotional connection', the informal 'conversation' has an unparalleled capacity for identity-reinforcement.

The latter supposition, the ECAs are human too, and so crave human engagement, leads to the third aspect of identity-formation which has engaged critical attention. Every ECA imports a different and inherently complex set of personal experiences, values and beliefs. Amongst the more tangible of these personal factors, common across much of the critical literature on academic identity is a more particular concern with gender and work-life balance (Guth, 2009: 185-6). The literature on women ECAs is considerable, confirming the increased presence of women in HE, but also the apparent lack of progress on related issues of direct and indirect discrimination (West and Lyon, 1995: 55; Philipsen, 2008: 228-9). Indeed it has been argued that the emergence of an ever more virulent 'audit culture' in HE represents a peculiarly masculine mutation of 'performativity' where 'aggressive' competition is presumed to be a necessary virtue, and where those who are more commonly excluded from dominant organisational 'networks' are placed at an inevitable disadvantage (Thornton, 2001: 19-21; Harley, 2003: 378-80). And Law Schools, dedicated to promoting a peculiarly 'masculinist' discipline, are again no exception (Collier, 2002: 9, 22; McGlynn, 1998: 46; Wells, 2001: 118-19, 126). The collateral impact of gender-based discrimination in personal matters of work/life balance, in what Collier (2002: 12, 18-20) terms the 'emotional economy' of the modern Law School, is obvious. If female ECAs feel a particular pressure to conform, it is perhaps hardly surprising.

Reflections

The literature then suggests certain themes. ECAs are supposed to be troubled by related matters of identity-formation and role-perception. The expectations 'gap' is widening, affinities are hard to discern, the apparent demise of collegiality disorientating, whilst generic processes of induction and teacher training are of questionable value. The core of

my research project lay in testing these suppositions in conversation with a cohort of eleven ECAs.[2] The methodology was simple, a series of interviews of approximately 45 minutes, based on a sequence of questions derived from the critical literature. Thereon, the interviews were to take the recommended shape of 'conversations with purpose' (Yin, 2003: 1-2). Data would be noted, processed and then member-checked for representational accuracy in initial draft form. The qualitative interview is very much the dominant methodology in ECA studies; widely approved for its capacity to engage the 'lived experience' of the ECA, to hear what Stake (1995: 1) terms their unique 'stories' of educational life. This aspiration has a sharp resonance for the legal theorist, of course. Much critical legal work over the past couple of decades having been dedicated to trying to chase down the 'lived experience' of the modern law school; most of which simply served to raise the voices of those who undertook the chase the hardest. I had of course read those, such as Denzin and Lincoln ((2003: 9) and Bassey (1999: 3, 24-5, 52) who advised against having too much faith in the ability of any interview or conversation in providing anything approaching an objective, still less accurate, 'representation' of these stories. And I had read those who viewed much of the critical legal endeavour in much the same way for much the same reason (Fish, 1989: 225-31). I shall revisit these cautions in due course.

For reasons of anonymity the institution at which the ECAs work is withheld (and referred to simply as LS). So too are the identities of the eleven, the demography of which can be simply broken down into 8 male and 3 female; seven non-UK citizens, 4 UK nationals; 3 with children of school age or younger; 4 in their first year as an ECA, 3 in their second and 4 in their final. The demography is presented purely to suggest what might, or might not, be perceived as a being a fairly typical ECA cohort profile. There is, of course, one further common feature; what Cownie (2004: 22) terms an 'insider perspective'. They are all members of the legal academy. The following data is presented in the spirit of what James Chandler (1998: 70-2, 94, 163-5), following the likes of Frederic Jameson and Michel Foucault, terms 'anecdotal' testament. It is also, for reasons of clarity, presented in terms of the initial questions.[3] The first three engaged matters of identity-formation and role-perception, whilst the second three sought to test critical presumptions regarding environmental and personal orientation.

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[2]   There were originally twelve, but one chose to withdraw.
[3]   The interviews originally contained seven questions. But for reasons of protecting institutional sensitivity responses to one questions, relating more closely to a particular training programme, have been omitted. The anecdotal sense is impressed by the use of fragmentary, italicized statements.

Why did you choose to become an academic lawyer?

Responses to this question were generally brief, uncontroversial and essentially pragmatic. One articulated a strongly idealistic drive; a *passion for research, and I like teaching as well, and the opportunity to think and to experiment with both*. Others admitted greater contingency. Three used the same metaphor; *I think I just fell into it to be honest*; *I fell into it I suppose*; and *I fell into it by accident*. A fourth used a similar, and resonant, metaphor, describing herself as being an *accidental academic*. A number commented that an academic career had seemed an obvious alternative once they had decided against a professional legal career, one commenting *I didn't want to become an academic lawyer particularly, but I was even more sure that I didn't want to practice*, another confirming that in comparison with a positive *Interest in research*, he had a collateral *disinterest in practice*. Two referred to the positive experience of having completed a doctorate; *I enjoyed my Phd and thought why not?* and *I really enjoyed doing my Phd*. Collateral experience gained whilst doing graduate work convinced two others, along with financial expediency; *I needed the money and so started teaching whilst I finished by Phd. And then I just carried on I suppose; Initially I wanted to go into practice, but I needed the money. So I did some teaching… and it grew on me*, concluding and now *I see myself staying in academia*.

How would you identify yourself professionally?

As the critical literature suggested, this question provoked considerable uncertainty; *No idea really*; *I just don't have a professional or academic identity at the moment. It doesn't bother me*; *I don't as yet have a strong sense of identity*; *I don't really know. This hasn't crossed my mind to be honest. Is it important? I suppose I would go along with being part of a Law School*. No one chose to venture a definition of what an academic might be. One response resonated; *There is a question of how we see ourselves as academics, I know. But I have no idea what the answer might be*. Two identified themselves as *academic lawyers*, though added that they could not say precisely what this meant. Another chose a closer disciplinary identity, as an *international commercial lawyer*. Another from a multidisciplinary background, however, surmised that the *term law lecturer does not really mean anything to*

be honest. Whilst a number expressed an affinity with LS, none admitted a strong affinity with its host University.

What do you think is expected of you? And what do you expect of LS?

These two related questions were intended to engage the issue of misaligned expectations. And the interviews again suggested a resonance. Responses included; *High quality research and good teaching. Nobody told us. But…I am not bothered by the lack of clear expectations. There is a general understanding*; *In broad terms yes. I think it is easy to grasp what the broad expectations are. I absorbed them, teaching and research*; *I think so, first of all teaching, and then research, though I haven't really thought about it much. But I do know what I am supposed to be doing, at least at a superficial level*; *three things, admin, teaching and research…but I have no clear sense of where the balance should be struck.* Another, having identified the same three responsibilities, added *whether or not it confirms to the University's expectations I don't really know. No one has told me this…they are just assumptions*. The note of resignation in one response, *that this is the danger of academic life I guess, a lack of guidance*, perhaps gives a clue as to why a number of respondents appeared relatively unconcerned. A few even seemed to be relatively confident; *yes, very clear, publish or perish*; and *Yes, I knew I had to publish, and quickly. And the need for funding was made clear. It was banged into our heads at School meetings, research meetings, away-days.* Others however were less sure, and perhaps a little more concerned; *Even now, not really. The initial stages were the worst, running round like a headless chicken*; and *Now I think so, but when I arrived I did not. I just played it by ear*. Time helps, and rumour perhaps, and the occasional head-banging; but not much else.

The second question elicited equivalent uncertainty. One articulated a strong expectation: *I expect fairness, appreciation and support. Having your strengths appreciated, having support mechanisms in place, and good lines of communication*. But most confessed to having never really contemplated what they might or should expect of their employer. Reasonable assumption, and common sense, again loomed large; *to provide a comfortable working environment, and provided this happens then I am happy*; an *environment that stimulates*; the hope that somebody would be around to *help if needed*; *to let me research*

in peace; *just being given a computer and some bookshelves*. No one volunteered the possibility of any further professional training or development.

What do you understand by the idea of collegiality? Is it relevant in the modern academy?

ECAs, the literature suggests, are disorientated by the apparent demise of collegiality. One interviewee certainly cherished the ideal, referring to collegiality as being *about sacrificing things*, adding *I think it is extremely important, and it is important to tell ECAs about it*. Another alluded to *citizenship in an intellectual community.* Most, however, conceived collegiality in pragmatic terms, of *just getting on with people*, or *working in an amiable environment*. If the term collegiality meant little, the idea of *joint* or *common endeavour* held greater consonance. Still, a common inability to provide a closer definition of what collegiality meant caused some concern. One admitted that their attempt might sound a *bit vague*. Another put it nicely, musing that it was something about *helping others*, but if *I walked into the street and someone asked me what the common enterprise of the University was, I would not know what to say*. The presence of this concern is interesting, for reasons which we will revisit; for it imputes a representational anxiety of questionable sustenance. Others were not so concerned by definitional uncertainty, even challenging the premise of the question. One wondering *if the longing for a collegial past might be a bit of fetish*, whilst others likewise mused that the idea of collegiality might be *a bit old-fashioned*, or *probably outdated*. What matters, another responded revisiting a commonly pragmatic theme, is the provision of a *safe yet challenging environment*, and *it doesn't really matter whether you call this collegiality or whatever*. The question, another interviewee responded bluntly, was *meaningless*; a sentiment which may not have been articulated quite so brusquely by others, but which it is reasonable to infer carried a strong resonance across the cohort.

What processes of orientation have proved to be most valuable in terms of settling role-perceptions?

ULS, like most other Universities, has a specific induction and training programme for ECAs, most of which focuses on 'good practice' in teaching. None of the interviewees were positive about their experience of this programme. Three complaints were common. First it

eats up time. With a nice sense of irony, another commented *I would rather have been preparing my teaching, than turning up to endless lectures telling me how to prepare my teaching.* Second, it is theory heavy and practice light, *useful* one observed *when they were giving us practical tips, and feedback*, but less so otherwise, a matter of enduring *twenty minutes theory, followed by twenty minutes dressing up common sense, and then twenty minutes…just repeating everything again.* Another wondered the value of being put *into groups with other ECAs who did not know what they were doing either, just to talk about things.* And third, as a generic programme, it fails to provide disciplinary orientation. One interviewee perhaps rightly questioned the point of inviting *people from the science faculty* to *teach us how to present statistical graphs or mathematical equations, when we will never need to?* In this context, local processes, understandably, assumed greater value. One referring to the comparatively positive experience of localised induction processes recommended that the *University did less, and the Law School… more*. Whilst a number confirmed this recommendation, for many the greatest help was informal; *getting together to go out for a drink*; *of belonging to an 'early career' group which meets socially*. Without alluding specifically to the idea of 'communities of practice', there was an obvious resonance in the recommendation, on the part of two interviewees, to the prospective value of *being put in a room together*.

To what extent do you consider your work and personal life to be properly balanced?

Responses to this question were perhaps the most varied. Certainly, a number recognised that their professional and personal lives were unbalanced, one admitting *it does bother me. I think I work too hard. It is very intense. I don't sleep that well sometimes. I just find there is no time to get everything done. Every weekend I seem to be working*. However, once again, a sense of resignation was common; *Yes it does impinge. But I have only just started, and you presume it will be the case. So I am not bothered for now. You just have to get things done, no matter how much time it takes. I expected it to be difficult. It is supposed to be. Things have started to ease up a bit, and hopefully it will get better*, and *I think I am getting there. I was less happy up until a couple of months ago. I was working weekends, evenings and so on, often quite late. But overall I am quite happy, though I can see why others might be bothered*. Given the idiosyncratic nature of academic life, another interviewee felt moved to suggest that the generic idea of work/life balance *verges on the ridiculous*.

A number alluded to domestic commitments; whilst *it doesn't really create problems for me, if I was objective I would think that it is not properly balanced…I have to say I am not overly concerned myself… I enjoy working at home. I am always told off for checking emails. Of course I don't have children, which might make a difference*. The three members of the cohort who do have young families tended to express rather greater concern still, one replying *Yes I do think about it and it does create difficulties sometimes*, and another *Yes there is a tension. There was even before I had the baby… It is difficult. It is the type of job which you don't leave behind in the office. I often work weekends still, just trying to catch up*.

Shadows

It was first apparent that there seemed to be no big surprises. Revisiting the six questions, I could note that a number had slipped into the profession almost by 'accident'; that the idea of an 'expectations gap' clearly had currency; that the idea of academic identity was curiously hard to pin down; that the term collegiality meant little, though reconceptualised in terms of a positive environment it meant more, and was warmly embraced on these terms; that localised generally inchoate practices of orientation were as valuable as generic induction and training programmes were essentially vacuous; and that work/life balance issues, though resonating rather differently across the cohort, still did so within familiar bounds. If there was a significant difference, in terms of the critical literature which had framed the interrogative themes, it seemed to be one of intensity. For whilst a potential for disengagement might be discerned, across the whole it was clear that pragmatism provided a strong antidote to the effects of potential disorientation. Common sense was indeed common. My interviewees had simply got on with things, ascertaining for themselves what institutional expectations might be, balancing their private and professional lives as best they could, untroubled in the main by more esoteric concerns of professional academic or collegiate identity. It might reasonably be concluded, perhaps, that the newer generation of ECAs was simply mutating in line with the demands of an increasingly disaggregated HE in a more competitive age of 'supercomplexity'.

The project, as originally conceived, was complete; except that it then assumed a rather different, and intriguing, dimension. It is at this point that the 'narrative' begins to consume

the 'descriptive'; for with varying degrees of intensity, a number of interviewees expressed a representational disquiet with the preliminary draft. The idea of tone, and more particularly my apparent inability to capture it, recurred. What I perceived to be a virtuous pragmatism was perceived by some to represent a critical lack of self-awareness. The implications of this frustration were considerable; resonating very obviously with assorted Derridean laments on the fate of 'author-ity' as well as Barthes's famous prognostication on the 'death' of the author (Derrida, 1992: 110-26). One ECA suggested that he may have been too *frank*, and would have welcomed the chance to revise his comments. A couple of others surmised that certain interviewees might have been caught on a *bad day*. This was certainly a possibility. Greater opportunity for revision, a second chance to answer the questions perhaps, might well have resulted in a different tone. But the literary critic in me remained sceptical as to the surmise that this might somehow be a better, even a more accurate one.

Yet, in such scepticism I had to admit that complacency also lurked; the danger of which was confirmed in conversation with another interviewee who, with considerable insight, wondered if the questions had set the answers, and thereby the tone. Such an observation, as any literary critic knows, invites all the attendant hazards of authorial projection; which is fine perhaps for literary critics, but not so fine for empirical researchers striving after representational acuity.[4] I went back to the original questions, devised by me in response to my interpretation of the critical literature, and contemplated how I might answer them myself; the circularity of the exercise becoming ever more crisply apparent. And the result was, in retrospect, entirely predictable. The answers I had cajoled from my interviewees were, in essence, the answers I would have given.[5] For I was an 'accidental' academic too, who had enjoyed little sure sense of what was expected of me as an ECA. Twenty years on, I am still in large part perplexed by the range of disaggregated, very often contradictory, demands that are made of me. My expectations are limited, in my case as much by experience. But I do not feel any great sense of disappointment, still less disengagement with my discipline or my institution. I too count myself lucky to work in a pleasant and supportive environment, but I care not whether it is a 'collegiate' one. I never had to endure a generic training programme, but I have had to endure countless such workshops since. I

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[4]   I should, perhaps, have been rather more readily aware of the attendant dangers of author-function and authorial projection, having written about it myself (Ward, 1995: 28-42).

[5]   As is, accordingly to Stanley Fish (1995: 48-9), inevitable; a conclusion which, as a literary critic, troubles him rather less perhaps than it did me.

cannot recall learning anything useful at any of them. And of course there are tensions in my own work/life balance. It would by mighty odd if there were not.

A distinct prospect loomed; that what had set out to be a determined attempt to listen to a group of ECAs describe their own experiences of academic life had turned into a wholly indulgent exercise in talking to myself. I could, of course, have given up, chastened by the circularity of the experience. The better alternative, I surmised, was to contextualise further the narrative nature of the exercise. What precisely had I heard? And to what extent might what I heard be represented? For those of us who work in associated areas of literary jurisprudence there is a sharp resonance here. The question of representation is a familiar one. Much of the literature on 'good practice' in qualitative research methodology is intended to ensure optimal representational accuracy, and in the main I had striven to acquiesce. There were in retrospect methodological choices I might now choose to vary; but it is doubtful that they would have changed much in terms of representational tension, or that they should have done.[6] I had also come across some, admittedly rather fewer, who warned against the distraction of prospective representational accuracy. I had noted Michael Bassey's (1999: 3, 24-5, 52) observation, that any interview data was textual in form and that, as such, its interpretation was an 'imaginative' exercise. It is for this reason that any 'fuzzy generalizations' which the interpreter might choose to draw inhere a considerable measure of 'built-in uncertainty'.

I had likewise encountered Denzin and Lincoln's (2003: 9) use of the 'bricoleur' metaphor to describe the process of data use; the imputation that whilst the qualitative researcher might be required to use the materials provided by others, he or she gets to choose the design. This particular metaphor had a still more familiar ring. The pragmatist philosopher Richard Rorty used it to describe his own intellectual endeavour (Ward, 2008: 281-2). Inhabiting the same ironic world as Chandler's 'anecdotal' historian, the Rortian 'bricoleur' is reconciled to the reality that the 'contingency' of language always frustrates the pretence of 'representational' truth. Designed not by reason or providence or empirical insight, but by the 'strong poet', the ironic world is forever subject to the vicissitudes of 'interpretive

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[6] I had tried to ensure that each interview lasted pretty much the same length of time, roughly 45 minutes, and that each interviewee was asked the same questions in the same order. I even tried to follow the injunction, in retrospect absurdly naïve, that questions should not lead answers. I could have 'transcript' checked as well as or even instead of 'member' checked, but it is doubtful that the tone would have changed much if I had, or more importantly have gained, rather than conceded, any textual integrity.

conversation' (Rorty, 1989: 4-5; 1991, 36-40). Discussing the difficulties of editing 'verbatim' drama, David Hare (2005: 29, 78-9, 84) has recently varied the bricoleur theme, suggesting that any writer has a responsibility to collect the 'driftwood' of conversation and 'make it into art', and thus give it 'reality' too. The problem, of course, is that whilst such a process might be all well and good for dramatists and ironic philosophers, it is not an approach commonly embraced by legal academics. Speaking to the same frustrations, Albert Camus (1975: 111) urged us to 'imagine Sisyphus happy'. The relative contentment of my interviewees was again striking. But lawyers generally prefer to imagine something a little less allusive, a reality that is somehow a bit more real than that embraced by Hare and Camus.

On its original terms, the experience of listening to the voices of the eleven ECAs retained its value, the fact that there were no surprises perhaps validating the relative consonance of their observations. But the sense of frustration remains, even as the voices, to revisit Kennelly's lines, recede. The lines insinuate a dual resonance. Academic life, as my interviewees had time and again confirmed, is defined as much by rumours 'once heard' as by anything else. And it is this which, it seems, so frustrates. It frustrates, on the one hand, because the writing of any human story is an imaginative rather than representational exercise; a 'story' invented. And it frustrates, too, because there is the constant nagging feeling that there must be something else, something more tangible to be said. We have all, I think, experienced this frustration. How many of us could confidently define our profession as academic lawyers? How many of us could define collegiality? How many of us have a sure sense of what is expected of us even? At a slight remove, how many of us relish the prospect of attending yet another 'good practice' workshop in something or other? How many of us could honestly say that our work/life balance is optimal? How many of us are entranced by the possibility that just one more weekend might elevate a prospective REF piece from the squalid commonalty of being internationally excellent to the hallowed status of world-leading? It might be said, following Camus, that frustration is simply the condition of human life. But that does not make reconciliation any easier. Likewise, there is certainly nothing wrong with happy resignation, or common sense, and it may be that academic life amounts to little more than staying 'alert and paying attention' (Fish, 1994: 230). Yet the thought that there might still be something more than receding rumours remains to vex us all.

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PHILOSOPHY OF LAW AND LEGAL EDUCATION IN AFRICA

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The process and content of legal education in the democratizing societies of Africa is of the utmost importance. This is so because the hallmark of modern democracy is subscription to the rule of law; but, of course, the provisions of the law have to be implemented by persons with the appropriate skills. My objective in this essay is to demonstrate the contribution of legal philosophy as a vital component in the process and content of legal education in Nigeria. Using the situation in Nigeria as a paradigm case, I will explore, in detail, how exposure to legal philosophy would facilitate and enrich the formal education of the law student.

Key Words: legal philosophy; legal education; developing nation

Introduction

One of the insights for which Socrates has been immortalized, is his observation, recorded in *Crito* (Plato, 1981, 45-56 at 52ff), that virtually every significant aspect of human existence in the state of civil society is, to some extent, impinged upon by the law. There is a direct correlation, therefore, between the health of a state and the soundness of its laws.

There is, to begin with, a near universal agreement among jurists and social and political commentators that adherence to the doctrine of the rule of law is a sine qua non for the constitution of a liberal democracy. The doctrine of the rule of law and liberal democracy are both underwritten by the same fundamental principle – egalitarianism; more specifically, procedural egalitarianism. There are various conceptions of the ideal of the rule of law, but perhaps the irreducible minimum or salient feature of the doctrine is a negative thesis: the opposition of the rule of law to all forms of arbitrariness in governance.[2]

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[2]   For a helpful discussion of the requirements of the ideal of the rule of law, see J.M. Elegido, *Jurisprudence*, Ibadan: Spectrum Law Publishing, 1994, chp. 10, pp.182 – 195.

Aristotle's classic distinction between the rule of law and the rule of man has remained a point of departure for much of the subsequent discourse on the doctrine. "We must begin", Aristotle says, "by asking an old and fundamental question – whether it is better to be ruled by the Best man or by the Best Laws." Aristotle's answer represents a clear departure from that proffered by his old teacher and mentor, Plato, whose preference, as stated in book six of *The Republic* (*Republic* 503, b), would be for rule by a philosopher king. For Aristotle,

> he who asks Law to rule is asking God and intelligence and no others to rule; While he who asks for the rule of a human being is bringing in a wild beast; for human passions are like a wild beast and strong feelings lead astray rulers and the very best of men. In law you have the intellect without the passions. (Aristotle, 1962, 143)

These Aristotelian sentiments were to find varying degrees of endorsement in the subsequent history of western political thought. For example, John Locke, the seventeenth century British social contract theorist, strongly endorsed the doctrine of the rule of law.[3] In the *Second Treatise of Civil Government*, Locke cautions that

> the legislative, or supreme authority, cannot assume to itself a power to rule by extemporary arbitrary decrees, but is bound to dispense justice, and decide the rights of the subject by promulgated standing laws, and known authorized judges. (Locke, 1955, 112 – 113)

Again, the first limitation on legislative power, according to Locke, is that legislatures

> are to govern by promulgated established laws, not to be varied in particular cases, but to have one rule for rich and poor, for the favourite at court and the countryman at plough. (ibid. 119)

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[3] In contrast, Marxists tend to assign only a limited – instrumental – value to the ideal of the rule of law. For them, the rule of law is highly desirable while it remains relevant. But it can be no more than a stop-gap measure in the course of social evolution, destined to become otiose as the law and the state wither away with the glorious inauguration of the communist utopia. For a recent Marxist defense of this conception of the rule of law, see Olufemi Taiwo, "The Rule of Law: The New Leviathan", *The Canadian Journal of Law & Jurisprudence*, (Jan. 1999), vol. XII, No.1, pp.151 – 168.

Now, as Professor Elegido has pointed out, "ideally all citizens [in a democracy] should be able to know and understand the laws which affect them." (Elegido, 1994, 188) However, this ideal is clearly unattainable in practice, given the complexity and sophistication of modern life under the law. This is where the need arises for the services of specially trained legal technicians – the lawyers. The subject matter of this essay is the education of the Nigerian lawyer.

For contemporary African societies, bombarded by forces of change both internally generated and those induced by external perturbations, the time has never been more auspicious than now to pay close attention to the development of our laws and the overall integrity of our legal systems. What I propose to explore in this paper is the process and content of legal education in Nigeria, specifically the contribution that legal philosophy could make to legal education.

The suggestion that philosophy may have anything of value to contribute to the legal education of a technologically starved developing nation, such as Nigeria, is almost certain to confront an intuitive skepticism. Nigeria, like other modern African states, must operate in a globalized environment, where the economies, and invariably, the politics and morals of the nations of the world are joined, if not all at the head, then at the hips. In this environment, one would suppose that what Nigerian (African) lawyers require are enhanced technical skills in the intricacies of international contracts, transnational personal injury class action suits, the finer details of the law of bankruptcy, principles of arbitration in industrial disputes, etc. What, one might ask, has philosophy of law got to do with any of that?

The thesis I defend in this paper is that the discourse in the philosophy of law could contribute immensely to the development of our legal education, which, in turn, should impact positively on the development of our legal system. The issues that precipitate the great jurisprudential debates on the nature and functions of law are the same issues usually practically instantiated by the specific causes of action in the various branches of the law. If those fundamental issues could be mastered in the process of legal education, which normally begins in our Law Faculties but must remain a life-long process for the practicing lawyer at bar or the judge on the bench, then the development of our laws and legal system is most likely to be more robust and deliberate.

Perhaps the first lesson philosophy of law has to teach is the realization that humanity did not invent the institution of law so that judges could have rules to play amusing little games with. The development of law became an anthropological necessity, to supervise the dynamics of human existence in the state of civil society. I take a couple of topical illustrations. In Nigeria, as in many other African countries, the most intractable impediment to socio-economic development is official corruption. This, at least in part, is due to a pervasive, narrowly legalistic attitude towards these forms of criminal conduct, which in turn promotes a culture of impunity and general levity. A deeper appreciation of the essence of official corruption as a form of malignant cancer on the body politic – which could be explored in details in a course in general jurisprudence – would, I contend, aid the development of our law of white collar crime, which, so far as I know, is not offered as a distinct course in our legal curriculum.

Similarly, a narrow case-law approach to the study of tort could hardly make manifest the significance of a properly developed tort regime, namely, that it transcends the specific remedies granted or denied in actual litigation; that it consists in the eternal need to keep the scale of justice balanced and the cautionary effects such a regime has on the behavior of legal agents, public or private, whose activities may cause harm. The exploration of such basic issues of justice underlying social principles and policy is, again, most suited to a course in the philosophy of law.

What then is legal philosophy? To this question, leading contemporary writers in the field would offer different answers. Ronald Dworkin, for example, defends a conception of legal philosophy according to which the line demarcating it from other aspects of legal scholarship is fuzzy at best. As Dworkin conceives it,

> no firm line divides jurisprudence from adjudication or any other aspect of
> legal practice. Legal philosophers debate about the general part, the
> interpretive foundation any legal argument must have (Dworkin, 1987, 14).

Thus, for Dworkin, "jurisprudence is the general part…of adjudication" (ibid. 15).[4]

Other leading philosophers of law are of the view that a line could be drawn between philosophy of law and other aspects of legal scholarship, with a fair degree of precision. The dividing line between jurisprudence and other forms of legal studies[5] and scholarship should be drawn, Hart suggests,

> [between] certain groups of questions which remain to be answered even
> when a high degree of competence or mastery of particular legal systems
> of the empirical and dogmatic studies…has been gained (Hart, 1983, 88).

Hart identifies three sets of such residual questions: "problems of definition and analysis, problems of legal reasoning, and problems of the criticism of law" (ibid.89).

David Lyons has a proposal that would further simplify the task of demarcating the disciplinary boundaries of legal philosophy. On Lyons's model, philosophical problems concerning law fall within two broad areas, the first is the explanation of the fundamental nature of law; the second has to do with issues deriving from how law may be evaluated (Lyons, 1984, 1). Accordingly, Lyons draws a distinction between "analytical jurisprudence" and "normative jurisprudence" (ibid.)[6]. Analytical jurisprudence investigates the basic characteristics or nature of law.

> [It] asks what is a law, and how is it part of a system? How can a decision
> be made according to law, when law is unclear? How is law like and unlike
> other social norms? How is it like or unlike moral standards? (ibid.)[7]

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[4]   For a full statement of Dworkin's conception of legal theory, see his book, *Law's Empire,* Cambridge, Mas: Harvard University Press, 1986.

[5]   Other forms of legal scholarship include legal science, which Hart defines as "the systematic or dogmatic exposition of the law and its specific methods and procedures" and other empirical studies of social life under the law – sub-specialties of the various social sciences like sociology, political science, anthropology, psychology, and history.

[6]   Lyons's distinction seems to correspond to Bentham's earlier distinction between "expository" and "censorial" jurisprudence.

[7]   Compare these issues with those Hart identifies as constituting the "recurrent issues" at the heart of legal theory. Hart, H.L.A. *The Concept of Law* (Oxford: Clarendon press), 1961, p.8.

Normative jurisprudence, on the other hand, "deals with the appraisal of law and moral issues that [the existence of] law generates" (ibid.)

A central objective, which generations of legal theorists have professed to pursue, is to elucidate the important features of the law, so as to articulate the differences between regimes of lawful regulation and other forms of social control. Sometimes the goal is said to be the explication of the distinction, considered crucial, between law and morality on the one hand, and between law and resort to naked force on the other. At other times, the goal is stated as

> distinguishing legal systems from other systems of social organization, such
> as the more primitive forms of tribal society or the less cohesive forms of
> international cooperation. (Soper, 1984, 2).

John Austin's mission statement is apt. The principal objective of his lectures on jurisprudence, Austin says,

> is to distinguish positive laws (the appropriate matter of jurisprudence)
> from the …objects with which they are connected by ties of resemblance
> and analogy; with which they are further connected by the common name
> of 'law'; and with which, therefore, they are often blended and
> confounded (Austin, 1998, 2).

In summary, legal philosophy is the academic discipline that seeks an understanding of the nature of law, both to facilitate the marking of the distinction between legal and other instruments of social regulation, and to facilitate the critical evaluation of the law, whether from a moral or from a purely pragmatic point of view.

How then might an academic discipline like philosophy of law contribute to the process of legal education, such that ultimately it would facilitate the development of our legal system in Nigeria? If it could be shown that legal philosophy would significantly facilitate an enhanced understanding of the nature of law as a vital social institution, its relevance and utility in the process of legal education would thereby have been conclusively established. It

is my contention that philosophy of law is very useful in at least this way. In the remainder of the paper I present some detailed demonstration of this thesis.

The Law Student

The primary focus of this essay is the law student. A student's main objective is to learn legal science. Her purpose is to master the rules, the principles, and the procedures of the various branches of the law. The student's formal doctrinal education would involve not only the recitation of the rules and principles (of say the law of tort or contract) but would also include work on how these rules and principles are to be interpreted, and how the rules and principles combine to constitute a legal system. She would learn to appreciate the structure and hierarchy of the norms of a legal system. While at it, the law student would pick up some practical skills of advocacy. In the case of Nigeria the legal curriculum is bifurcated: the substantive rules and doctrines of the various branches of the law are taught in a five-year programme at the Law Faculties in our universities (as in most common law systems, the basic approach is the case law method); the practical skills of advocacy such as the rules of procedure, are taught in the post LLB one-year programme at the Nigerian Law School.

Now, how might the legal philosopher's abstract general enquiries into the nature of law aid the law student to realize her objective? In other words, what is the role of legal theory in this early phase of legal education?

A concise answer is this: legal philosophy can provide a much-needed context within which to make complete sense of the disparate rules and principles that make up the various branches of the law. Perhaps more important, philosophy of law can facilitate the articulation of the metaphysical assumptions on which social life is predicated and which invariably underlie the rules and principles of the different branches of the law, thereby unifying them into a coherent system. An understanding of the functions which the institution of law serves in human society, how the law is related to and how it is different from other regulatory standards, such as religion and morality, the law's relationship with brute force, would help to cast the law into a sharp relief, as an instrument for regulating social life. Not only would the articulation of a general theoretical framework help to set out

in clearer relief, the structure of the interconnectedness between the various branches of the law, it would also provide valuable insights into how the law reflects the prevailing values and priorities in a society.

It is possible, of course, for a student to learn, and later to practice, what Karl Llewellyn would describe as "bread and butter law", i.e., just learning by rote, the rules and principles and the essential elements of procedure, without paying attention to the general theoretical framework that legal philosophy provides. It may indeed be the case that a significant number of students undergoing the professional training in law nowadays, in developing countries and in developed ones too, would fall into that category. But that should not warrant the conclusion that legal philosophy is irrelevant to legal education. To cite an analogy, most people ingest water and use it in various other ways, without knowing, or ever bothering to find out, its chemical composition. That has never been taken as evidence that the work of the scientist who studies the chemical properties of water is irrelevant or otherwise useless. The relevance and utility of legal philosophy could be inferred from the fact that it helps to promote the acquisition of a superior knowledge of the law. As J.M. Elegido puts it,

> in so far as jurisprudence examines the ultimate foundations of legal
> concepts and institutions it gives to one's knowledge of the law a depth
> and completeness that is peculiarly satisfying (Elegido, 1994,14).

Furthermore, exposure to legal philosophy could directly facilitate the student's doctrinal education in legal science. In this regard, John Austin's observations in respect of the English law student of his time are, in my view, equally applicable to law students everywhere in modern times. According to Austin,

> to the student who begins the study of the English Law, without some
> previous knowledge of the rationale of law in general, it naturally appears
> as an assemblage of arbitrary and unconnected rules. But if he approached
> it with a well-grounded knowledge of the general principles of
> jurisprudence, and with the map of a body of law distinctly impressed upon

his mind, he might obtain a clear conception of it (as a system or organic whole) with comparative ease and rapidity (Austin, 1998, 379).

Austin is also correct in claiming that a thorough grounding in the general principles and basic concepts taught in the philosophy of law would engender a heightened sensitivity in the student when she comes to cross cultural or cross epochal analyses and comparison of legal institutions:

> For, certainly, a man familiar with such principles as detached from any particular systems, and accustomed to seize analogies, will be less puzzled with Mahomedan or Hindoo institutions than if he knew them only in *concreto*, as they are in his own system; nor would he be quite so inclined to bend every Hindoo institution to the model of his own (Austin, 1998, 383).

If the prevailing situation in Nigeria is a fair indication of what obtains in other developing African countries[8], then the state of our legal education is far from being satisfactory.[9] There is an ongoing debate in Nigeria, among the stake-holders in legal education – Law Faculties, the Nigerian Bar Association (NBA.), the Nigerian Law School, the Council of Legal Education, the Body of Benchers – on the appropriate orientation for Nigeria's legal education. There is a consensus that a review is now inevitable and urgent. The NBA, in collaboration with the office of the Attorney-General and Minister of Justice, organized a two-day summit in 2006 (May 2 -3), on the future of legal education in Nigeria.

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[8]. There are strong reasons to presume that this might be so. For one thing, the history of legal education in many of these countries is quite similar: the structures and curricula of legal education were creations of colonial masters, who only reckoned with as much of African customary norms and the cultural diversities of their geo-political conquests, as suited their administrative purposes. In addition, many of these countries, especially in west and central Africa, have lived through decades of military dictatorship, during which period many aspects of social and economic life, including the law and legal education were heavily militarized, if not utterly perverted.

[9] The decline in the quality of legal education is better understood in the context of a general decline in the standard of education in Nigeria. It is a problem pervading the entire educational system, starting with ill-prepared primary and secondary school leavers (a token 1.8% of candidates passed the last National Examinations Council – NECO's – senior secondary school leaving examinations) culminating in the production of many substandard graduates. Needless to say that entrusting the administration of the justice system in the hands of ill-prepared lawyers portends dire consequences for our society, especially in regards to the entrenchment of the rule of law.

The collaborative initiative of the NBA and the Attorney-General's office in organizing the brain-storming session is highly commendable. However, the discordant notes in the reflections of some of the principal actors in Nigerian legal education are less cheering. The then Attorney-General and Minister of Justice for his part, seem to have a good grasp of what should be the proper orientation of our legal education; but the Summit's prescriptions for how to attain the desired objectives are, on the other hand, at best vague, possibly contradictory. The Attorney-General's vision is that,

> our legal education system must be capable of developing lawyers who are imbued with a high sense of consciousness and responsibility and are able to contribute meaningfully to the resolution of societal problems. The profession must begin to play a leading role in the implementation of poverty-reduction programmes such as social security, tax reform, efficient consumer credit and mortgage systems. We must take the front seat in devising appropriate legal mechanisms for responding to the developmental needs of a developing society as ours. [10]

He concluded that "all [of] this would necessitate a shift of focus from litigation and other forms of traditional legal practice to the broader practice of development lawyering."

Curiously, the communiqué issued at the end of the Summit included, inter alia, a determination that "the teaching of law [in Nigeria] is too theoretical with the result that law graduates are ill-equipped to practice law"; and subsequently, the resolution that "teaching of law should be less theoretical and more practical, and clinical methods of teaching should be encouraged."[11]

One need not contest the value of clinical methods of teaching and other methods deemed appropriate for imparting practical legal skills. However, in view of the ultimate aspiration of our legal education, as envisioned by the Attorney-General, namely, to teach the art and

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[10]   This quotation is from the paper, entitled "Rethinking Legal Education in Nigeria", presented by the Attorney-General and Minister of Justice, Mr. Bayo Ojo, at the two-day Summit (*Guardian Newspaper* of May 9, 2006).

[11] .   As reported in the *Guardian Newspaper* of May 9, 2006 (on file with the author).

science of development lawyering, one would have expected that the appropriate orientation of our legal curriculum is to expose law students to more theory, not less. Surely, what the Attorney-General seem to be suggesting, even if only implicitly, is that "bread and butter law"- to recycle a favourite catch-phrase of Llewellyn's – is no longer adequate to serve our developmental needs. The resolution in the communiqué, on the contrary, would tend to suggest that "bread and butter law" is law enough, or adequate to our societal needs. More distressing still, is the fact that no concrete measures have been taken since 2006, to implement the changes deemed desirable in our legal education.

My suggestion is that we should utilize the opportunity of the desired comprehensive review of our legal education to inject ample measures of legal theory into the curriculum. I should doubt that the products of a less theoretically endowed legal education would be able to perform the range of lofty social roles that the Attorney-General envisions, no matter their level of technical competence in the law.

In her ambitious advocacy for the inclusion of philosophy in the curriculum of legal education, Martha Nussbaum predicated her argument on a piece of profound intuition. As Nussbaum observes,

> this world is a philosophical world, whether we like it or not, a world in which philosophical ideas and conceptions are understood or misunderstood, for better or for worse, and action is taken as a result of these understandings. At the same time, for all her weird detachment, and indeed perhaps in part because of that detachment, the philosopher is a contributor to the world. Her thoughts and arguments have pertinence to the world and the potential for leading it to understand itself more fully and clearly. I think these facts give us some powerful reason to incorporate the teaching of philosophy into legal education (Nussbaum, 1993, 1645).

My position here is the more modest proposal to incorporate the teaching of legal theory or philosophy of law as an integral aspect of our legal education. There is an additional consideration for exposing law students to as much of theory as possible, even if that means cutting down on the teaching of the practical skills. As lawyers, the graduated students

would have a life time of practice to fine-tune their practical skills; their rigorous and systematic education in general theoretical matters is likely to terminate, or reduce considerably, with the end of their formal education in the law faculties and at the Law School. Therefore, if the goal is to produce well-rounded lawyers, capable of appreciating the developmental needs of our societies, and not programmed legal automata, then we should endeavour to expose our law students to as much of the basic theoretical stuff as possible. Once thus exposed to the basic theoretical issues that underlie the advent and development of the institution of law, there is a greater likelihood that our lawyers would sustain interest in such matters. Our legal system and our social system in general can only be the better for that.

Some would contest the desirability of injecting elements of philosophy into legal education, considering the proposal pointless at best, or worse, positively harmful. For example, M.B.E. Smith (Smith,1990, 67-93) has argued that exposure to philosophical ethics is likely to engender in lawyers an attitude of moral skepticism, which would be a very bad thing indeed. Smith claims that,

> despite the renown of some of its apostles, moral scepticism does tend to
> promote psychological dispositions that are potentially dangerous when
> held by lawyers and judges (ibid, 90).

The doctrine of moral scepticism tends, in Smith's opinion, to breed either moral anarchy – "moral indifference" (ibid.), or a pernicious form of moral dogmatism or fanaticism – "undue stubbornness" (ibid). Smith would prefer that lawyers and judges are left strictly alone to embrace some inchoate form of moral objectivism (ibid., 88), of course, that uncritically held.

It is quite astonishing that Professor Smith should suppose that the course of justice would be better served if only lawyers and judges are condemned to such a perpetual state of glorified ethical illiteracy.[12] Justice Holmes's thesis makes more sense to me. In his famous essay, "The Path of the Law", Holmes asserts that,

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[12] For a strong rejoinder to Smith, see David Luban, "Smith Against the Ethicists", *Law and Philosophy*, vol. 9 no.4 (1990-1991), pp.417-433.

Theory is
the most important part of the dogma of the law, as the architect is the
most important man who takes part in the building of a house. It is not to
be feared as unpractical, for, to the competent, it simply means going to
the bottom of the subject (Holmes, 1960, 144- 166, at 165).

Holmes had impressed it on his audience of mostly young lawyers that,

The
remoter and more general aspects of the law are those which give it
universal interest. It is through them that you not only become a great
master in your calling, but connect your subject with the universe and
catch an echo of the infinite, a glimpse of its unfathomable process, a hint
of the universal law (ibid., 166).

Legal Philosophy and Judicial Reconstruction

Recourse to the philosophy of law may also avail in the task of judicial reconstruction, in the
aftermath of a period of legal pathology. Periods of legal pathology are characterized by the
violent rupture of a legal order, when a legitimate legal system is supplanted by one of
doubtful legitimacy. The decade of Nazi rule in Germany is an example frequently cited. T he
decades of military dictatorship in Nigeria and some other African countries would also
qualify.

After the Nazis were routed by the allied forces, the post-war German courts confronted the
onerous task of sorting through the flood of complaints stemming from the decisions of Nazi
courts and other lawmaking organs of the Nazi government. In the ensuing debate, legal
philosophy was elevated to unaccustomed prominence. Positions were staked and legal
theories defended or denounced, as, at least, partly to blame for the unredeeming disaster
that Nazi government represented, especially for the evils done in the name of the law by

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the Nazis and their judicial collaborators.[13] More fundamentally, issues were raised about the validity of some of the things the Nazis called laws.

Similarly, most Nigerians now appreciate the fact that military governments are a traumatic disruption of the legitimate course of governance[14]. Here too, many atrocities were committed in the name of the law. Under the guise of maintaining law and order, successive military juntas unleashed a vicious assault on human rights. One notorious instance was the trial, conviction and subsequent execution of Mr. Kenule Saro-Wiwa and eight of his fellow leaders of the Movement for the Survival of Ogoni People (MOSOP). The execution of Ken Saro-Wiwa and his fellow leaders of MOSOP on November 10, 1995, provoked a global outrage. It was a major factor in the decision to suspend Nigeria from the Commonwealth of Nations, a decisive event in Nigeria's descent into a pariah state.

Suppose, as it happened in post-war Germany, the relatives of the MOSOP men were to seek redress in Nigerian courts under the present democratic dispensation.[15] Surely, discourse in

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[13]   .   Naturally, much of this national debate has been conducted in the German language; the arrow-head was Gustav Radbruch. For some of the writings available in English, see, generally, Gustav Radbruch, "Five Minutes of Legal Philosophy", trans. Stanley L. Paulson, in *Philosophy of Law*, 4th edn., ed. Joel Feinberg and Hyman Gross (Belmont, Calif.: Wadsworth, 1991), pp. 103 – 104; Gustav Radbruch, "Statutory Non-Law and Suprastatutory Law", originally published in German as "Gesetzliches Unrecht und ubbergesetzliches Recht", in *Suddeutsche Juristen – Zeitung* 1 (1946), pp. 105 -8; Stanley L. Paulson, "Lon L. Fuller, Gustav Radbruch, and the 'Positivist' Theses", *Law and Philosophy* (1994), vol.13, pp.313 – 359; Stanley L. Paulson, "Radbruch on Unjust Laws: Competing Earlier and Later Views", *Oxford Journal of Legal Studies* (1995), vol. 15, pp. 489 – 500; Robert Alexy, *The Argument From Injustice*, trans. Stanley L. Paulson and Bonnie Litschewski Paulson (Oxford: Clarendon Press, 2002); Lon L. Fuller, "The Problem of the Grudge Informer", in Lon L. Fuller, *The Morality of Law*, 2nd edn. (New Haven: Yale University Press, 1969), pp. 245 – 253; Lon. L. Fuller, "Positivism and Fidelity to Law – A Reply to Professor Hart", *Harvard Law Review* (1958) vol. 71, pp. 630 - 672; H.L.A. Hart, "Positivism and the Separation of Law and Morals", *Harvard Law Review* (1958), vol. 71, pp. 593 – 629; Thomas Mertens, "Nazism, Legal Positivism and Radbruch's Thesis on Statutory Injustice", *Law and Critique* (2003), vol. 14 pp. 277 - 295; Thomas Mertens, "Radbruch and Hart on the Grudge Informer: A Reconsideration", *Ratio Juris* (2002), vol. 15, p.2 ff.

[14]   Among a long list of ills that military (mis)adventure into governance brought on Nigeria are the total decay of economic and social infrastructure, including the complete collapse of the once vibrant educational system (see footnote 8 above and accompanying text), unbridled official corruption, and general civic cynicism.

[15]   In this regard, it is pertinent to note the out-of-court settlement agreement negotiated between Royal Dutch Shell (on behalf of its Nigerian subsidiary, Shell Petroleum Development Company) and the families of Ken Saro-Wiwa and the other eight Ogoni men executed in 1995. The agreement, whereby Shell was to pay $15.5 million, was finalised on June 8, 2009, shortly before the commencement of trial in a law suit filed by Ken Saro-Wiwa's son aided by international human rights lawyers, in a Federal District Court in New York. Shell was charged as having aided and abetted the military junta in Nigeria in 1995, in the capture, trial and subsequent execution of the Ogoni men.

legal philosophy would become very relevant. An important issue the courts would have to determine is the status of what prevailed in 1995, as a legal system. Was Nigeria under a legal system then or was it under a regime of unlawful coercion, given the antecedent of the military government led by General Sani Abacha? Specifically, were the MOSOP leaders executed in accordance with the orders of a lawful tribunal, or were they the victims of unlawful homicides, carried out, to be sure, at the behest of the ruling junta?

Matters such as the conditions for the existence of a legal system are clearly implicated in these questions; these matters go beyond the routine tasks of a judge, even at the highest levels of the judiciary. But such issues have been debated for ages by legal philosophers[16]. It would therefore be regrettable if judges simply go by their own intuitions on these matters, without taking full advantage of the insights deriving from centuries of rigorous philosophical reflections on them.

Making Sense of a Constitutional Order

But, other than these direct pedagogic inputs, could there be other ways in which philosophy of law could contribute to the development of the Nigerian legal system? I think that there may well be such additional uses of legal philosophy. It is my contention that the discourse in legal philosophy could facilitate a clearer understanding of the prevailing chaotic situation in the constitutional order in Nigeria.

There is the need to make sense of the obvious looseness in the structure of the Nigerian legal system. A major problem for the actors in, and commentators on, the Nigerian legal system is its lack of internal unity and coherence. In fact, to talk of a Nigerian legal system is accurate only in the sense that there is one dominant system superimposed on at least two other systems.[17] Successive Nigerian Constitutions have recognized the existence of the Sharia legal system, up to the appellate level, for certain classes of litigation and litigants. The Constitution also recognizes the efficacy of the Customary legal system, again up to

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[16]   On this, see H.L.A. Hart, *The Concept of Law*, op. cit. pp. 109 – 114; see also Joseph Raz, *The Concept of a Legal System.* Oxford: Clarendon Press, 1970.

[17]   On this, see B.A. Susu, "Legal Pluralism and Future Development in the Emerging Nations of Africa", *Odu* (A Journal of West African Studies), New Series, no. 17 (Jan. 1978), pp. 18-25.

some judicial level, and for certain designated matters. Superimposed on these two are the norms and instrumentalities of a modern secular legal system, founded on the Common Law of England.

The coexistence of these legal systems has been a constant source of tension between the traditional civil societies and the modern state. The actors in each of the systems do not always keep to the constitutionally prescribed boundaries. Indeed, they do not always agree on where the boundaries are. For instance, there is currently a simmering controversy over the constitutionality of the extension of the Sharia legal system to criminal matters, in twelve states in Northern Nigeria. T here is also the vehement opposition to the Child Rights Act in parts of Northern Nigeria, with the Supreme Council for the Sharia in Nigeria (SCSN) as the arrow head of the campaign.[18]

It is also the case that even the dominant secular legal system sometimes finds it expedient to co-opt the instrumentalities of the other two systems to secure compliance with its rules. It is not uncommon, when all else has failed, to hear the police and other law enforcement authorities appealing to traditional rulers, or religious leaders, as the case may be, to use their good offices to get their subjects to abide by the law, or in some cases, to assist in reining in offenders. It sometimes takes the threat of ancestral or divine sanctions to get some people to comply with duly enacted laws.

I cite one example to illustrate this phenomenon. Currently, there is a wave of violent crimes, especially armed robbery and kidnapping for ransom, in the South-South and South-East geopolitical zones of Nigeria. The police and other law enforcement agencies seem helpless to curb the trend. Apparently frustrated by the inability of the official criminal justice institutions to protect the lives and property of his subjects, the paramount ruler of Benin Kingdom in Edo State (South-South Nigeria), Omo N'Oba Erediuwa, his Iyase (the traditional Prime Minister and Chief of the Armed Forces of the ancient Kingdom) the Chief

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[18]   The Child Rights Convention was domesticated via an Act of the National Assembly in 2003. Among other things, the Sharia followers object to the Act's criminalization of child marriage. The furore generated by Senator Sani Yerima's reported marriage to a thirteen year old Egyptian girl in April this year (2010) has again brought this conflict between legal traditions to national attention. Ahmed Sani Yerima, at present a Senator of the Federal Republic from Zamfara State, has always been at the centre of the Sharia controversy. As the Executive Governor of Zamfara State, North West Nigeria, from 1999 to 2007, his was the first State to declare a full-blown Sharia regime.

priests and notable witch doctors recently gathered at the palace grounds to place ancestral curses on those who are directly or indirectly involved in contributing to the problems of crime and insecurity in the land.

The Guardian newspaper of June 24, 2010 reported that barely twenty four hours after what the newspaper in an earlier editorial opinion dubbed "the Bini festival of curses" (see *The Guardian* newspaper of Friday, June 18, 2010) hordes of criminals had started to report at the Omo N'Oba's palace, to atone for their crimes and pledging to renounce their violent ways. So effective was the resort to the traditional model of crime control in Benin, Edo State, that the Inspector General of Police, Mr. Ogbonna Onovo, has requested his Igbo kinsmen in South-Eastern Nigeria to enact an Igbo version of the ceremonial laying of curses on the perpetrators of violent crimes (see *The Nation* newspaper of Thursday, July 15, 2010).

Every state in Nigeria has a council of traditional rulers. It is noteworthy that the Chairman of each state's council of traditional rulers is a permanent member of the State Security Council, the body constitutionally charged with overseeing the security of lives and property in each state.   Not only would a legal scholar studying Nigerian law have to contemplate the hierarchy of the norms of a legal system, she also must figure out the hierarchy of the legal systems that make up the Nigerian legal order.   The provisions (in our legal education) to deal with this constitutional peculiarity are, in my opinion, grossly inadequate. The Conflict of Laws course is usually listed as a "restricted elective"; the course content consists largely of conflicts generated within the Common Law system itself, with little or no attention paid to the conflicts between the Common Law and the other two systems.

To make sense of what we have here, we may derive useful insights from legal theory. Professor Hart's speculations in legal anthropology (Hart, 1961, 89-96) come readily to mind. In the case of Nigeria, what colonial Britain did was to superimpose the norms and infrastructure of a fully developed Common Law system on a geopolitical formation composed of many autonomous legal systems, at varying levels of development. While the legal systems of some pre-colonial Nigerian ethnic nationalities, the Yoruba, Hausa, Tiv, etc., were highly developed, permitting the clear identification of the secondary rules, and the institutions of centralized adjudication, change, and recognition, the legal systems of some

other ethnic groups were much less developed, operating largely as regimes consisting mostly of what Hart describes as primary rules of obligation.

Neither colonialism nor the various post-colonial attempts to forge a unified legal system under a coherent national constitution have succeeded in resolving the historical disparities in legal development. By illuminating the origins of our constitutional crisis, legal philosophy can aid us in designing a more responsive constitution. Using the resources of legal theory, we may seek a better understanding of each of the sub-systems, their criteria of legal validity, and their relative stages of development as legal systems. Such analyses would enable us to assess the degree of adaptation or resistance of the sub-system to the norms and procedures of the Common Law.

Conclusion

The relevance and utility of philosophy of law to the practical concerns of a society – any society - is, in my view, not open to doubt. I have demonstrated how legal philosophy could be of tremendous aid in the education of the law student in Nigeria. The analysis could be extended to other stakeholders, such as litigants and their counsels, as well as ordinary citizens whose immediate concern is to organize their affairs in conformity with the law. It could also be extended to social scientists, who undertake empirical studies of particular rules of law or particular legal systems. I have also argued that philosophy of law could contribute important insights thus facilitating the task of judicial reconstruction in the aftermath of a period of legal pathology. Finally, I have supported the contention that legal philosophy could offer useful ideas regarding the genesis of the constitutional problems currently plaguing Nigeria.

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THE ODD CASE OF THE LEGAL FOUNDATION MODULE: REPORTING ON STUDENT PERCEPTIONS OF E-LEARNING AT CARDIFF LAW SCHOOL

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The debate over whether online activities enhance learning has also been occurring in legal education. For Cardiff Law School, where pedagogy dictates the 'blend' of traditional and online support, the question has been whether complementing or substituting traditional teaching activities with e-learning tasks and resources (e-blend) can enhance Cardiff Law School students' overall pedagogical experiences. This paper reports on a project that explored aspects of this dilemma by investigating Cardiff Law School students' perceptions, with a particular focus on the value they placed on e-learning resources and tasks. The research methodology adopted integrates quantitative data (student results) with a qualitative analysis (semi-structured focus group interviews).

Key Words: e-learning; teaching efficiency; qualitative analysis; law student perceptions

British Higher Education legal teaching is typically faced with the burden of increased substantive teaching complexity, reduced preparation time, and institutional research pressure. An ongoing debate is raging over whether e-learning innovations can have any lasting effect outside facilitating information delivery/retrieval for students. For Cardiff Law School, where pedagogy dictates how traditional and online support may combine, the dilemma has been whether integrating e-learning activities and resources with traditional teaching can enhance learning and at the same time increase teaching efficacy (e.g. reducing teacher preparation time, collecting individual and group feedback, improving student results, etc.). Our own and some recent research has qualified some of the assumptions that might be drawn in this area (Maharg, 2007).

Our project findings reveal that overloading law students with information does not guarantee teaching quality, and endorsing IT as a panacea for a lack of funding can be detrimental to individual modules and institutional teaching quality. However, the project results also give some indications that IT and carefully designed e-learning tools and tasks can improve student perceptions of their pedagogic experience if the e-blend is inserted into a constructive learning environment.

This paper is divided into two parts. The first provides a brief review of the theoretical and methodological pedagogical bases of e-blending that informed the empirical research. The second part presents and reflects on the project results, with a particular focus on students' perceptions of teaching efficacy in e-blended modules as recorded in focus group scripts.

Questioning the Theoretical Assumptions

In the past decade, approaches to e-learning have generated a wide interest in British Higher Education. This is due in part to an increase in the availability of standardised educational support technologies, but also to the United Kingdom Government consultations and strategies in recent years (DfES 2003, HEFCE 2004). One notable outcome was the Higher Education Funding Councils being tasked with finding ways to embed e-learning in a full and sustainable way 'within the next 10 years'. Indeed, the HEFCE 2006-11 strategic plan reinforces the view that innovation and improved quality in learning experiences *via* e-learning, among other methods, are key factors in meeting current and future diversity and employability needs (2007). A possible underlying assumption is the belief that the adoption of educational technologies can improve the quality of students' learning experiences and of teaching efficacy (e.g. increase students' assessment performance, create an efficient culturally integrated community of learners, etc.). Such a belief can be supported by the view that '[c]ost-effectiveness is a [...] major goal of a Blended Learning system in both higher education and corporate institutions. Blended Learning provides an opportunity for reaching a large, globally disperse audience in a short period of time with consistent, semi-personal content delivery' (Grahan, 2005: 10).

A general discussion of the pedagogic potential and benefits of e-learning can be retrieved from several sources (see for example: Biggs, 2003: 213; Duffy and Cunningham, 1996; Dunlap and Grabinger, 1995; Laurie, 2006; Maier, 1998; Salmon, 2002). However, these studies focus on online learning modules that are pedagogically distinguishable from those delivered at Cardiff Law School. For traditional Higher Education establishments such as Cardiff Law School, the main stimulus for endorsing a new e-pedagogic style has to do with maximising resources (e.g. reducing teaching preparation time), maintaining the minimum standards for conferring an English/Welsh Law degree, and enhancing students' overall perceptions of their pedagogical experiences within their HE institutions (Grahan, 2005: 10).

Our research project is also distinguishable from other empirical studies on the formation of online communities of learners. For instance, the report by Boardman et al (2003) on the use of discussion boards at the University of Durham includes a useful and detailed analysis of law students' frequent use of online blogs that were moderated by module leaders. While these activities created a students' common questions database, they cannot be considered genuine e-blending. Boardman reports, for instance, on the positive feedback that such use of blogs might have on students' perceptions of a particular law module. However, an online resource such as this tends to reproduce didactic material normally available in other formats (such as Q&As that can be retrieved in text books) and it can be out of sync with traditional teaching purposes (e.g. students might only use such a blog during revision time).

In contrast with these studies, Cardiff Law School sought to adopt a blended learning approach to e-learning as a potential solution to the problem of significant reductions in undergraduate applications. Over a five-year period, Cardiff Law School's improved research status was not mirrored by a corresponding improvement in students' perceptions of the school as a whole and this had a significant impact on student applications. Like many other institutions, this led to a belief at the time that by integrating e-learning into traditional teaching (the e-blend,) students' perceptions of Cardiff Law School would directly improve, student applications would increase, and school revenues would (indirectly) improve. These assumptions have since been questioned by theorists and have not been confirmed by research to date. At the theoretical level, educational experts argue that such

a conviction is unfounded and 'dangerously misleading' (Oliver and Herrington, 2001: 214). Overwhelming students with information or overemphasising the use of e-learning technologies and resources does not guarantee a pedagogic enhancement of their experience; instead it enlarges the gulf between educators and learners. Biggs (2003) reaches a similar conclusion. He found that because legal research and analysis are core skills and the databases used are enormous, law students need to be trained to be selective, to use key words that cross-classify so that the data obtained is as relevant as possible, and to 'surf fruitfully, so that it is not mind -boggling or a waste of time'(2003: 217).

It might also be argued that using educational technologies to improve student learning and performance outcomes can be related to the *enhancement of pedagogic methods*, if such teaching efficacy is measured in relation to a teacher's confidence in his/her own ability to influence and improve student learning and academic performance (see Bandura, 1993; Woolfolk Hoy, 2004; Bauer and Zimmermann, 1998). At a theoretical level, it is sometimes assumed that teachers with high efficacy (i.e. confidence in their abilities) are more likely to experiment with instructional materials and find new ways to deliver and improve their teaching methods (see Allinder, 1995; Stein and Wang, 1998). In practice, however, the concept of teaching efficiency is difficult to define and it is only indirectly linked to students' perceptions of their pedagogical experiences (Dunlap and Grabinger, 1995; Schubauer-Leoni and Ntamakilir, 1998). There is a complex interplay between teaching efficacy and the students' perceptions of that teaching efficacy on their learning. This may be why most of the empirical studies to date have focused not on the relationship between teacher activities and students' performances ($_{e.g.}$ retention, critical engagement, assessment performances), but rather on how to reach an agreement on how to best measure this constructed relationship (Maharg, 2007; Maier, 1998). In addition, these empirical studies might not give a holistic picture because they focus almost exclusively on a teacher's perspective. Our project attempted to bring some clarity to the debate by focusing on students' views of teaching efficacy in relation to the use of e-learning and their own performances. These views were obtained during and after they finished traditional modules that included e-learning activities. Overall, our project findings might support a speculative link or a series of connections between Cardiff Law students' perceptions of teaching efficacy and e-blended activities.

Background and Research Methodological Structure

Our project's focus on a possible speculative link between blended e-learning and teaching efficiency arose for two reasons. First, there had been a progressive improvement over a five-year period in first year students' performances in a compulsory legal skills module (LEFO) and it was important to investigate why. Secondly, an ongoing Cardiff University-funded project, led by one of the authors investigating students' understanding of assessment criteria, had revealed a possible link between the adoption of e-blending and students' perceptions of its usefulness.

Prior to the academic year 2002-2003, various attempts to teach legal skills had not proved successful and students' general performances had continued to deteriorate. In light of this trend and the need to meet Quality Assurance Agency for Higher Education (QAA) Standards for Law introduced in 2001, Cardiff Law School revised the module structure with a specific focus on essential legal skills such as legal research, and writing for law using traditional teaching methods and hands-on lab exercises (Jackson and Davies, 2005). This brought about an expected improvement in overall essay marks from 2002/3 onwards.

The increase in students' performances can be explained by a multiplicity of factors. However, six possible reasons could be excluded from the outset. First, during the period under examination, the quality and the demographic balance of student cohorts had remained unaltered. The entry requirements were fixed at 'two As and a B'. Secondly, there was no indication that the quality of the teaching had significantly improved. Other than the module leader, there are often many new tutorial staff and assessors every year because LEFO teaching is allocated to all junior members of staff.

Thirdly, the substantive elements of the module (see Fig.1) had not been substantially amended during the period under investigation. Prior to 2004, LEFO Tutors' main educational task was to guide students in class on how to acquire legal writing basic skills (e.g. in-text footnoting, creating bibliographies and research trails, etc.); how to read legal cases; and how to write a successful assessment (i.e. evidence of proficiency in research,

range of legal material read and effective legal writing). After 2004, these expected learning activities were followed by an online activity that reinforced and/or completed a traditional learning task (e.g. read a case).
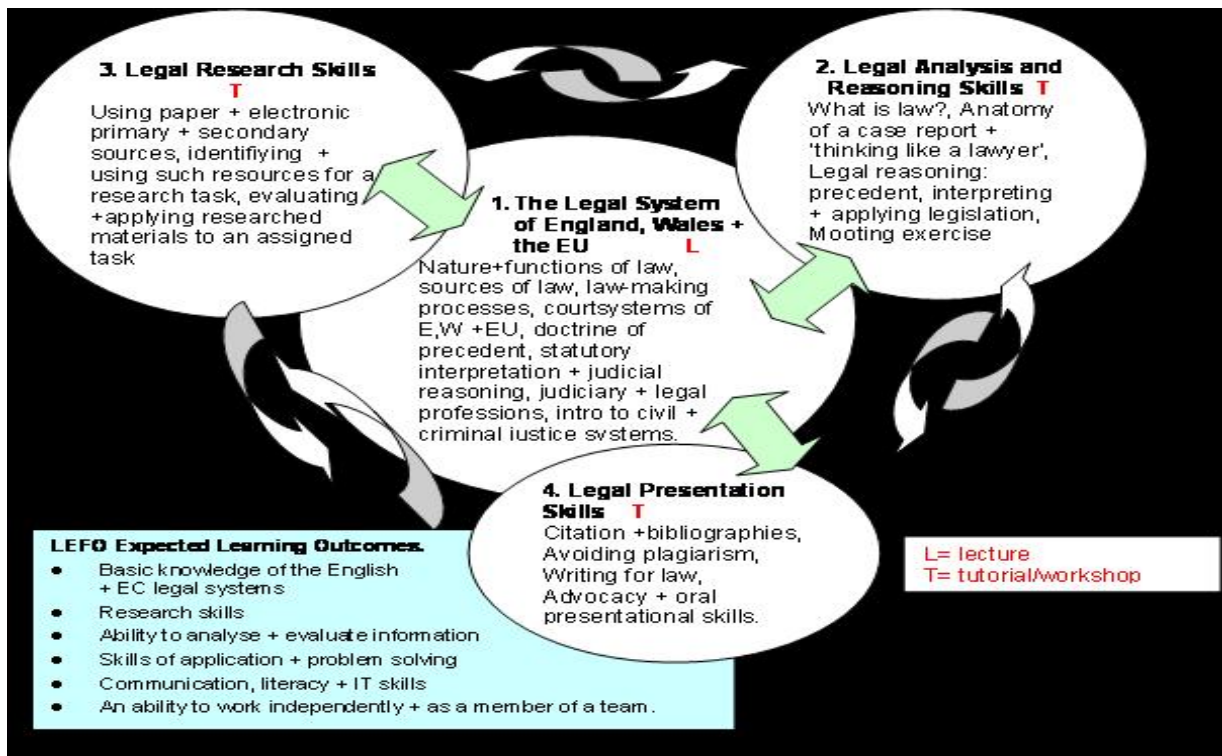
Figure 1: LEFO Module Design

The 2002 changes in the alignment between teaching units and assessment and the adoption of a new method for delivering information might explain a slight increase in students' results (Maharg, 2007 150). However, logic demands that an eventual design improvement should settle after a couple of years of running the new curriculum. In other words, after the novelties of new teaching practices are mastered by the staff, it can be assumed that students' acquisition of the learning material should reach a settled level. However, LEFO students' academic performances continued to improve after 2004 rather than level off. It was felt that the improvement in our students' performances could possibly be correlated with the progressive integration of e-learning tools and tasks with LEFO traditional teaching methods.

Fourth, in the period analysed, marking had not become more lenient. Assessment is left to a group of four or five tutors who do their work independently and autonomously. Fifth, the assessed tasks had not become easier. LEFO Students are assessed via a long prose assignment aimed at assessing legal writing skills and an MCQ test aimed at evaluating substantive knowledge of law and assessing students' ability to read judicial decisions. The data collected by the project has focused exclusively on the essay mark where students are allowed to choose their own substantive titles. Lastly, during the period under consideration by our project, plagiarism policies had remained unaltered.

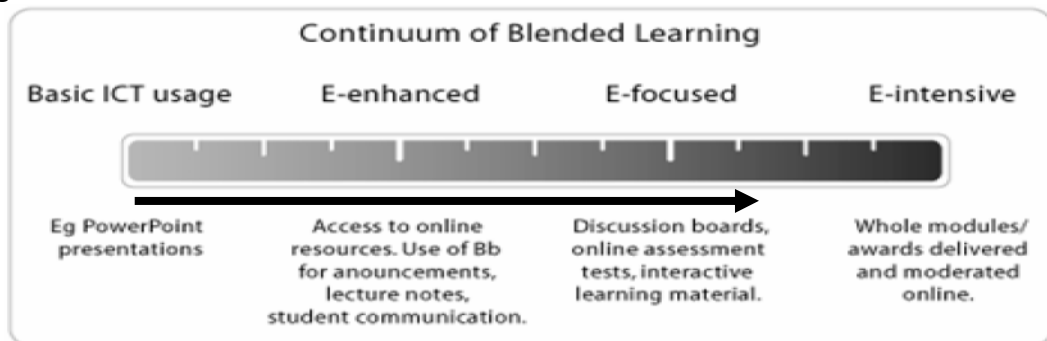These preliminary qualifications have not altered the original difficulty of the project to explain the interplay (or lack of it) between the progressive improvement in students' performances and the introduction of new e-blended activities. Neither the absolute number of students monitored by the project nor the depth of the qualitative data could support such a link. Therefore, it was decided to focus the research scope on students' perceptions of their pedagogic experiences rather than trying to quantify it in absolute terms by assessing, for instance, *quasi* objective elements such as learning retention. This resulted in adopting open definitions of e-learning and e-blending (that fostered some speculative deductions over the link between IT and e-blend and actual learning).

Adopting such an open definition of e-blending appears at odds with the intended project scope. Because there is no commonly adopted definition of *e-learning*, most institutions adopt a broad analytical description of behaviour to support their particular strategic aims. For example, for HEFCE '[e-learning is the] use of technologies in learning opportunities'. While these various definitions might help to qualify a learning activity at conceptual level, they do not describe the different processes that transform a traditional module into an *e-blended* module. Depending on the emphasis chosen, similar studies might use terms such as web-dependent or mixed-mode delivery. In other words, they fit well the requirements of a *pure* online module, but they appear unduly restrictive of the e-blended learning activities adopted at Cardiff Law School.

By being open-minded about the conceptual significance of e-learning, our project was able to include a wider spectrum of activities (see Fig.2) that moves from simple delivery of

information (Lecturers' PowerPoint Slides) to fully autonomous online task such as an online-mock exam. In particular, the openness of our definition of e-learning provided us with a chance to speculate over the impact of technology in modules that had very limited e-integration.

Continuum of Blended Learning

Basic ICT usage	E-enhanced	E-focused	E-intensive
Eg PowerPoint presentations	Access to online resources. Use of Bb for anouncements, lecture notes, student communication.	Discussion boards, online assessment tests, interactive learning material.	Whole modules/ awards delivered and moderated online.

The *basic ICT* end of the continuum refers to the mixture of traditional teaching practices combined with basic IT, for example PowerPoint and Word documents.
At the *e-enhanced* stage, teaching and learning is supplemented with access to some online resources on Blackboard, such as announcements and lecture notes.
The next stage is *e-focused* and this includes the use of discussion boards, online assessment tests and interactive learning materials alongside some face-to-face delivery.

Figure 2: Continuum of blended e-learning (CELT, University of Glamorgan)

We were better able to qualify the overall aim of the project by refocusing on a relatively limited area of interest, such as students' perceptions of modules taken over short and long periods of time. Research on e-learning and learning outcomes in law schools tends to involve case studies which focus on distance learning in online modules (not an option at Cardiff Law School), or on professional training programmes to account for the use of specific didactic tools such as discussion boards (Maharg, 2007: 215). In particular, Maharg discusses the positive effect of an e-blended activity in which students create a student simulation. While students might find it useful to generate a contextual learning environment similar to a massive multiplayer online game, (Maharg, 2007:225) it is unclear whether such online interaction in itself can change students' overall perceptions of the module. An argument that often emerges from literature reviews is that similar results could have been achieved if traditional pedagogic tools were used properly. Our project research suggests, albeit mildly, that such assumptions are unsound if the pedagogic potential of using e-learning is linked to students' positive perceptions of their pedagogical experiences.

Data Sources

The main focus of the project was to explore whether the blending of e-resources and activities with traditional teaching methods on the Year One LEFO module had an impact on the students' perceptions of teaching efficacy and their own overall performance. The project used both qualitative and some quantitative data. The *quantitative* data is self-explanatory. It relies on an analysis of the possible (albeit quite weak) correlation between the seven-year process of integrating e-learning tools and tasks into the LEFO module and the improvement in students' assessment performance. While the data alone has very little scientific value, it helps to explain the phenomenological development of the project and to qualify the reading of students' perceptions extracted from focus groups during which second and third year students depict the first year LEFO module as one of the '*most useful modules taken at Cardiff Law School*' .

Two distinct groups of students participated in the qualitative part of the study: the first group included only Year One LEFO students; the second group was composed of Year Two and Three law students from pure and joint law programmes of study. The focus group interviews were structured to follow the various stages students were at during the course of the year (see Table 1). The LEFO students were interviewed on four occasions. The first meeting aimed at discussing their views on assessment before being provided with any instruction, and the second meeting focused on their views after receiving training and advice on the assessment and use of legal databases. The third meeting took place after formative feedback from tutors had been received (delivered online), and the final meeting took place to explore how the students were going to use the feedback and e-resources to prepare for exams. The second group of second and third year law students met three times. The first meeting, a semi-structured interview, required them to reflect on previous years' assessment methods and criteria. At the second meeting, the students were asked to review and evaluate available online resources in modules they had already taken and passed. The last meeting focused on formative feedback and pre-exam preparation.

Year 1 (2 groups: 17 LEFO students)	Year 2 + 3 (2 groups: 12 students)
Stage 1: To informally discuss attitudes/ feelings about interpretations of assessment criteria	**Stage 1**: To informally discuss attitudes/ feelings about assessment
Stage 2: To informally discuss: guidance received, resources available, and whether expectations over the assessment task were clearer.	**Stage 2**: Review of e-resources available and used
Stage 3: To informally discuss feedback **Stage 4**: To informally discuss whether feedback from LEFO helped or not.	**Stage 3**: To informally discuss: formative feedback; what resources have been used that are useful; what other support should be made available.

Table 1: Focus Group Interview Groups and Stages

Both groups were also asked to complete an online resources questionnaire before their final meeting and indicate what online resources they used (or not) on LEFO, Blackboard and other modules, and to evaluate these resources in terms of frequency of use and overall usefulness. The quantitative data incorporated a series of speculative analyses of assessed essay results of LEFO students between 2002/3 and 2006/7 (approximately *160* students per year).

By dividing the focus groups over an academic year, we were able to collate some data that would possibly enable us to assess whether modules under review were aligned in Biggs's terms (2003). Biggs considers a module as aligned if pedagogical activities are 'in-line' with the module's expected outcomes and assessment. This was crucial to aspects of our project, since only in carefully designed modules could students evaluate the (perceived) impact of e-learning activities undertaken.

The focus group questions and semi-structured interviews sought to obtain information on three thematic issues:

1) Were expected learning outcomes of learning activities met and did particular tasks improve their assessment performance?

2) What formative assessment contributed to their constructive learning experiences?

3) What criteria were used to assess their work?

The Year Two and Three focus group interviews and meetings sought to capture the students' perceptions of teaching efficacy over the entire spectrum of modules taken during their time at Cardiff Law School. Given the small sample of the group (13 students), the data collected from these interviews have only anecdotal relevance. They were asked open questions such as: What learning resources have had an impact on teaching delivery and skills/ knowledge acquisition? Which e-learning resources usefully contributed to their overall performance in a module? What connections could students make between delivery of information and use of e-learning resources?

The scripts were subsequently analysed and cross-referenced with the questionnaire results.

ii. Reflecting on the Data: the Odd Case of LEFO

As shown in Graph 1, prior to 2002/3 student assessment performance was poor. Forty per cent of the student essays did not achieve a mark of 50 (out of 75) and 17% failed to reach the pass mark of 40. After the progressive e-blending of LEFO the overall results improved; overall only 10% were under 50 (out of 75), and over 52% of the recorded marks were over 60. This increase in performance could be attributed to a series of factors, but there were some indications of a potential link between the e-blending of the module and the improvement in students' essay writing skills.

ESSAY RESULTS
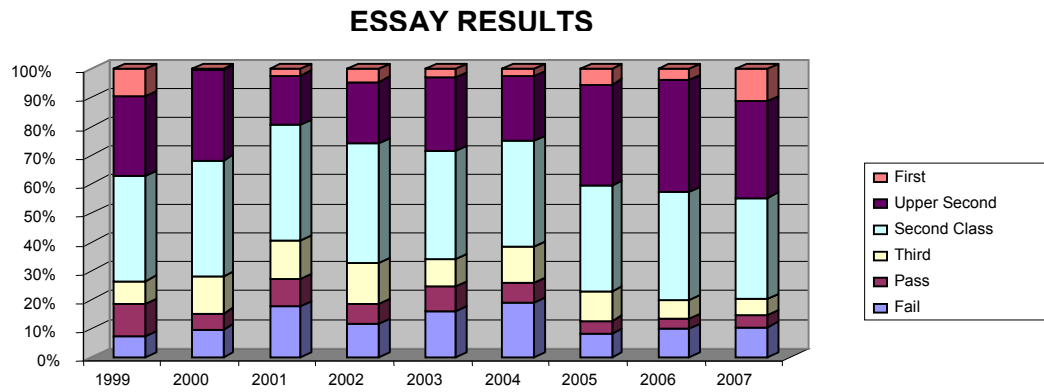
Graph 1: LEFO Students' Essay Performance

In 2003, QAA standards led to a revision of the LEFO module design with a particular focus on improving students' academic legal research and writing skills, and providing hands-on sessions on finding and using online legal resources databases. When the new curriculum was introduced in 2002/3, the only online resources used were those covered in the hands-on sessions with the law library online as electronic legal databases and the University's VLE (Blackboard) were not yet available. There were more Upper Second and Second Class grades for the assessed essays compared to previous years, but less Firsts and no significant improvement in the number of Passes and Fails when comparing 2002/3 with 2003/4.

Improvements across the grades really started to appear after 2004. There might be a number of possible reasons for this. In 2004/5 the gradual process of e-blending LEFO started. Some traditional learning tasks were complemented by several e-tools and some basic e-learning activities. Blackboard (Cardiff University's chosen VLE) was introduced as a pilot and LEFO used it to deliver traditional learning resources (e.g. lecture notes). E-Learning tools such as legal research engines were also inserted as research resources so students could use their LEFO-learned skills in other modules. A new online mock exam (MCQs) was also introduced and for the first time students received immediate online feedback each time they completed the test.

The school appointed an e-learning officer in January 2004 who started developing a series of e-resources on generic legal studies and information literacy skills. By 2005-6, these e-

learning resources, tasks and simulations helped to clarify and support the overall LEFO learning outcomes (see Table 2) and gave students the opportunity to better engage with and develop the set of skills expected in any legal professional.

RESEARCH, STUDY & INFORMATION LITERACY SKILLS 05/06	
Expected Learning Outcome	E-blended activity
Learning and Conducting Legal Research	Finding the Law (an interactive guide linked to all key Cardiff resources); Sources of Law quiz
Improving research and information literacy skills	What kind of learner are you? (MCQs aimed at providing feedback on individual learning strategies); Information Literacy Quiz;
General Study + Language Skills Legal Writing skills	An interactive list of online resources and useful websites; Dissertation Writing Guide and Quiz; Essay Writing Guides and Activities

Table 2: Key Learning Outcomes and e-learning Resources for LEFO 2005/6

The progressive increase in student performance reached its maximum in 2006-07, when less than 10% of the results were under the mark of 50. This is possibly due to the fact that more e-learning resources were developed in 2006-7 and made available for use (see Table 3). For example, the online reading strategies and writing resources made it possible for students to revisit activities and skills covered in the classroom whenever needed or after in-class sessions.

RESEARCH, STUDY & INFORMATION LITERACY SKILLS 06/07	
Expected Learning Outcomes	E-blended activity
Conducting Legal Research	+ Multimedia training on using professional legal databases.
General Reading and Writing	Online resources to help master reading /writing skills and improve grades
Mastering legal reading	Reading strategies guide, academic reading guide + tasks
Citing it right!	OSCOLA tutorial: citing and referencing in law
Avoiding plagiarism	Quizzes developed by law library + links to other resources
Writing good essays	Getting to grips with assessments and feedback (interactive guide on using assessment criteria and feedback to assess own and others' writing + authentic samples of student writing)
Editing Skills	Key grammar summaries, do's and don'ts, effective paragraph writing for law, editing checklist etc, Internet for ESOL
LLB Assessment Criteria Guide	Sample exam questions, answers and feedback across a range of grades and subjects

Table 3: Summary of Additional e-learning Resources for LEFO 2006/7

Some resources were also used explicitly by the LEFO lecturer and some other tutors in their teaching, and students were expected to use them too when preparing for or reviewing in-class activities. For example, students learnt in lectures about the direct links between careful referencing and legal principles, and relevant coherent legal reasoning in their own writing and the use of correct bibliographical references. They were then required to use an online version of the well-known referencing tool *Oxford Standard for Citation of Legal Authorities* (OSCOLA) to reference a variety of legal sources. This was followed up with a practical in-class session on assessing other people's writing in readiness for a formative assessment. Students could revisit the task online for further practice and/or revision purposes. After 2007 the progressive introduction of new e-blending resources and activities stopped and so did the improvement in overall student performance. T he

similarities between the increased e-blending process of LEFO and students' results suggested interplay between the two that needed further investigation.

Quantitative Data

In the previous section we outlined our unscientific speculations about a 'tentative linkage' between the increasing integration of e-learning material in LEFO and students' improved assessment performances. This section looks at how we sought to explore the possible implications of e-blending law modules and overall performance from students' perspectives. The qualitative data gathered via the focus groups aimed at evaluating student perceptions and, to a lesser extent, behaviours by adopting a combination of focus group interviews and questionnaires. The aims of the qualitative part of our research were therefore twofold. Firstly, the research aimed at qualifying first year students' perceptions of the usefulness of learning resources (traditional and 'e') and the clarity of the assessment criteria. The assumption was that the level of students' understanding of the assessment task and the usefulness of the learning materials and resources available for use would give an indication of the level of perceived teaching efficacy or at the very least the level of transparency in the module design (Grahan, 2005: 8; Biggs, 2003). For example, Biggs argues that a carefully designed module will make it possible for students to easily know what is expected from them and ensure they have the pedagogical tools for achieving these expectations. Within the axioms set by Biggs's view of HE Learning, blended learning should therefore enhance the pedagogical effect of teaching.

The project therefore aimed, via the focus group sessions, to verify these assumptions by questioning first-year student perceptions; and to assess the long-term impact of e-blending epistemic practices on second- and third-year students. Our assumption was that once students were trained to use different types of educational resources (notably electronic and traditional educational tools), they would continue to use (or they at least expected to have at their disposal) the same learning facilities in other modules (Biggs, 2003). In particular, it was assumed that students would continue to interact with the e-simulated

environment that they had been trained to use. The qualitative data appears to confirm such assumptions.

Qualitative Data; The analysis of First-Year Focus Group Scripts

In the first focus group held in October 2006 (17 students divided into two groups), LEFO students' focus group scripts revealed that they felt access to relevant e-learning resources as tools for learning would be crucial for improving their assessment performance and demanded training in the use of those resources be moved to the first weeks of the term. They had been made aware of the existence of online resources (during lectures) but had yet to receive training on how to use them. Their scripts also revealed that they had quickly realised that university learning is based on their autonomous research abilities and on the quality of their findings. A student, for instance, made the point that: '*A-levels are all about knowledge but university is about knowledge and ability to use it and demonstrate skills in an academic way.* The LEFO scripts also revealed an anxiety over the lack of clarity in higher-education assessment criteria and the reduction in contact hours *vis à vis* A-levels.

During the second focus group meeting, LEFO students' anxiety over assessment and learning resources had visibly lessened because the assessment criteria to be used were better understood and all students had now received training in and had used the online learning and research resources. The overall perception was that their in-class and online activities aligned with their forthcoming assessment task. The LEFO students were particularly enthused by OSCOLA (an online training resource for citing legal material) which students described as '*fantastic*'. This data can be verified by cross-referencing these types of responses with the responses to a questionnaire that students had to complete before the fourth and last of the focus group meetings. For example, the questionnaire answers indicate clearly that all the LEFO students surveyed used the online resources 'quite often' or 'often'; that the online OSCOLA resource in Blackboard was used by all the LEFO interviewees, and that they all considered it either '*useful*' or '*very useful*'. Indeed one student pointed out the advantages of this resource: '*OSCOLA gave me important examples of what to cite and how this might be achieved and I will use it in the futur*e.' The third LEFO focus group meeting took place after the students had received the results of their first

formative assessment and the ensuing discussion focused on the rigour of the marking criteria, for example:

Q: 'Is it everyone's experience that this is different from writing A-level essays?'

A: 'I find that quite hard. To fit everything in, it just seems you're not doing things in any great detail. I feel when I read it back myself, I just feel I haven't written enough.'

Apart from an analysis of students' attitudes toward HE assessment standards (which is outside the aims of this report), the LEFO students interviewed appeared to be concerned by the strict formal requirements of professional legal writing.

Q: 'It seems you have all been marked quite heavily on your citing style. Is that fair?'

A: 'Unanimous, yes.'

A(Student One) : 'We might as well learn.'

A (Student Two): 'I know we have been told along the way. You've got to get the hang of it. '

They also appear to understand the importance, at least at a general level, of using online resources and activities designed to teach essential referencing skills such as OSCOLA.

A (Student One): 'Yes, I'm confused. If you quote extracts that are relevant but when you try and make things concise and put them in your own words, do you have to reference that? '

A (Others): 'Of course you do!

A (Student One): 'I wrote my own interpretation of what the judge was saying in his judgment. Do I still have to cite the case and page numbers?'

A (Others): 'Yes, you should also refresh your mind about how to cite using OSCOLA!'

The last meeting took place in March 2007 after the LEFO exam. Students were asked to reflect on the module's usefulness. They were also asked to complete in advance a questionnaire that targeted the relevance of common themes emerging from previous focus group script analysis. The questionnaire revealed that students felt they had learned the

importance of legal research and considered OSCOLA and legal databases crucial for their own development and for improving their assessment performance in other modules.

Again these perceptions can be validated by cross-referencing them with behavioural changes reported in the questionnaire answers, but the same responses also reveal that online resources that are not blended are either not used or seldom used. For instance, links to other Cardiff University Personal Development Planning (PDP) e-learning activities and resources were not used or considered not useful. Internet for Lawyers was never used by our student sample and LexisNexis (a legal database for which they did not receive training) was considered not useful by all the Year One students surveyed. The impression from these results is that the LEFO students' perceptions appear not to be founded on an autonomous assessment of online activities or, in the case of legal databases, their functionality. Their perception appears conditioned by having access to online activities that reinforce or replicate in part what has been done or said in class. In other words, a speculative argument based on students' perceptions of their pedagogic experience suggests a link between retrieving an e-learning task similar to that done in-class and their perception of efficacy.

The Analysis of Year Two and Three Focus Group Scripts

During the first meeting, second- and third-year students' scripts (eight second-year and five third-year students) show - albeit from a small sample - a general appreciation of their first-year LEFO blended learning approaches and the development of core legal skills. These students continued to use LEFO e-learning resources for essay writing and legal research strategies, and continued to use the online search and referencing tools, but pointed out that they had integrated many of these skills with the ones mastered during their preparation for A-levels. They realised that only a minority of educators were referring to the available e-learning resources and even less were integrating their teaching practices with the available online material. However, they positively referred to modules where this practice was implemented (e.g. Press and Broadcasting, Family Law, and Land Law).

In December 2006, the second focus group meeting for second- and third-year students was expected to foster a discussion about the resources available to students (traditional and 'e'), including the most relevant online resources and e-tools at their disposal generally or promoted in particular modules. Before the meeting students were given a list of all online resources available at Cardiff Law School (including legal databases and online how-to guides, self-access e-learning resources on essay writing , exam writing, etc.), and a questionnaire to assess them. The expected outcome was a comprehensive evaluation of the entire spectrum of electronic pedagogical tools and resources available to them and that they had used or tried out. However, it became apparent that most interviewees were using exclusively online material for which they had received training in LEFO.

> Q: 'What online resources do you use or find useful for preparing formative or summative work?'
>
> A (Student One): 'I was not aware of PDP[2] resources until I started these focus groups... find the assessment section under law skills useful – past land law exams, sample LEFO summative essays.'
>
> A (Student Two): 'Yes, they are really good and well put-together.'
>
> A (Student Three): 'Yes, OSCOLA: cite it right [...] I use the "cite it right" all the time when I am writing an essay. It is open in a separate window all the time, to check each reference as I use it.'
>
> A (Student One): 'Yes, me too.'
>
> A (Student Two): 'Yes, but I also use the OSCOLA.pdf file, too.'

Again the sample of second- and third-year students is limited, but the comments appear to confirm the speculation that online material has an impact on learners only if it is inserted into a pedagogical environment where traditional teaching methods support e-learning. It was good to note that the second- and third-years were willing to try out unfamiliar e-resources and were willing to comment on their usefulness generally. Unfortunately, the research structure did not allow enough space to elaborate on the motivations of students'

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[2]   Personal Development Planning: a dedicated PDP area in Blackboard had been developed for all law students (and staff) to ensure equality of access to all e-resources and activities whether promoted on taught modules or not

pedagogical behaviours. However, the fact that some students perceived some tasks as more difficult than others demands further qualification. For instance, online activities that familiarised users with legal databases were very similar to the use of a search engine such as Google. These types of e-tools cannot therefore be considered difficult (see the discussion on the next pages about resources being difficult to use).

During the third meeting, second- and third-year students were asked to complete a questionnaire aimed at probing their educational online activity. Again the scripts' analysis confirmed previous common themes. All but one student considered OSCOLA useful and used it either 'quite often' or 'all the time'. By cross-referencing these responses with the questionnaire given to students before the meeting, it appeared evident that even simple online activities were sufficient to change students' perceptions of module learning efficacy.

> Q: 'How often did you use or view the following additional materials? How useful were they to you in completing your formative / summative work? When do/did you use them? (Please indicate your response with an X and elaborate on why, how and when you used them or not in the comment boxes).'
>
> A (Student One): 'Often refer to it when referencing essays.'
>
> A (Student Two): 'First point of reference when struggling to reference something.'
>
> A (Student Three): 'Always use this as it was recommended by a module leader(!).'
>
> A (Student Four): 'This is a much more user-friendly way of getting a lot of information across; the incremental bit-by-bit approach!'
>
> A (Student Five): 'I have used the interactive tutorial about four times and I have the OSCOLA written guidance for all of the law essays I have done this year. It's really useful but could be a bit clearer in some areas, for example it doesn't cover all eventualities for referencing, so on a couple of occasions I have had to guess.'

The last comment deserves some attention because it might infer that there is a discrepancy in learning behaviours among students with consistently high marks. An enquiry over their overall performance appears to indicate a different learning technique. Students with a strong assessment performance try to master a required skill by repeating an online activity several times. For instance, one student says: *'I have used the interactive tutorial about four times and I have the OSCOLA written guidance for all of the law essays I have done this year.'*

Another common theme that surfaced from analysis of the Year Two-Three questionnaire is a substantive difference between the perceived retention of learning material in modules that blended their learning resources and those that did not. For instance, second- and third-year students who had not learned basic legal skills in LEFO (either because they had arrived from other law schools or from other degrees) claimed that they found online material difficult to learn and difficult to use.

> Q: 'What online resources do you use or found useful for preparing formative or summative work?'
>
> A (Non-LEFO Student One): 'I did look at various online resources on PDP and elsewhere, but personally find them difficult to use. '
>
> A (Non-LEFO Student Two): 'I only really knew about these from the questionnaire done before this meeting. I have not used it, but will definitively go through it before doing my summative.'

Moreover they complained about second- and third-year teachers who assumed that they had retained those skills.

> A (Non-LEFO Student One): 'There has never ever really been any guidance or feedback on problem questions. In the first year, when asking how to go about answering problem questions, the tutor was surprised we had not learnt it on LEFO; assumed we had.'
>
> A (Non-LEFO Student Two): 'Yes, it is assumed that we know how or taken for granted that we have all paid attention on LEFO or FEL,that the skills are already there, so if they are not, then you get left behind trying to catch up. '

The discovery, albeit unintentional, of a discrepancy in students' perceptions between former LEFO and non-LEFO students appears to support the speculative argument that online material is perceived as useful (and its ongoing use continued) only if it is complemented by in-class activities or use by a tutor.

Concluding Remarks

The aim of the research was to probe Cardiff Law School students' perceptions of their pedagogical experiences on modules that included elements of e-blending and the use of e-learning tools and resources. The theoretical assumption under scrutiny was whether an e-blended module is perceived as *pedagogically more useful* than a traditional one. The short answer is: yes. Students who have learned to complement their studies with online activities and who make good use of the e-learning resources available to them to develop skills perceive that they have discovered something useful. They also change their learning behaviours by using online activities and resources to train and, in case they have forgotten, to re-train themselves. For instance, during the second and third year of their studies, students commonly used first-year online exercises such as Finding the Law and OSCOLA.

Unfortunately, the demography of *the sample* (e.g. gender, age of entry in HE, average assessment performance, A-level results, etc.) were not recorded to protect the anonymity of students. The initial assumption was that students who see their data recorded might reduce the intensity of their critical analysis. The implication of that initial decision became apparent in the penultimate meeting, when a clear distinction between LEFO and non-LEFO students' learning behaviours arose. It remains unclear, for instance, whether non-LEFO students find first-year online activities difficult or if they consider the eventual learning outcomes irrelevant. From the narratives collected during focus group meetings, the two elements (difficulty and relevance of the task) do not have a solution of continuity and they need to be further explored in a new study.

A second element gathered from the project might help to qualify the perception of pedagogical usefulness of online material that is simply bolted on to traditional modules. The project results suggest that merely adding online simulations and sources of information to students does not improve their perception of usefulness. Online learning platforms such as Blackboard have facilitated the adoption and availability of online resources. Indeed, at Cardiff Law School students can, if they so wish, use all online activities automatically inserted in their Online Student Personal Development Portfolio. In practice, however, our project suggests that students consider the majority of online activities to be not useful or too difficult. The perception of ineffectiveness therefore remains, even for

very basic online pedagogical tasks such as the use of databases and electronic legal search engines. Such perceptions, or rather set of perceptions, remain unexplained by this and other research. However, it is hoped a new project will investigate these perceptions and take into account student and staff perceptions of similar tools and activities.

In conclusion, apart from a prosaic observation that depicts students as selective learners, our project findings have given a strong indication of the potential impact of e-blended programmes. The evidence suggests that e-blending can change perceptions of the value of the information delivered in British Law Schools.   In particular, if students come to appreciate the benefits of an e-activity, they will form a series of distinctive patterns of learning that are perceived as useful. Some students might repeat online exercises several times until the expected learning outcome is wired into their practices; others might prefer to re-train themselves only if there is a need in a different module. However, as both groups of learners in our study acknowledged, the enhanced pedagogical benefit of the e-blend is best achieved when it is reinforced during in-class learning.

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The Commonwealth Legal Education Association

The CLEA fosters and promotes high standards of legal education in the Commonwealth. Founded in 1971, it is a Commonwealth-wide body with regional Chapters in South Asia, Southern Africa, West Africa, the Caribbean and Europe and numerous country committees. Its work is overseen by an Executive Committee whose members represent: Australasia, Europe, The Caribbean, East Africa, West Africa, North America, Southern Africa, South Asia (Bangladesh, Pakistan and Sri Lanka), South Asia (India), and South East Asia.

Membership is open to individuals, schools of law and other institutions concerned with legal education and research.

The Association's *Programme of Action* is based on the need to make legal education socially relevant and professionally useful, particularly through:
- the development of law curricula and teaching methodology;
- assisting law schools to prepare themselves for the demands of the profession in the context of the information revolution and other global challenges; and
- supporting continuing legal education and distance learning programmes.

PUBLICATIONS
- *Commonwealth Legal Education*, the Newsletter of the Association, is published three times per year
- The *CLEA Directory of Commonwealth Law Schools* is published biennially

- The *Journal of Commonwealth Law and Legal Education* is the official journal of CLEA and is published in association with the Open University School of Law. It is published online twice a year and is subscription free.

The Association's website **www.clea-web.com** provides access to a wide range of Commonwealth legal materials, model curricula and some publications.

CONFERENCES

The Association organises regular international and regional conferences and seminars. Recently, it has organised/co-sponsored conferences on topics such as law and development, human rights and just and honest government, as well as on legal education. Venues have included Australia, Nigeria, Cayman Islands, UK, Jamaica, Sri Lanka and Malaysia.

Details about all CLEA events can be found on the Association's website: **www.clea-web.com**

CURRICULUM DEVELOPMENT

The Association is committed to developing new curricula that reflect both the importance of Commonwealth jurisprudence and the need for law schools in the Commonwealth (and beyond) to equip their students to meet the demands of the 21st century lawyer.

Two curricula are currently available:
- Model human rights curriculum for the Commonwealth;
- International co-operation in criminal matters

Two further curricula are in preparation
- Tacking corruption and the misuse of public office
- Islamic law

ACTIVITIES FOR LAW STUDENTS

The Association organises a number of activities of law students. These include
- The Commonwealth Law Moot (held biennially)
- The Commonwealth Students' Essay Competition
- Justice VR Krishna Iyer Essay Competition
- Conferences for Commonwealth law students

The CLEA is a partner organisation with the Commonwealth Secretariat and has observer status at Commonwealth ministerial meetings.

For further information on the work of the Association and details of membership, please contact:

The General Secretary, Commonwealth Legal Education Association
c/o LCAD, Commonwealth Secretariat, Marlborough House Pall Mall, London SW1Y 5HX, UK.

Tel: +44 (0)20 7747 6415   Fax: +44 (0)20 7004 3649
E-mail: clea@commonwealth.int   Website: www.clea-web.com

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Journal of Commonwealth Law and Legal Education

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As of 2011 the Journal of Commonwealth Law and Legal Education (JCLLE) will be an online publication. It will continue to be a peer-reviewed journal.

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