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## **JOURNAL OF COMMONWEALTH LAW AND LEGAL EDUCATION**

**Vol. 13, No.1, Spring 2019**

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# Journal of Commonwealth Law and Legal Education

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## IN THIS ISSUE

This edition of the Journal of Commonwealth Law and Legal Education includes an exciting range of articles, together with a case note, from Nigeria, England, Wales and Barbados. The key focus is on legal education, but the variety of the topics explored demonstrates the breadth of research being carried out internationally on this theme.

The edition's focus on legal education begins with article by Jeffrey Kleegeer, which provides a critical insight into legal education, taking a holistic approach and drawing on examples from both the USA and Australia. A timely reminder of the commonalities between Commonwealth and non-Commonwealth jurisdictions.

The second article in this edition, by Charles Barker, moves to a narrower focus, proposing a theoretical framework for the teaching of oral communication skills to undergraduate law students. This eschews a narrow vocational approach and argues for a richer, more contextualised method of developing these valuable skills.

In the third article of the collection, Stephen Clear and Marie Parker consider Welsh legal education, with an emphasis on the expectations of both UK and international students. They draw upon pedagogical theory and new empirical data to propose a model to fully promote internationalisation and facilitate deeper, effective learning experiences for the benefit of all students.

The fourth article in this edition shifts across jurisdictions to Nigeria, with Kingsley Omote Mrabure arguing for a number of reforms to ensure that Nigerian legal education is

The final article, by Bethel Uzoma Ihugba, Shuaibu Danwanka and Samuel Oguche, is once again focused on Nigeria. However, it has a different focus, namely, the impact on law lecturers of the prohibition on undertaking private practice whilst working in the public sector. An interesting reminder of the way in which wider regulation can impact on legal education.

The last section of this edition provides a case note on an interesting case from Barbados, which considers the ability of Commonwealth citizens to be added to the electoral register, an issue with potential significance throughout the Caribbean. We continue to welcome

submissions of case notes and comments on cases, new legislation and proposed law reforms, together with shorter opinion pieces and book reviews likely to be of interest throughout the Commonwealth.

We welcome feedback and enquiries from potential authors and peer reviewers by email at [JCLLE@open.ac.uk](mailto:JCLLE@open.ac.uk). Full author submission guidelines are given at the back of this edition.

Emma Jones and Francine Ryan  
Editors

## **IMPLEMENTING A MEANINGFUL & EFFECTIVE LEGAL EDUCATION REFORM**

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### **ABSTRACT**

This article offers a critical perspective on legal education based on a holistic approach to law study. Since formalization of the modern university in the 1800s, and ascendancy of doctrinal method as the dominant form of instruction in many commonwealth law nations, educators have taken an interest in reconnecting law with society and culture to enhance knowledge and improve lawyer competence. This article identifies challenges facing law study and describes how to overcome them using a three pillars model derived from the literature to contribute to the conversation about how best to go about implementing a meaningful, effective legal education reform.

### **I. INTRODUCTION**

This article offers a critical perspective on legal education reform using a holistic approach. Since formalization of the modern university in the 1800s, and ascendancy of the doctrinal method of instruction, educators have taken an interest in reconnecting law with culture and society to enhance knowledge and improve lawyer competence. This article identifies challenges facing law study and describes how to overcome them using a three pillars model to implement meaningful, effective legal education reform.

Lawyers play leading roles in business, civic affairs, government and politics (Sullivan, *et al.* 2007). Challenges in law study include rising costs, diminishing or flat enrollments, incomplete training, isolation from other disciplines (siloe thinking), conflicting demands of students and the profession, inadequate resourcing and the reluctance of academic staff and students who become too invested in the system to want change (Keyes & Johnstone, 2004: 538). The development of legal education is important not just to produce competent practitioners but also to ensure proper access to justice (Barker, 2015: 93). Educators need to move beyond traditional models and embrace innovative curriculum design. They must collect and analyze assessment data to reform pedagogy. Student learning outcomes evidence informs educators how to better integrate curriculum components—holistically combining doctrinal, interdisciplinary and experiential learning. The traditional model of doctrinal-based instruction is flawed because it is too passive. The three pillars approach developed here extracts all possible value to be derived and limits its use, minimizing negative impacts.

Improvement in law study is possible by restructuring the curricular-sequence. Content knowledge, practice-skills and professional responsibility (Sullivan, *et al.* 2007: 47) are more equitably aligned. Reform ensures status-building is available to reverse alienation and detachment (Rochford, 2008: 41). In this way the privatization trend in academia is reversible and law study doesn't have to be a choice between 'practice-ready' graduates and broad-based 'liberal arts' exposure (Brand, 1999: 109).

First-year law study covers a core set of traditionally mapped subjects. These are (and should continue to be) delivered in traditional doctrinal style. Beginners move from puzzlement about law to familiarity as content knowledge is increasingly understood. The mystification of being transformed into a lawyer should be preserved. But the approach is imperfect because it lacks integrating knowledge with purpose. That needs altering. The Webster program at a law school in New Hampshire, United States (US) shows how that can happen. But even the Webster program isn't perfect. It can be improved with a three pillars model for law study (Gerkman & Harman, 2015) that would include the suggestion of retaining doctrinal learning but injecting it with interdisciplinary exposure and patterning it after medical training simulated learning for a more effective pedagogical application (Sullivan, *et al.* 2007).

Unfortunately, education is not immune to market impacts. These need to be tempered by idealistic values (Brand, 1999) that enrich perspectives (Rochford, 2008: 42). Experiential learning, professional responsibility and the privatization of law all play a role in how law study reform will end up being expressed. Learning is improved by better linking doctrinal and experiential methods of teaching (Tokarz, *et al.* 2014: 13) so that students might become better trained professionals capable of effectively serving the public (Borrego & Newswander, 2010: 62). The three pillars approach recognizes there is a need to master an effective combination of content knowledge, practice-skills and professional identity training to develop effective decision-making skills to competently perform services in circumstances of uncertainty, which is to say—to teach students how to recognize complexity and continually learn from experience (Welch Wegner, 2009: 20-21). Doctrinal pedagogy is effective for teaching critical legal thinking but inadequately addresses purpose in social-context and practice-skills training requisites. Students must master discipline-specific competence and world-view knowledge to serve as effective practitioners in complex, diverse professional settings.

## II. COLLABORATION & INDIVIDUALISM

In Australia legal education evolved in a non-structured way, in fits and starts, without any serious inquiry into quality and purpose, in contrast to its development in the United Kingdom (UK), (Barker, 2015:93). In the US, the Langdellian case-dialogue system as the dominant form of law study was firmly entrenched by the 1920s. The post-Second World War period saw the first formalized inquiry into Australian universities leading to the Murray Report published in 1957 identifying finance and development as a priority for legal education (Barker, 2015: 93).



In the US not much has changed in legal education over the last century; but, in New Hampshire, the Daniel Webster Scholar Honors Program administered at the New Hampshire School of Law is an example of how law study can be improved by integrating thinking with practice skills and professional identity training (Gerkman & Harmon, 2015). The Webster program retains introducing doctrinal learning in the first-year of study but in second and third-years shifts pedagogical focus to interdisciplinary team-based collaborative instruction and practice-skills training. Other law programs prepare students to manage the impacts of economic, political and sociological influences on legal decision-making by offering courses in legal theory, history and the social sciences to expand the richness of study recognizing law's relationship to other disciplines is critical to its function (New York University Law School). The three pillars model proposed here embraces this three-step approach.

The Martin Report, published in 1964, identified the problem of the growing complexity of society, demands for more extensive training for lawyers to address those demands and the tendency of tension between professional training requirements and university educational aims as well as the problem of underfunding of legal education (Barker, 2015: 95). Interdisciplinary learning provides solutions to all of these identified problems. It offers a more humanistic legal education and a broader, more diverse context to better understand the richness of interests underlying legal problems which makes students better problem-solvers, and it addresses the issue of cost as described below and developed throughout this article.

The literature on legal education reform has taken up the question whether such education should be more sensitive to market demands or service-provider needs, but it is clear both interests are important. There is confusion among theorists on deciding what the proper distinction between private and public ought to be, how needs can best be met and how use-value and resource allocations may be optimized. Achieving these objectives is a priority for any business model, although public education is somewhat nuanced and unique. The professional culture appears to encourage training students to be practice-ready to better serve the public; while the effect of economic rationalism on education policy cannot be ignored (Brand, 1999: 109-110). Meanwhile, the Webster program integrates private and public needs linking training with service and improving student preparedness by administering formative and reflective assessment in a practice-based context (Gerkman & Harmon, 2015: 1). Interdisciplinary instruction broadens knowledge delivered while retaining the vocational nature of law (Brand, 1999:110) satisfying the Martin recommendation that wherever possible, legal education should be founded upon full-time studies at university level (Barker, 2015: 95, n. 12).

Privatization serves individuals, reduces costs and strengthens the collective, public good (Rochford, 2008: 43). The history of legal education reform is marked by fits, starts, set-backs and the influence of privatization. There is an unresolved tension between providing a

humanistic, beneficial liberal arts education and preparing students for practice in a socially-productive vocational profession (Brand, 1999: 111). Critics argue programs focused on doctrinal learning insufficiently instruct on critique that is inadequately defined (Rochford, 2008: 45, citing James, 2004: 380) and need to focus instead on interdisciplinary principles (Brand, 1999: 113, n. 10). Others suggest doctrinal instruction should remain a core legal education focus because students need to know law—meaning possess theoretical knowledge; but as recognized in the Bowen Report of 1979, lawyers must satisfy minimum academic education *and* practical training skills to qualify for admission (Barker, 2015: 96). In the US, doctrinal or theoretical instruction has been the priority over the past century (Rochford, 2008: 45). Review of the Webster program reveals educators now recognize knowing law is about more than what constitutes legal doctrine—graduates need to be better prepared for actual practice by having exposure to a mix of skills-training and interdisciplinary-based collaborative learning activities. The Webster approach produces more competent graduates who are better prepared to engage in practice than their traditionally trained counterparts (Gerkman & Harmon, 2015: 1-2).

The Webster program applies free market principles to enhance student economic value recognizing graduates are more productive practitioners if trained using collaborative learning (Rochford, 2008: 46, citing Hager, P 2005: 661). Individualistic approaches to learning do nothing to foster community spirit. Instead they reinforce competitive struggle, alienate, are passive and dehumanize commodifying learning equating students with units of production (Rochford, 2008: 46). The trend in aligning higher education with broader economic aims indicates movement toward privatization (Brand, 1999: 117). This is particularly so as state funding to public universities is reduced, institutions increasingly behave entrepreneurially (Brand, 1999: 118), students and the profession increasingly demand courses focused on business and theorists conflate commodification with vocational discourse seemingly to align education with professional demands (Rochford, 2008: 47). The problem with this individualistic pedagogical approach is it overlooks that law is a social practice (Rochford, 2008: 48, citing G. Langford: 1989: 21) and more satisfying solutions are possible using collaboratively-negotiated settlements as opposed to contested litigation. Viewing legal education as individualistic investment in self flies in the face of the bar's aspiration to equate practice with service. Interdisciplinary thinking erases negative connotations arising from competitive, adversarial practice and instead encourages innovative solutions to complex social problems.

Problem-solving is improved when causation is better understood, and cooperation is encouraged to produce more effective solutions (Borrego & Newswander, 2010: 74). Ignoring the social nature of learning detaches students from their community (Rochford, 2008: 50). The literature identifies five key knowledge forms needed in effective law study. These include content knowledge, practice skills, ethical standards and appreciation of policy choices in the social context of law (Brand, 1999: 124, 137) expressed as doctrinal learning,

interdisciplinary problem-solving and practice-skills training. Theory depends on practice for application; practice depends on theory for substance; and learning improves with holistic sequencing of all necessary elements.

### **III. ADVANCING LAW STUDY**

The Bowen Report stressed the need for achievement of three essential components of training prior to admission to practice that incorporate theoretical knowledge, practical skills-knowledge and a component relating to professionalization (Barker, 2015: 97, n. 21). Law study is improved by deemphasizing the traditional teacher-focused, doctrinal learning model that views legal education as properly autonomous, subservient to the profession, isolating and individualized (Keyes & Johnstone, 2004: 539-543). The fact is, doctrinal pedagogy transmits knowledge about legal rules, but little more. It does not prepare students to appreciate the meaning and purpose of law in society. Some argue structuring the curriculum to develop problem-solving skills is improved by adding experiential instruction and small-group teaching activities to the curriculum (Keyes & Johnstone, 2004: 544). Others suggest training in disciplinary grounding, integrative quality, critical awareness, communication, collaboration and capacity to resolve conflict between disciplines (Borrego & Newswander, 2010: 66) is more useful. One report suggests the organized bar ought to identify its view of the best mix of content, methods and instruction skills for aspiring practitioners (Gerkman & Harmon, 2015: 3, citing the MacCrate Report, 1992: 334).

Most theorists will agree genuine learning requires active engagement with teaching focused less on routine delivery of transmitted knowledge from teacher to student and more on guiding students to develop their own understanding of how to learn (Keyes & Johnstone, 2004: 546). Successful teaching depends on purposeful course design that entail appreciating how practice is about more than imitation—it concerns applying knowledge to problem-solve by effectuating prior-acquired knowledge and skills for contemporary application and enhancing capacity by improving critical thinking, analysis and judgment.

The Bowen Committee recognized legal education must teach analytical skills, substantive legal knowledge, but also basic practice and research skills, including the skill of communication, familiarity with the institutional environment and an awareness of the non-legal environment and its connection to the legal (Barker, 2015: 98, n. 31). The Webster program acknowledges this instructional agenda and was designed to teach students how to determine effective responses in law practice under certain factual variables (Gerkman & Harmon, 2015: 3) in random combinations based on contingent human nature. The curriculum was developed to improve learning by promoting a methodology that articulates the advantage of combining perspectives to capitalize on synergy to teach students to translate knowledge across disciplinary boundaries, establish common ground in problem-solving and develop critical awareness necessary to make sense of knowledge by framing problems with interdisciplinary combinations in mind (Borrego & Newswander, 2010: 66-69).

This is an example of critical autopoiesis in teaching and learning. Law involves translating messy human social issues into clarity using legal reasoning to take strategic action to advance a client's cause. It represents order derived of progress. To succeed with such a course, it is necessary to parse distinction between what is private and what is public (Sullivan, *et al.* 2007: 54) in search of optimally effective pedagogies along the way.

Educators recognize that intercultural knowledge of other disciplines effectively socializes learners and improves outcomes by displacing inefficient, individualistic, private disconnects (Woods, 2007: 853-854). To that end, students pursuing law study may be encouraged to do an extended course combining distinct but related subjects (Sullivan, *et al.* 2007: 54). Learning how law operates as it relates to other disciplines would produce more effective practitioners (Woods, 2007: 853-854). Discipline-specific study is invaluable for creating specialists, but interdisciplinary learning promotes development of otherwise untapped boundary-crossing higher-order thinking and communication skills necessary for success in the workplace (Ivanitskaya, *et al.* 2002: 97).

Law study aims to teach content knowledge, the ability to apply legal principles to resolve problems, familiarity with court procedures, the ability to draft documents, an appreciation of the role of law in society and knowledge of ethics and practice-skills, generally ('Studying Law in Australia', n.d.). Law is a professional discipline — to better prepare students for practice, founders of the Webster program sought to implement MacCrate-described lawyering skills (Gerkman & Harmon, 2015: 4) to better integrate instructional methodologies, interdisciplinary learning and practice-skills training and thereby encourage more collaboration between students from different subject areas teaching them critically useful knowledge-pooling skills for advanced problem-solving capability (Woods, 2007: 854). Student learning improves when the curriculum is altered to retain the benefits of traditional doctrinal learning, while expanding to include equal focus on interdisciplinary connections and practice-skills development. Student competence is enhanced by understanding the legal environment of capitalism, the embeddedness of law in social relations and the complex role of law in resolving inequalities of race, class, gender and sexual identity experienced in society.

#### **IV. RESOLVING THE TENSION BETWEEN LAW SCHOOLS & THE PROFESSION**

The reform suggestions proposed here reflect criticism of legal education in the literature and profession including the ongoing debate over the continued utility of articling as a tool of pedagogy in commonwealth law nations. There is a recognized gap between what the profession indicates it wants (practice-ready lawyers) and what law schools seem capable of providing (almost practice-ready lawyers) (Gerkman & Harmon, 2015: 4). How is this divide to be bridged? Some theorists complain pedagogical training for academic staff is inadequately supported and insufficient rewards are available to promote innovative scholarly approaches to teaching (Keyes & Johnstone, 2004: 556). Others complain private

practice exerts excessive control over the curriculum and academics need to have more input (Keyes & Johnstone, 2004: 557). This latter claim is based on the idea that instruction ought to focus less on practice-skills training and more on theory or alternatively, on interdisciplinary context and purpose learning outcomes. Meanwhile the reality is reform requires adequate funding to ensure quality control and good instruction will effectively cover all necessary elements in an all-inclusive law study. The Pearce Report, viewed by some as the most comprehensive, significant investigation undertaken of Australian legal education favored the Socratic casebook method of instruction over expository lecture methods (Barker, 2015: 101). That would represent improvement but unfortunately does not go far enough to better train students for practice proficiency. Pearce also identified positive trends in legal education reform including growth in the use of combined degrees, small group teaching, skills training, provision of graduate study and specialized focus on teaching and research (Barker, 2015: 101, n. 65, citing McInnis *et al.* 1994: 170). These suggestions effectively promote holistic learning and ought to be encouraged.

Some educational programs focus on interdisciplinary purpose and practice-skills training with positive effect (Keyes & Johnstone, 2004: 558, note 156, citing Brownsword in Cownie (ed.) 1999: 27-30, 36-38). For example, at Central Michigan University, instructors of literature, history, music and art share methodologies, discuss how their expertise and disciplines overlap (Ivanitskaya, *et al.* 2002: 97-98) and engage in a curriculum designed to improve student learning outcomes by integrating knowledge-analyses from diverse subjects to address a specific problem. At Queensland University of Technology, instructors teach discipline-specific capabilities embedding specific skills-learning in maximally relevant courses (Keyes & Johnstone, 2004: 559). Other studies indicate interdisciplinary activities and collaborative learning methodologies are helpful learning tools (Cooper *et al.* 2001: 233). A mix of interdisciplinary learning and structured activity-based teaching using a student-focused approach beneficially guides students in constructing their own knowledge (Keyes & Johnstone, 2004: 559-560). This latter skill is an absolute necessity for practice proficiency.

An effective pedagogical inquiry is to have instructors think about articulating context and purpose, assessing student progress and providing constructive feedback to correct misconceptions of in understanding law (Keyes & Johnstone, 2004: 560-561, nn. 168-175). Problem-based learning presents interdisciplinary material and identifies connections between disciplines to enhance student learning. Interdisciplinary instruction teaches students to create meaningful knowledge-structures that guide decision-making, assisting students in recognizing patterns and connecting them to newly encountered events and ideas (Ivanitskaya, *et al.* 2002: 99). Exposure to the liberal arts provides useful context for understanding the role of law in society and is readily available at most every university. Students can combine undergraduate and advanced degrees to take full benefit of the knowledge available by integrating the connections that exist between the disciplines enhancing competency (Gorman 1971: 848).

Law study requires a commitment to intellectual rigor, embracing dogma, developing practice-skills (Menkel-Meadow 2007: 555) and taking the time necessary to assimilate knowledge, skills and abilities to appreciate how to apply them effectively to resolve legal problems. Law is scientific, artistic, humanistic and social. Its study requires an open mind about how law impacts social life (Luhmann, 2004). Law study must recognize the human connection between action, its consequences and discontents—which is what law schools need to teach their students (James, 2000). Law schools need to provide students with the skill-sets necessary to reflect on broader determinants of law (Webber, 2004: 567-568). This requires effective practice-skills and understanding how law impacts individuals as well as society overall.

Theorists recognize the practical limitations of exclusive reliance on doctrinal pedagogy. It is too adversarial and patriarchal (O'Brien, 2011). They observe more theoretical and sociological approaches would better prepare students for professional challenges (Webber, 2004: 571). Legal education was once constituted primarily of practicing lawyers mentoring apprentices. Later, schools formed to legitimize law study in response to criticism indicating the apprenticeship method offered inadequate academic preparation. Instruction delivered by practitioner-lecturers was thought more effective. It increasingly bureaucratized and after the 1970s a permanent academic staff was formed on the view teaching and scholarship required organization into formal structures of appointment (Webber, 2004: 575). The literature recognizes enhanced quality of instruction derived from movement toward more permanent full-time academic staff (Webber, 2004: 576).

The doctrinal Socratic method of case-dialogue delivery was intended to make law study more scientific, theory-based and dogmatic. The law study reform proposed here is intended to improve the preparation of students for practice—teaching them what they need to know in terms of advocacy, analysis, counseling, interviewing, lobbying, negotiating, presenting, speaking and writing about law (Menkel-Meadow 2007: 577). For example, a lawyering seminar linked to a substantive course using simulated learning that provides students an experience of thinking and doing (Sullivan, *et al.* 2007: 35) is a far more effective collaborative learning-in-context approach because it ~~that~~ engages students in learning and enhances instructional outcomes. This reform aims to reinforce content knowledge development in practice settings, minimize harm by guiding, provide better instructional feedback for learning, evaluate and correct errors in a risk-free environment and respond with efficiency to the challenges posed by the reality of rising costs in education (O'Brien, 2011: 129, citing Kift, 2008: 2).

The doctrinal case-dialogue critical thinking approach of teaching students to think like lawyers is necessary for effective law study; but the apprenticeship model of training through practical experience is also necessary. Alone, both methods are deficient. Together, learning

is improved. What is necessary to effectively reform law study is to construct a proper mix of doctrinal, interdisciplinary and practice-skills training that will enhance student learning outcomes. Consistent with flexibility in law programs, academic teaching staff must revise curricula to better respond to student, bar and public needs. A plan to achieve this follows.

## **VI. REFORMING THE STRUCTURE OF LAW STUDY**

The value of interdisciplinary law study is outlined in a proposal favoring merger of the graduate Bachelor of Laws curriculum with undergraduate study (Kilgour, 1955: 83). This approach encourages a more effective law study at less cost integrating doctrinal with experiential learning (Tokarz, *et al.* 2014: 14) and restoring context to law study by incorporating the practical effect of legal phenomena in social relations (Webber, 2004: 579). This approach also affords students more elective space in their academic programs opening access to the entire university for interdisciplinary exposure (Chanen, 2007: 42), and permits attaching simulated learning laboratories to lectures to reinforce theoretical underpinnings by using practical applications of them. Improvement in student learning is shown in evidence drawn from assessment of student learning outcomes results, interviews with students, analysis of data on job placement rates of graduates or rates of placement in advanced programs of law study including indirect evidence of career reporting.

The Australian Law Reform Commission Report entitled ‘Managing Justice’ published in 2000 made a salient comparison with the MacCrate Report’s 1992 review of legal education in the US. MacCrate called for a reorienting of legal education around what lawyers need to be able to do while the Australian position remained anchored around outmoded notions of what lawyers need to know (Barker, 2015: 103, n. 85). MacCrate provides an abundance of evidence to support its conclusions. Competent provision of legal services means helping clients discover effective ways to resolve a problem—this is doing that goes beyond knowing and is what law study must be reformed to teach.

Interdisciplinary-based instruction produces lawyers better able to do. They do better by imagining creative solutions for better legal results (Tokarz, *et al.* 2014: 18). Law study is judged by the quality of instruction and the competency of graduates to perform well. Law is but one discipline in the business of education organized to deliver quality instruction. Each competes at the university for students and resources, must offer highest quality at lowest cost and if it is to thrive, it must be viewed by its consumers as value-producing and offering of a distinct competitive advantage. For example, the partnership between Manor College and Delaware Law School at Widener University is an early-stage effort to create such a product (Manor College and Delaware Law School Form Partnership, n.d.). There, students may enroll in law-based degree programs to complete multiple degrees. Such an arrangement can stream-line study and save students time, money and enhance the quality of their education. The objective of law study is to deliver a balanced, complex educational experience that guides students in learning how to identify legal problems, prioritize solutions

and appropriately respond to challenges. Programs such as this offer a means to leverage university resources, expose students to enriching interdisciplinary connections through collaborative processes and deliver instruction better suited to practice needs (Moliterno, 2013: 81; Cooper, *et al.* 2001: 229, citing Hammick, 1998: 323-332; Welch Wegner, 2009: 20). Doctrinal teaching suggests law practice is adversarial intellectual combat but there is more to it than just that—cultural purpose underlies the meaning, application and enforcement of legal duties and rights and instruction must address those relations. Law study reform would re-integrate previously divided disciplines to achieve that result ~~end~~.

Law study reform acknowledges the validity of complementarity. Effective teaching addresses student and practice needs, opens minds to alternative ways of thinking, allows for doctrine and practice-skills development and stimulates learning by identifying prior-acquired knowledge to build on and connect to other-discipline applications. This is how reform can advance a holistic appreciation of law's relationship to society. Instructors must encourage excellence in critical thinking, content knowledge acquisition and contextual understanding integrated by teaching students how to notice patterns, reflect on meanings, identify, describe and define problem-solving strategies, communicate insight and apply knowledge innovatively to confront uncertainty in situational complexity—and achieve all this effectively. This is accomplished ~~achieved~~ by active collaboration among peers to distill better solutions to problems (Tokarz, *et al.* 2014: 13).

Reform has a chance for success if the silos of intellectual isolation that falsely promote law as a relic of scientific doctrine devoid of interdisciplinary sensibility are deconstructed. Law is less effective when it is divided from its close connection to other social science disciplines (James, 2000). To reintegrate law with its natural partners ~~to~~ and make it more humanistic, students must learn to think about content in terms of its impact. Instruction must blend theory with practice to enhance understanding. The first step toward effectuating a more meaningful law study is to embrace the opportunity to develop and exchange ideas systematically. The second step is to identify a workable model to connect what one knows with what is unknown to resolve the central problems of social life, in getting along with others. The third step is to actualize those connections and apply them to good effect. The three pillars approach would subject students to an intensive, two-year program after a traditional doctrinal first-year introduction to law. Building on the traditional first-year curriculum, students would follow a regimented set of requirements in a specified sequence. This curriculum mapping approach would ensure students are immersed in professional relationships and develop collaborative learning skills to encourage reasonable risk-taking, learning from error with constructive feedback and promoting new ideas and seeing events through others' perspective with an open mind (Gerkman & Harman, 2015: 6).

The Webster program offers a combination of formative, reflective and summative assessment as both a critical aspect of the learning environment and a means to measure



outcomes with the purpose of better transforming students into competent practitioners (Gerkman & Harman, 2015: 6, citing Garvey and Zinkin, 2009: 117-119). The courses required in the Webster program include pretrial advocacy, alternative dispute resolution, a survey course in client counselling, family law, domestic violence, conflict of laws, commercial transactions, trial advocacy, business transactions and advanced problem-solving and client counselling all of which are organized around simulations, class discussions and mock trial activities (Gerkman & Harman, 2015: 7-8). The assessment provided is formative including frequent and constructive feedback on performance as students advance in the program allowing for productive reflection on the feedback and opportunity for self-correction as a component of student learning (Gerkman & Harman, 2015: 10). Assessment is reflective in that students consider formative feedback, evaluate peer performance, contemplate what they are learning and are guided in developing a strategy to cure identified weaknesses. Reflection permits a more sophisticated understanding of how lessons learned are intended to develop proficiency as the lessons relate to the practice of law and the role of lawyers in practice. Students are evaluated on their interpersonal and professional interaction with clients and ability to organize relevant information for competent representation—meaning their capacity to utilize information (Gerkman & Harman, 2015: 11).

Such a learning approach improves law study integrating practice-skills training and awareness of purpose reconnecting theory with practice. The result is a better-quality graduate (Cooper *et al.* 2001: 230) who is more prepared to grapple with legal problems. As a student I wondered why my contracts professor dedicated as many class sessions to Hawkins [1929] referred to as the Hairy Hand case, as he did. There, a doctor had promised his patient a perfect hand but couldn't deliver same. The patient sued for breach of promise, but his damages were reversed on appeal because it was more proper to award the difference between what was promised and what was received than omitting the value conferred. I mention this here to make the point that the doctrinal lesson learned was not justifiably important in the greater scheme of contract law to have spent the time spent on the lesson. Such is the deficiency in traditional Socratic method doctrinal law study pedagogy (James, 2004b: 588). Valuable instructional time was ill-used.

## VII. ON PRIVATIZED LEGAL EDUCATION

While time can never be restored, space in the curriculum can be more efficiently allocated. The form, nature and purpose of legal education today is a product of government intervention, market demand and resistance by academic teaching staff (James, 2004b: 590). Legal education is influenced by alternative discourses representing inconsistent world views that include doctrinalism, vocationalism, credentialism, liberalism and multiple variants in critical legal scholarship discourse (James, 2004b: 590). The adversarial nature of law is competitive and stressful (O'Brien, 2011: 131, citing Kelk, *et al.* 2009: 12). While the teaching of law must reflect its adverse nature, teaching law in a competitive and stressful learning environment *for the duration* of a program isn't justifiable. The approach ~~although it is~~

arguably beneficial in some respect—the traditional-adversarial approach is initially useful to desensitize students to the human aspect of legal matters to focus on analysis in a deconstructionist mode; but reconstruction thereafter is necessary. An example of positive reform is New York University's program (Sullivan, *et al.* 2007: 38-43) in which students are offered vocabularies for thinking about practice, are presented with a legal problem, guided in learning how to resolve it using collaborative instructional activities, are required to plan and execute a response, engage in collaborative critique, develop an understanding of content knowledge, critical thinking and communication skills—all from an experiential perspective that enhances student learning outcomes and reduces peer-generated competitive pressure and stress.

Assessment of student learning data is collected to support progress in learning and to reinforce teaching that meets student needs. This refers to consonance, measuring the success of intended outcomes; individualization, reinforcing growth in knowledge skills; relevance, comparing group learning with individual activities; feedback, supporting student progress; and facilitation, promoting practice-skills (Cooper, *et al.* 2001: 231, citing Mullen, *et al.* 1985).

Student learning may be assessed with reaction by evaluating the learning experience; learning by observing possible effects on student knowledge; skills development by identifying how best to couple learning substance with process; and results by recognizing possible impacts on student learning (Cooper, *et al.* 2001: 233, citing Kirkpatrick, 1967). Interdisciplinary and experiential teaching methods can be utilized to supplement doctrinal learning, encouraging the development of positive professional attitudes and a collaborative work ethic. Innovative teaching, including group-work, experiential projects and collaborative learning methodologies (What's the Difference, n.d.) fill gaps in learning left by doctrinal teaching and produce a supportive learning environment where students are guided in developing a context for their knowledge and team-building skills that reduces the negative psychological impacts of traditional law study pedagogy.

The literature acknowledges there is a need to increase course offerings dedicated to practice-skills training (James, 2000; Moliterno, 2013) and to provide a social perspective on law's purpose in dispute resolution. The second-year of law study could shift instruction from doctrinal critical analysis to interdisciplinary re-contextualization, using small-size laboratories attached to lectures, collaborative learning exercises and other innovative instructional practices to restore context and prepare students for later-stage experiential learning. Academic staff could be encouraged to attend workshops focused on identifying connections between law and other disciplines and new academic staff who value interdisciplinary learning could be sought-after.

Law school policies impact teaching by regulating most every aspect of the education process in the name of efficiency, accountability and marketability with utility taking precedence over other objectives such as the transmission of doctrinal knowledge, teaching of practice skills, pedagogical innovation or social reform (James, 2004b: 593). In fact, under the corporatist model specifically critiqued by James, 2004b, it would appear law study as a product might be viewed as a quantifiable process capable of being managed in such a way as to minimize costs and maximize quality, profit, and customer satisfaction (2004b: 595). Law schools compete to attract the highest-quality students and faculty possible in what is essentially a capitalist commercial enterprise that seeks to minimize its costs and maximize its profit (reputation in the case of public institutions) by improving its relative ranking compared with comparable institutions.

Interdisciplinary teaching helps students better understand law because law is explained as a social construct and system of beliefs and meanings that attach to human behaviour. Making sense of human social conduct facilitates conflict resolution of problems that arise in a complex social system made up of competing interests. The three pillars of law study discussed here can help students integrate a tightly organized content knowledge, liberal arts and practice-skills regime. At each pillar, critical thinking and analysis skills are formed from distinct points of departure and perspectives. Ideas are concretized and yet are made to retain a degree of flexibility necessary for effective problem-solving. Knowledge of the arts, humanities and social sciences guide students in appreciating how law functions in the context of human social relations. Lawyers-in-training need to be reminded that their clients are individuals with real-world problems and vulnerabilities—not mere cases to be practiced on. Lawyers need to be trained critical thinkers, competent to effectively file and argue claims and defenses supporting client interests; but also, to be sensitive to clients as individuals who feel and experience pain.

Law study develops intellectual capacity in students to objectively apply rules of law to the facts at hand, to communicate and act in uncertainty and to respond to diverse situations with reasoned, finely-tuned judgment. Theorists complain of shortcomings in pedagogical approaches, arguing deficiencies are caused by a mismatch between opportunities and threats (McAuslan, 1989) and the ability of the university to respond appropriately; but it is Ivory Tower thinking ~~mentality~~ that limits institutions of higher learning in efforts to achieve their objectives. Such entities must learn to function as businesses—because that is what they are. Pursuing knowledge for knowledge’s sake is laudable, but without a patron to support the endeavor, funding must be justified by a business model that is productive. Privatization has naturally impacted education—invisible-hand-like, the university functions as a vehicle to develop market and property interests (Thornton, 2004: 482).

The commodification of legal education has had the effect of compromising certain liberal-traditional values associated with the disinterested pursuit of knowledge now favouring

alternative values aligned with entrepreneurialism (Thornton, 2004: 482-483). The resulting impact on law study is resource cut-backs, downsizing, increases in stand-alone law degrees, reversion to larger class-size lectures on doctrine that reinforce the autonomous nature of law and its disconnection from the social forces that drive it (Thornton, 2004: 483). These impacts are not beneficial. They fly in the face of a well-rounded liberal arts perspective on knowledge-generation that would teach students how to respond effectively to unplanned-for contingencies by broadening their sensitivities (Thornton, 2004: 485) and thus, their sensibilities. Characterizing education as a commodity, reorders priorities in ways that reward efficiency but sacrifice quality as by increasing class size to reduce delivery cost.

As described by James (2000), the Pearce Report identified a number of problems with Australian legal education that are generalizable to law study in all common law nations. Pearce identified deficiencies in law study that were in need of remedy including the negative weight of inertia, concern with the commitment institutions have toward teaching and the causes of and responses to student dissatisfaction with their learning (James, 2000). The study recommended attention be paid to theoretical and critical perspectives but noted law must be taught in its social context and a purely technocratic approach to law study would be inappropriate (Thornton, 2004:485). The report emphasized law study should stimulate student intellect and encourage independent thought and inquiry about the complex relationship between law and society (James, 2000). Relatedly, the MacCrate report (MacCrate, *et al.*, 1992), also generalizable to law study in commonwealth law nations, recommended schools emphasize practice-skills instruction and formation of values, provide students with opportunities to perform lawyering tasks with guidance, offer constructive feedback and encourage reflective evaluation of performance. This describes the ideal model of a liberal law school education—one that provides a balanced mix of delivery of necessary elements for a meaningful education. This objective seems to have been lost as a result of the privatization of law. In many respects, neoliberalism has replaced social liberalism and positivist legal pedagogy now caters almost exclusively to corporate interests (Thornton, 2004: 486). The debate about the necessary deliverables in legal education rages on as the pendulum swings between dominance of private or public interests. Some argue enhanced practice-skills training and interdisciplinary context in law study are necessary elements of reform. Others claim the doctrinal learning method is preferable because practice-skills training is vocational, non-academic, too time-consuming and too costly to deliver—in short, it is an academically inferior approach easily accomplished in the workplace over time (Sullivan, *et al.* 2007: 94). Defenders of doctrinal pedagogy conclude there is no worthy alternative model for skills-training (Sullivan, *et al.* 2007: 94, citing Tomain *et al.*, 1990) concluding the predominant focus is legitimately placed on market-based, applied knowledge (Thornton, 2004: 486).

## VIII. A TRINAL CURRICULAR & PEDAGOGIC REFORM

This article has articulated the necessity for law study reform. Is effective reform possible, and if so, how would it best be implemented? Reform requires making better use of the knowledge, skills and resources available at the university. This is accomplished by promoting meaningful interdisciplinary teaching that facilitates student learning using critical engagement with complex social issues in simulated formats. Reform is possible but requires altering how institutional resources are allocated to enhance student learning outcomes. The American Medical Association integrates the teaching of science theory with clinical practice-skills training. Simulation exercises are used to train students in developing effective problem-solving skills (Sullivan, *et al.* 2007: 94). The study of law could be improved by similarly implementing a pedagogy of 'seeing'/'doing'/'demonstrating'/'knowing' to develop more effective practitioners of law. Learning requires guidance, feedback, correction, mirroring, redoing, prompting on 'how' 'why' and 'ought' skills-development with respect to the functioning of law and creating confidence in learners that they indeed do possess sufficiency of knowledge, skills and understanding to engage in practice effectively.

While it is true that learning to do by doing can create a risk of harm; it is also true that there are ways to minimize said risk. For example, one ought to learn substance *before* process or 'what' before 'why' and 'how'. The trend toward privatization in academic study has forced law schools to deliver their product in more traditional, doctrinal, positivistic packaging—to curtail costs which idolizes the cenobitic-monastic image of the ideal learning environment. The notion of a community of hermitic scholars that pursue the ideal of pure intellectual discovery free of the distraction of daily life, however, is no more (Thornton, 2004: 488). All that remains of that is the ceremonial garb. Even the candles are long-gone. The three pillars approach to law study described in this article would retain a measure of traditional doctrinal instruction but would improve law study by expanding the curriculum to include interdisciplinary learning intended to make law study more relevant to real-world practice (Jennison, 2014). Jurisprudence is the sociology of law (Luhmann, 1985). Reintegrating law that was previously separated from its social science counterparts is intellectually and practically necessary. The reintegrative use of simulated learning reverses the division by blending law study with other social science disciplines using the adapter of context. Doctrinal critical thinking is strengthened when it is bonded to other law study foundational elements such as communication, content knowledge, context and practice-skills training (Bathurst, 2012).

The MacCrate report notes the importance of developing lawyering skills in law study. In Appendix E of the report, it is observed that in some locations, practice programs are used to supplement theory-based training such as, for example, the use of articling (Articling, n.d.), which is still required for licensure in some commonwealth law jurisdictions (MacCrate, 1992). The literature suggests higher-order thinking and learning occurs in collaborative settings that promote familiarity and provide learners with the opportunity to work through simulated problems, encouraging intellectual deconstruction and reassembly, with attention

paid to how parts combine to form an integrated whole. Contextualized experiential learning of discipline-specific core content in a broader context improves knowledge. This type of positive, beneficial supplement-to-learning reform may meet with resistance, however, if instructors of practice remain ~~are~~ devalued. The method is at risk in an environment of declining resources and market-induced pressures that threaten the traditional idea of the university as provider of a broad-based liberal arts training (Thornton, 2004: 494). Doctrinal theorists conceive of practice-skills pedagogy as the ability to find, draft and argue doctrinal law, with practice-skills always subordinate to theory-based approaches to law study (Sullivan, *et al.*, 2007: 114, citing Garth & Martin, 1993: 504). There is no place in traditional law curricula for contextual learning, and scant space for recognition of the value of practice-skills training. Doctrinal theorists, however, have got it (in part) wrong—practice-skills and a sense of professional purpose are in fact co-equal determinants of a meaningful and effective law study and expanding on student exposure to them is absolutely essential. While practice is distinct from theory, it requires a substantive understanding of law's broader role and purpose in social relations.

To the extent law study is philosophical and historical, it is accepted as a legitimate intellectual discipline; but to the extent it represents vocational training, it is denigrated law-for-practice not knowledge (Thornton, 2004: 494). This points to the deeper, more important divide in the debate over reform between business and property interests, and those focused on broader social issues (Thornton, 2004: 495). In conjunction with the market-oriented focus on less reflective or philosophical business law subjects, there is a tendency to wish to teach law 'as it is' that dilutes the importance of critical rational discourse. Some theorists argue legal education as a source of knowledge-production is circumscribed (Thornton, 2004: 495-496) but others acknowledge that because law is not autonomous (Menkel-Meadow, 2007: 557), students must be taught to appreciate its function in society and inter-connection with other disciplines. This appreciation includes understanding economic, moral, political and social elements embedded in law drawn from social science (James, 2000), not just the interactive relationship between law and business.

There is no one single 'type' of a university. Legal regulation occurs in places other than universities and law schools. Higher education today is short on money, is micro-managed and any proposed reform of legal education is likely to be met with resistance following a 'we can't do that' conclusion to innovative suggestions (Collier, 2004: 506-507). For example, law-related professional-development trainings/ workshops/ seminars expenditures aren't reimbursable by the academy because 'you would do them anyway.' *What?* Listen to the sound of capitalism and privatization speaking. The fact is law is typically derived from policy decisions based on empirical claims about living conditions, normative assertions, desired change and economic, political and social considerations (Collier, 2004: 506-507). To provide context about what it means to be a lawyer, students must adopt a reflective capacity and appreciate that their study entitles them to entrance into membership in a distinguished,

professional community in which lawyers serve as officers of the court. Law influences how people behave toward one another. Law is made through interpersonal relations that go beyond the boundaries of jurisprudence (Menkel-Meadow, 2007: 560). Law is deliberately constructed, and so law study must be open to interdisciplinary and experiential elements that reflect the evolution of thinking about appropriate mediation in human social relations.

Right or wrong, for what it's worth, it is necessary to recognize that credentialism drives legal education. This thinking, that the best measure of ability comes with academic qualification, is what has caused doctrinal academic staff to denigrate the value of practice-oriented 'vocational' staff, is what has pushed interdisciplinary context beyond consideration and is what has led to the characterization of any form of pedagogy in law study, other than doctrinal, as less valuable (Sullivan, *et al.*, 2007: 101). This issue is connected to the fact that the corporatized university and trend toward privatization in social relations is a by-product of the privatization of law. The entrepreneurial university is a redirection of all aspects of university life toward the exploitation of learning and knowledge, commodifying what was once pure (Collier, 2004: 509-510).

The privatization trend has generally transformed the conventional wisdom on how a public university education should best operate. Utility demonstrates corporate links should drive education, entrepreneurial modes should fuel qualitative change and how individuals function should be redirected to exploit learning to benefit business interests (Collier, 2004: 510-511, n.33, citing Polster, 2000: 183). Some theorists bemoan the negative consequence of the privatization focus to which we have all grown accustomed, arguing subservience to commercially-oriented objectives undermine the traditions of established academic teaching and research and puts disinterested inquiry and academic standards (Collier, 2004: 511) at risk, forcing universities through the professoriate to sacrifice pure knowledge-reproduction. In the context of law study, this distracts from what should be its primary purpose—guiding students on the proper role of what it means to be a lawyer (Tokarz, *et al.*, 2014: 30).

For many academic institutions, it is sufficient reform to use casebooks with materials that go beyond traditional methods, coupled with designer-specialty courses that connect law with business and use a sprinkling of small-group seminars to promote critical thinking and communication skills. However, optional, pass-fail electives in devalued practice areas taught by subordinated academic staff (Sullivan, *et al.*, 2007: 88) sends a poor message about what is valued in academic study. Restructuring the curriculum to create combined degree offerings with scale-efficiency and more efficient resource-use in mind would truly benefit law study. An example of effective reorganization of law study is in how the course 'Alternative Dispute Resolution' is offered at Hamline Law (Sullivan, *et al.*, 2007: 105). There, the course is cross-listed with the university's management and public administration program evidencing entrepreneurial integration, creating interdisciplinary impact and reducing costs by filling seats that would otherwise go empty (Sullivan, *et al.*, 2007: 101).

Another example of cost-effectively enriching the educational experience of students by expanding their exposure to interdisciplinary approaches to problem-solving is the course offering 'Perspectives on Law' available at the University of British Columbia that is intended to counterbalance the traditional first-year focus on doctrine by introducing complex relationships among law, society and values (Sullivan, *et al.*, 2007: 153) to students. Yet another example is the interdisciplinary study curriculum developed at the University of Toledo where law and social thought inquiry is combined to envelop the study of law within a rich humanistic and social science tradition that aims to explore connections among diverse disciplines as they relate to legal issues to promote critical and creative thinking (Welcome to The Program, n.d.).

Under the commodification of education regime under which universities appear increasingly to labour, knowledge is characterized as a raw material resource applied to generate social wealth and competitive advantage (Collier, 2004: 512). There has now developed a new debate about academic reform centering on identifying the future-bound purpose of universities. One school of thought favours support for economic development and would reallocate resources toward programs focused on training in science, technology, engineering and maths. The obverse approach would be to starve through neglect those programs that lack 'use-value' because they do not contribute obvious economic gain and cannot be justified in terms of priority-funding. These other programs fail to meet the criteria of value in the cost-effective delivery of education and research (Collier, 2004: 512). The dilemma in this is accepting the corporatization of the university. What would enable a better-quality legal education, and how may it best be promoted?

The structure of higher education is constantly transformed in terms of academic functionality and management practices (Collier, 2004: 513). Changes to the delivery of education have included political interventions aimed at producing a leaner, more flexible, cost-efficient and accountable public sector, and a repositioning or restructuring of traditionally civic, public-minded institutions toward entrepreneurial-driven objectives (Collier, 2004: 513). The privatization of education has its greatest impact in knowledge-reproduction operationalized at the level of individual performance where the rubber hits the paved road in terms of how institutional management impacts student learning, and how the institution is viewed in its larger community based on performance (Collier, 2004: 515). Legal education has responded to the pressure to privatize by shifting the orientation and purpose of instructional design away from intellectual inquiry toward instrumentalism and vocationalism to actualize a more practice-centered, market-oriented model (Collier, 2004: 527). This could be taken to mean that hitherto lauded effort to enhance practice-skills training is more in the way of responding to privatization trends than to improve law study. If the purpose of law study is to produce graduates competent to practice law, then the perceived graduate employment needs of the profession must have a greater impact on curriculum reform to provide students with a balanced, comprehensive program of



knowledge and practice-skills training that would more effectively integrate theory with practice (Jennison, 2014: 644, n. 4) and offer consumers more contextualized knowledge about the true function of law in society (Chanen, 2007: 42). The Webster program discussed in this article is an effective model for better integrating theory with practice to enhance student learning. When students in the program were compared with students not in the program, in terms of degree of achievement, it was found that participants were just as competent or more so than lawyers who graduated from law school within the prior two years of the study signifying clearly that the coursework provided the equivalent of practice-experience of two years in the field post-graduation (Gerkman & Harmon, 2015: 12).

## IX. CONCLUSION

Corporatization, privatization and commodification are observed trends in the evolution of academic institutions. The privatization trend is a response to rising costs coupled with reductions in public education funding that has made the traditional pursuit of knowledge driven by curiosity a near-impossible objective to achieve (Collier, 2004: 534, citing Thornton, 2001: 43). University legal education has had to adjust to this reality and to do so has had to undergo a painful restructuring. The purpose of law school is to develop competent professionals. A meaningful, effective reform of law study will require less large-scale doctrinal learning sections offered and more small-sized interdisciplinary seminars appended to skills-based training sessions. To achieve the greatest possible cost savings in what will amount to higher-cost delivery, law study reform must better integrate undergraduate, graduate and post-graduate offerings to leverage resources available at the university to strengthen the quality of instruction using a blend of doctrinal-interdisciplinary-experiential methodologies that better manage costs. The fact remains: students require effective correcting, guiding and mentoring with feedback to encourage critical reflection on their performance (Sullivan, *et al.*, 2007: 109). Theorists have observed incorporating interdisciplinary and experiential learning into the curriculum improves competency and enhances student learning outcomes by recognizing optimal resolutions to legal problems (Chanen, 2007: 42); focusing on developing good collaboration and leadership skills in students (Moliterno, 2013: 73); and using clinic to facilitate the ability in students to effectively respond to complex, real-world problems and indeterminate, contingent sets of facts in practice settings (Tokarz, *et al.*, 2014: 30). The shift toward increasing the offering of practice-skills courses and clinical opportunities along with integrating doctrinal with context and practice-skills training efficiently replaces the sage on the stage with a guide on the side (King, 1993: 30) to enhance student learning outcomes.

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## **RETHINKING TEACHING ORAL COMMUNICATION SKILLS TO UNDERGRADUATE LAW STUDENTS USING CICERO AND ACTIVITY THEORY**

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### **Abstract**

This paper seeks to reassess teaching oral communication skills to undergraduate law students and develop a theoretical framework based on activity theory to help evaluate, design and re-evaluate approaches to the teaching of these skills. It will be argued that skills teaching at undergraduate level should not attempt to offer a version of vocational skills training but should seek to create teaching interventions that reflect the undergraduate social, cultural and historical context and that are based on learning theory appropriate to that context.

**Key Words:** Activity theory, advocacy, oral communication, legal training

### **Introduction**

In 2013 the Legal Education and Training Review (LETR) acknowledged that oral communication skills (as distinct from advocacy skills) are often taught on undergraduate law programmes but concluded that “they may not be taught well enough” (Webb et al., 2013: 135). The same report only refers to advocacy skills teaching in the context of vocational and early career training (Webb et al., 2013), suggesting that the authors did not consider it to be a significant feature of undergraduate law programmes. It was also reported that the views of both academics and practitioners were divided on whether skills teaching has a place on the undergraduate curriculum as it “threatened to divert attention away from the core job of the law degree” (Webb et al., 2013: 46). These concerns about the place of skills teaching at the undergraduate stage of legal education are part of a wider debate about the shift from a content-focused approach to a competency-focused approach to legal training (Webb et al., 2013: 123). As the LETR reports, this is a debate that is also a feature in other jurisdictions including Australia, Canada and Scotland (Webb et al., 2013: 123). This paper does not seek to add to the debate on whether it is appropriate to develop oral communication competency at undergraduate level but to consider, if oral communication skills are to be taught, how it can be done effectively.

The focus of this paper is on the developments in legal education in England and Wales. However, the theme of how to develop oral communication skills alongside academic legal education will be relevant to colleagues in other jurisdictions exploring how to balance content and competency in legal education. Indeed, the aim of the paper is to set the teaching of oral communication skills to undergraduate law students in a broader context and present

a theoretical framework based on activity theory to support the development of appropriate approaches to teaching these skills. A wide interpretation of oral communication skills will be discussed to reflect the range of skills required across legal practice including explaining skills, persuasive speaking and advocacy. However, the main focus will be on what might broadly be called public speaking skills.

The range of oral communication skills that could potentially be included in an undergraduate law programme and the absence of any settled syllabus present a challenge to curriculum designers. Programmes designed for the vocational stage of training and early career professional development offer possible models for the undergraduate stage. However, it will be argued that the temptation to borrow from vocational and professional legal oral skills training should be resisted. Instead oral communication skills should be viewed in a broader social, historical and cultural context and skills learning should be supported in ways that reflect the context appropriate to undergraduate students. Central to this argument is a connection across nearly 2000 years and a similar number of miles between Marcus Tullius Cicero in Republican Rome and, inspiration to activity theory, Lev Vygotsky in 1930s Moscow.

In 1934 the 37-year-old Vygotsky was admitted to hospital where he died from the tuberculosis that he had suffered through much of his short life. Apparently aware that he would not return from hospital Vygotsky wrote a final justification of his work.

NB! *Pro domo suo*

This is the final thing I have done in psychology – and I will like Moses die at the summit, having glimpsed the promised land but without setting foot on it. Farewell, dear creations. The rest is silence.

(Yasnitsky & Van der Veer, 2015: 88)

Vygotsky is referencing Cicero's *De Domo Sua* speech where Cicero argued for the return of his home after his exile and, more importantly, the return of his reputation. However, the echoes of Cicero run deeper in this short passage. What Vygotsky presents is a Ciceronian speech in miniature. Cicero's recommended sequence of ethical appeal or *ethos* (reference to Cicero and Moses); appeal to logic or *logos* (his contribution to psychology); and emotional appeal or *pathos* (Hamlet's last words – "the rest is silence"). It is perhaps no surprise that Vygotsky, the one-time law student, seeks help from Cicero in his valedictory. Indeed, Cicero remains an influential figure in legal and political rhetorical discourse and it is submitted that there is good cause to take another look at Cicero's view on the teaching of communication skills. Overt reference to Cicero has become a prominent feature in current political rhetoric with classicist Boris Johnson reportedly favouring Cicero's rhetorical techniques (Moore, 2012) and Donald Trump being labelled the 'Cicero of 2016' by the Washington Post (albeit, according to the article, without Cicero's courtesy) (Zauzmer, 2016). However, to focus on



prominent individual politicians who make use of Cicero's rhetorical tools to further their individual goals is to miss the wider application of Cicero's writing. If we look at Cicero more closely we can see that there are elements that he had in common with the work on education of Vygotsky and his pupil Leont'ev. These are elements which perhaps distance Cicero from an individualistic approach to the development of oral communication skills towards approaches which set skills development in their wider social and cultural context.

### **Cicero and a social, cultural and historical view of oral communication education**

[A]fter the establishment of our world-wide empire...there was hardly a young man of any ambition who did not think that he ought to put forth all his energy to make himself an orator. At first, indeed, our countrymen in total ignorance of the theory, and believing neither in the virtue of training, nor in the existence of any particular rule of art, attained...what success they could by the help of native wit and invention; subsequently, after they had heard the Greek orators, studied Greek literature, and called in the aid of Greek teachers, they were fired with a really marvellous zeal for learning the art. They were encouraged by the importance, the variety, and the number of causes of every description, to supplement the learning, which they had...gained from private study, by constant practice, and found this better than the instructions of all the professors.

(Cicero, 1892: 6–7)

Cicero's 55 BCE work *De Oratore* (or *On the Orator*) offers a useful insight into how a society that valued oratory in public life perceived the development of those skills. Encoded within Cicero's opinion about young orators in Republican Rome are themes that will be explored in this paper, in particular that developing public speaking skills needs to be set in the social, cultural and historical context of the activity. It should be made clear at the outset that it is not suggested that Cicero would have viewed oral communication skills in anything but individual terms. After all, the whole premise of *De Oratore* is based on why Rome had produced so few great orators (Roman male individuals such as himself). However, Cicero's brief review of the development of presentation skills shows that the men learning presentation skills in Republican Rome faced many of the same issues as modern students of any gender. Indeed, the fact that undergraduate law departments continue to struggle to find effective ways to develop these skills suggests that we may be looking at the problem in the wrong way by looking at the individual rather than the activity as a whole.

### **The learner's experience of oral communication skills education**

"...total ignorance of the theory" (Cicero, 1892: 6)

Students joining an undergraduate law programme from the English and Welsh education system are unlikely to have extensive experience of formal oral communication skills education. Indeed, in England and Wales from the summer of 2014 (due to concerns about the moderation of assessments) speaking and listening no longer formed a part of the General Certificate of Secondary Education (GCSE) English (Mercer et al., 2017). The climate of accountability of schools and teachers is not one “which encourages teachers to deviate from curriculum emphases which are tested and prescribed” (Jones, 2017: 506). However, the paucity of formal qualifications reflects a deeper lack of oracy skills development (the oral equivalent to literacy and numeracy skills development (Wilkinson, 1965)). Teachers report a lack of confidence in teaching the range of oracy skills (Jones, 2017). This is reflected in a think tank report which found (based on YouGov PLC survey of 906 teachers) that 57% of teachers said that they had not received any training in oracy in the last three years and that 53% would not know where to go to find information about oracy (Millard & Menzies, 2015). While there remains debate about the value of oracy, including presentation skills, in secondary education in England and Wales, the picture is of an education system where such skills are not given a high priority either in terms of assessment or teaching within the broader curriculum. The situation in England and Wales contrasts with secondary education in other jurisdictions such as Scotland, Australia and the USA where, to varying degrees, oracy remains a formal element of the curriculum (Mercer et al., 2017).

At the time of writing the future of legal education and training in England and Wales is being debated with the likelihood of less restricted and less structured routes into the legal professions (Hand & Sparrow, 2016). Indeed, in March 2018 the Solicitors Regulation Authority announced that a single Solicitors Qualifying Examination would be introduced as early as 2020 (Solicitors Regulation Authority, 2018). Currently the main route to becoming a solicitor or a barrister in England and Wales is that which was established after the 1971 Report of the Committee on Legal Education (Committee on Legal Education, 1971) or ‘Ormrod Report’ after its chair. The Ormrod Report formed the basis for having an academic stage of training followed by a linked but separate professional stage. The academic stage being a qualifying undergraduate law degree or an equivalent conversion degree for graduates with a degree without qualifying law degree status. The focus on the academic stage is on substantive academic legal knowledge rather than practical skills. In particular, a qualifying law degree is based on seven foundation of legal knowledge subjects which focus on substantive law topics (Hand & Sparrow, 2016). Although the makeup of these foundation subjects has changed since 1971, at no point have they included vocational skills such as explaining, oral presentation, negotiation or courtroom advocacy.

The absence of practical skills from the core subjects at the academic stage of legal training does not mean that practical skills such as oral communication skills and advocacy do not feature in undergraduate law programmes in England and Wales. The importance of being able to communicate legal knowledge “both orally and in writing, appropriately to the needs

of a variety of audiences” (Bar Standards Board & Solicitors Regulation Authority, 2014: 18) has expressly formed part of the requirements of the academic stage since 1999. This is echoed in the subject benchmark statement for law which requires law graduates to demonstrate the “ability to communicate both orally and in writing, in relation to legal matters” (Quality Assurance Agency for Higher Education, 2015: 7) and anticipates “oral/video presentations; moots; skills-based assessments” (Quality Assurance Agency for Higher Education, 2015: 8) potentially forming part of the assessment strategy at the academic stage. The direct reference to oral communication skills as part of the benchmark statement is not intended to be read as an indication that a law degree is designed solely to train future lawyers. Rather it is intended as a recognition that law graduates may go into a range of careers equipped “with considerable transferable generic and subject-specific knowledge, skills and attributes” (Quality Assurance Agency for Higher Education, 2015: 4). The suggestion being that the development of lawyer competencies, such as oral communication skills, offers law graduates valuable transferable skills for a range of graduate careers. The role of oral communication as part of overall legal education is also reflected in Recommendation 6 of the LETR which states that legal services education and training schemes should include oral communication skills (Webb et al., 2013: 287) and that there should be a greater emphasis on these skills throughout the training process (Webb et al., 2013: 275). While these skills have been a feature, both formally and informally, at the academic stage of legal education for many years, the LETR recommendation and the QAA Benchmark Statement for Law suggest that the development of oral communication skills should be seen as an important activity throughout the legal education process.

### **Characteristics of the learner**

“...believing neither in the virtue of training, nor in the existence of any particular rule of art, attained...what success they could by the help of native wit and invention”

(Cicero, 1892: 6)

It would seem, in England and Wales at least, that students are unlikely to have had formal teaching or assessment in oral presentation skills upon starting the academic stage of legal education. Further, it is by no means certain that they will have such training during the course of the academic stage of legal qualification. Indeed, if they do receive such training, it may well be that the standard is not high. For many students they will need to rely on their ‘native wit and invention’. For Cicero these were innate characteristics of the would-be orator. However, Cicero’s would-be orator came from a narrow wealthy male section of Roman society educated in what was expected of their class. The constituency of modern law students is wider today both in terms of gender and socio-economic background. The extent to which this breadth translates into equality of opportunity in the legal profession is a

question for another paper. Nevertheless, unfortunately what a wider audience might see as the characteristics of a competent public speaker and advocate risk being the product of a similar narrow social and economic background to the one that Cicero had in mind. This is acknowledged in LETR which cites as a benefit of oral communication teaching the view that it will assist “those entering from a wide range of socio-economic and educational backgrounds.” (Webb et al., 2013: 299).

On any view, it is clear that for Cicero ‘native wit and invention’ were not enough to allow an aspiring orator to succeed and that some formal teaching was also required. However, it was only in 1993 that Mr Justice Hamper felt able to declare that “the myth that advocacy cannot be taught has been finally put to rest” (Mauet & McCrimmon, 1993: xii). This was a conclusion Cicero had reached just over two thousand years earlier. It is tempting to view the persistence of this myth as a product of the belief, to quote one former Lord Justice of Appeal, “that the greatest advocates are simply born that way” (Brooke, 2015). However, the myth’s persistence may be due more to the belief that development of effective oral communication skills in a legal context can only truly be developed through practical experience; what Brown describes as “craft-knowledge” (Brown, 2006: 218). Such practice and experience based wisdom has been recognised as a deeply ingrained feature in legal practice (Le Brun & Johnstone, 1994). Certainly it was a feature in Cicero’s day. One of the great orators depicted in *De Oratore* declares that “the laws and institutions and ancestral customs of the Roman people were my teacher” (Fantham, 2004: 80) but only to reinforce his belief in the need for formal teaching.

### **The role of the teacher in oral communications development**

“...after they had heard the Greek orators, studied Greek literature, and called in the aid of Greek teachers, they were fired with a really marvellous zeal for learning the art.”

(Cicero, 1892: 6)

It is argued that there is a place for teaching oral communication skills (including advocacy) in the undergraduate law programme. However, the form and extent of such teaching presents a more challenging question and this turns on how students learn. Vygotsky’s theory of the zone of proximal development (ZPD) emphasises the mediating role of other human actors in an activity. As Vygotsky explains the ZPD “is the distance between the actual developmental level as determined by independent problem solving and the level of potential development as determined through problem solving under adult guidance or in collaboration with more capable peers” (Vygotsky & Cole, 1978: 86). So in essence, the role of the teacher is to develop the skill of the learner beyond what can be achieved through ‘native wit and invention’.

The idea of mediation in the learning process was developed further by Vygotsky's pupils and offers an insight into both how oral communication skills development operates and what interventions might support this process. For Vygotsky's pupil Leont'ev the focus was on the activity (in this case the skills learning process) rather than on the individual learner. According to activity theory, human activity is mediated by the material and social world in which the activity is situated (Leont'ev, 2009). Engeström (2014) defines this collective activity through an expanded framework that illustrates the interactions between mediated activity and rules, community and division of labour (Figure 1).

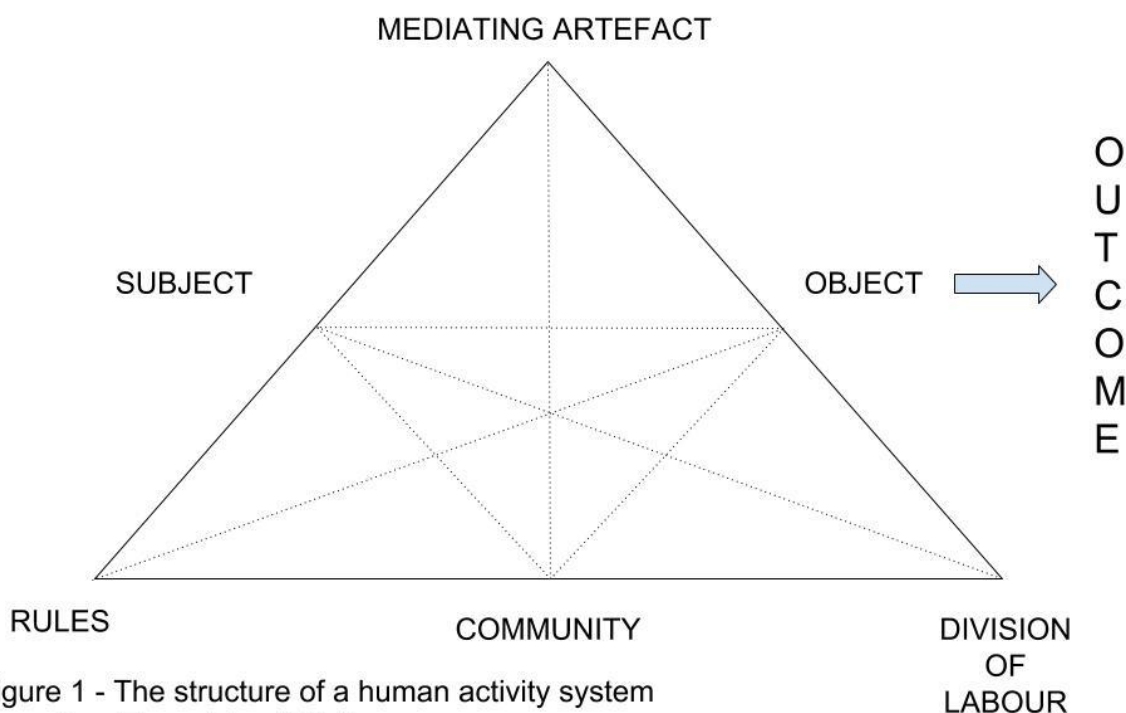


Figure 1 - The structure of a human activity system  
(based on Engeström, 2014)

This framework is best understood by breaking down its elements. It starts with a basic stimulus and response represented by the single line in Figure 2 between Subject and Object. This depicts basic animal behaviour; for example, the subject sees and eats some food. However, human actions are not normally based on a simple stimulus-response process. Instead humans have developed tools which change the way in which we interact with the world. These tools might be physical (such as a hammer) or psychological (such as language or other signs or symbols) (Kaptelinin & Nardi, 2006). The process by which these tools and signs change the way that humans interact with the world and learn is referred to as mediation. Human activity mediated by tools and signs can be depicted in the triangle in Figure 2. However, this triangle only shows an individual learner. Leont'ev's work emphasises that this individual learning process is part of a wider social, cultural and historical activity

(Leont'ev, 2009). Engeström's expanded framework (Figure 1) shows the individual mediated learning process (the triangle at the top) but also draws in the various facets of the wider activity. This includes the rules which operate in the activity, the community of people involved in the activity and how the tasks within the activity are divided between the members of the community (Engeström, 2014). Changes in the activity, such as a new teaching intervention or a new tool, may lead to a tension or contradiction in the system "where some old element...collides with the new one. Such contradictions generate disturbances and conflicts, but also innovative attempts to change the activity" (Engeström, 2001: 137). Depicting the activity as a framework provides a visual way to explore this process.

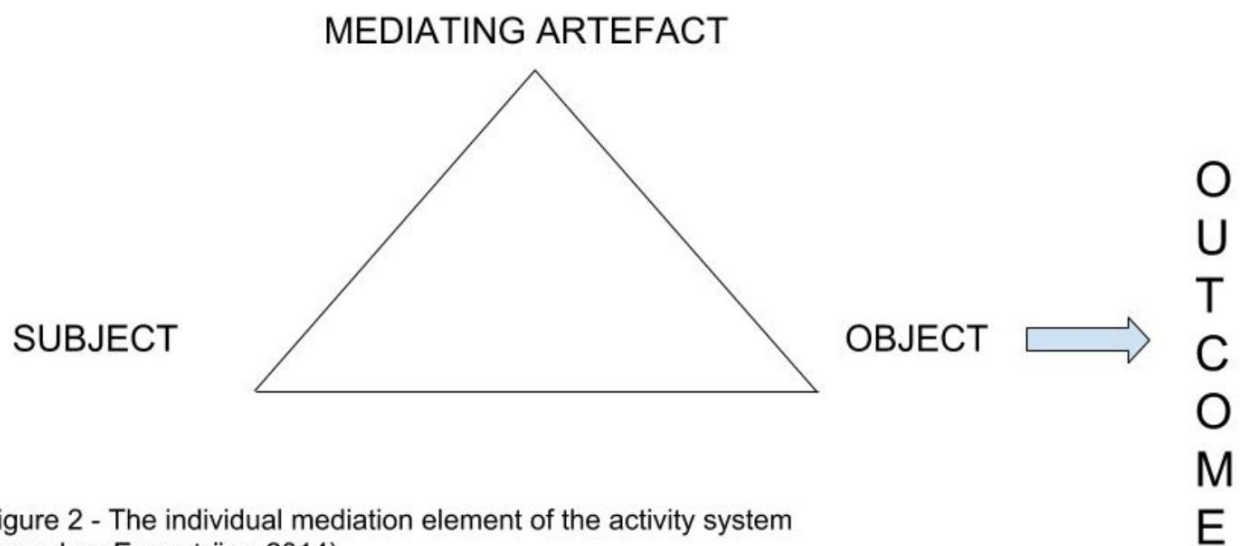


Figure 2 - The individual mediation element of the activity system (based on Engeström, 2014)

In the example from Cicero, the Greek teachers and the Greek literature on oratory have had an impact on the skills development of Roman orators. They have played a mediating role which has allowed the learners to develop beyond what could be achieved without their intervention - Vygotsky's ZPD. However, within activity theory the Greek teachers have a role within the wider activity, what Leont'ev would describe as a "double life" (Leont'ev, 2009: 411). They have objective meaning in that they are the product of the cultural, historical and social development of Roman society as it embraced Greek thinking and approaches to public speaking. They also have subjective meaning in the activity and consciousness of the individual learner but, in becoming subjective and individual, "they do not lose their socio-historical nature, their objectivity" (Leont'ev, 2009: 411). The activity that Cicero describes after the influence of Greek teaching was introduced can be plotted in an expanded activity system (Figure 3). From this it is possible to get a visual representation of how the various elements of the activity interact.

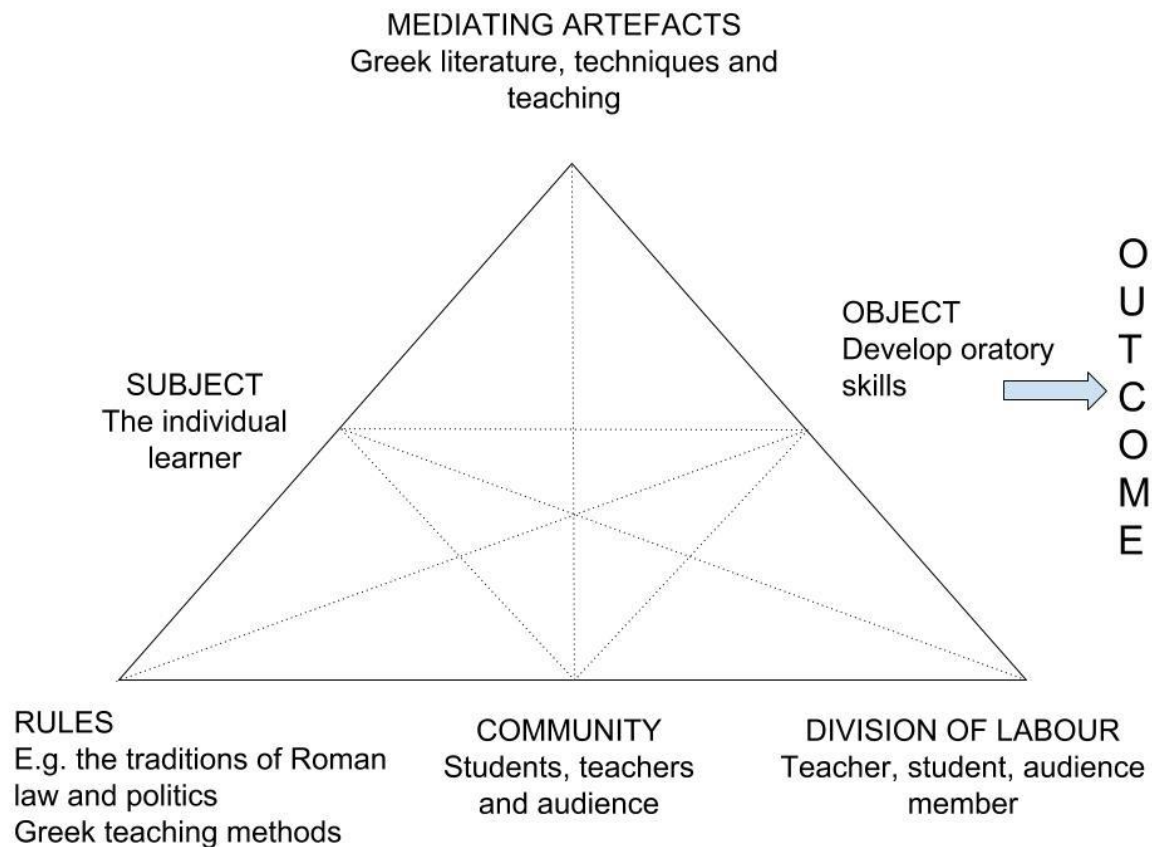


Figure 3 - Activity system “after they had heard the Greek orators, studied Greek literature, and called in the aid of Greek teachers” (based on Engeström, 2014).

When looked at from this perspective, it is possible to see that oral communication skills development is not about the individual but rather the individual learner set in context. In order to understand and support the development of skills our unit of analysis should be “the person-in-the-situation, not the person as a separate entity” (Havnes, 2004: 162). This is readily observed in our experience of everyday life. We all understand that a speech will be different at a wedding, a retirement event or a university research seminar; even when the people involved as presenter and audience may be the same. We also understand that different individuals will deliver each of these speeches in their own personal style. Each of those speeches is a product both of the individual presenter and the context. We can all cite anecdotes where a speech did not match the context. This might appear to suggest that the individual speaker is merely a slave to context. On the contrary, activity theory recognises that the individual will also operate as a force that helps shape the context itself. As Havnes observes, “the scope of our intention simultaneously goes in two directions; toward the context and toward the participants. Neither can be understood independently. This is a fundamental ideological basis in activity theory” (Havnes: 2004: 163). Viewing a learning activity as part of a unified subjective-objective reality can help to direct the investigation towards the environment in which the learner experiences that learning activity; both in

terms of the demands that the environment makes on the learner and what it affords in terms of supporting their learning (Havnes, 2004).

In order to understand the role of the teacher in oral communication skills development we need to step back from the focus on the individual and view the person-in-the-situation and design the teaching intervention accordingly. Interventions by teachers in skills development require the student to gain experience of the activity being developed. Indeed, it might be argued that misunderstandings about how this experience can be obtained lies at the heart of the debate around whether or not oral communication skills can be taught at all. It has already been shown that the legal profession has a tradition of focusing on the importance of craft-knowledge. Certainly Cicero, Vygotsky and Leont'ev well understood the importance of learning through experience. The vital role of the oral communication skills programme designer is to design a programme that offers the opportunities to gain experience of that skill. To do this successfully the programme must set the learner in the appropriate context (understand the person-in-the-situation) so that the activity offers appropriate challenges and affords appropriate support.

### **Learning from experience**

“They were encouraged by the importance, the variety, and the number of causes of every description, to supplement the learning, which they had...gained from private study, by constant practice, and found this better than the instructions of all the professors.”

(Cicero, 1892: 6–7)

Experiential learning can be defined as “the process whereby knowledge is created through the transformation of experience. Knowledge results from the combination of grasping and transforming experience” (Kolb, 1984: 41). For Kolb (Kolb, 2014; Kolb, 1984) this involves the now familiar cycle of the learner’s concrete experience of a task, followed by reflective observation which leads on to the learner’s conceptualisation of the task. The learner then puts their new conceptualisation into operation through active experimentation. This experimentation leads on to further concrete experiences which creates the ongoing cycle. This conception of experiential learning has been prominent in approaches to teaching advocacy skills at the vocational stage of legal education and early career training (Davies & Welsh, 2016). However, it has been argued that Kolb’s approach to experiential learning gives too much emphasis to individual cognition and too little emphasis to social, historical and cultural aspects of learning (Holman et al., 1997). An attempt will be made here to consider the experiential learning aspects of oral communication skills development from a social, historical and cultural perspective before considering how such activity theory informed approaches might be put into practice.



If an early career lawyer is faced with the necessity of speaking to clients, speaking in court, negotiating settlements (and observes others doing the same) they are likely to develop the relevant skills through their experiences. Training in the use of skills at the early career stage has the object of creating better outcomes in the subject's work as a lawyer. A Kolb experiential learning analysis would conclude that the training process allows the learner to develop their skills by gaining additional experience. When viewed through the lens of activity theory the learning can be seen in broader terms where the learner is not simply developing skills through an individual cognitive process of experience, reflection, conception and experimentation. Rather, they are part of a wider activity where their learning is mediated by the material and social world in which the activity is situated. When viewed in these terms it becomes possible to see that the learning process is more complex and is fundamentally social rather than individual. Learner and teacher are engaged in an activity which has the object of developing the learner's skills. However, the actions of the learner may be motivated by goals that do not match the activity as a whole but nevertheless make up a part of the wider activity (Leont'ev, 2009). Leont'ev illustrated this with the example of collaboration in the acquisition of food in a tribal society. Each individual participant "must perform actions that are not directly aimed at obtaining food. For example, one of his goals may be the making of trapping gear" (Leont'ev, 2009: 400) which may be used by others in the community to catch food. The object of the collective activity is to catch food but the action of the individual participant is to make trapping gear.

In the context of skills training in the early years of practice the actions used to help the learner to develop oral communication skills have a very clear connection to the object of making the learner a more effective lawyer. However, the learner's motives may not be as directed to the object as one might expect. For example, a new lawyer at a continuing professional development training event might well be motivated to work hard to demonstrate their competence to their peers at the training event, rather than to become a more effective practitioner. As we move back through the layers of training the goals of the learner may become more ambiguous particularly at undergraduate level where the skills are being assessed as part of the programme of study. As Havnes observes in relation to assessment "it can be questioned if the object of the education practice is learning for future professional practice or the passing of exams" (Havnes, 2004: 163). On any view, with different career ambitions within an undergraduate student cohort, the object of the activity has to be much more broadly defined. This results in two important consequences for the undergraduate skills learner. First, the actions that the teacher wishes the learner to perform must have a clear goal which that learner can readily recognise and accept. Second, the skills development must give the opportunity for the learner to build their skill and the context in which they learn needs to adapt to support that process. Leont'ev gave examples that illustrate both of these demands.

Leont'ev illustrated the importance and value of having goals that are relevant to the learner with the example of encouraging a school child to do their homework. It may only be possible to induce the child to complete the homework by saying that they will not be able to go out and play until it is finished. As Leont'ev explained:

The child begins doing its homework conscientiously because it wants to go out quickly and play. In the end this leads to much more; not simply that it will get the chance to go and play but also that it will get a good mark. A new 'objectivation' of its needs comes about, which means that they are understood at a higher level.

(Leont'ev, 2009: 366)

Applying this to undergraduate skills teaching, attention must be paid to making sure that students are set immediate goals that are relevant but also feed into the wider object of the activity.

An individual cognitive approach to experiential learning recognises that the individual is changed by the learning process. However, the learner must continue to be seen in the social context. As they develop as a learner, this will have an impact on the context itself and the activity as a whole. Leont'ev illustrates the process by which the learner internalises what they have learned through mediated action by giving the example of learning to shoot a gun (Leont'ev, 2009). Through this example one can see that context changes as the learner develops.

After the novice has learned, for example, to squeeze the trigger smoothly, he is given a new task, to fire at the target. Now the aim in his consciousness is not 'to squeeze the trigger smoothly' but another one, to 'hit the target'. Smoothness in pressing the trigger is now only one of the conditions of the action required by this goal.

(Leont'ev, 2009: 370)

Certainly it is possible to throw the early career lawyer in at the deep end and let them develop their craft knowledge through the experience of working with real clients. Just as it is possible to hand a novice a rifle and ask them to shoot at a target. In both cases this may well result in the development of competent skills. However, in both cases the learner will not have been given sufficient opportunity to incrementally build and internalise the various skills that make up the overall process.

### **Teaching oral communication skills at undergraduate level – Current Position**

Oral communication skills have been taught at the vocational stage of legal education for many years. The introduction of more flexible approaches to qualification as a lawyer such as

the Solicitors Qualifying Examination are likely to result in these skills being taught at an earlier stage of the legal education process including at undergraduate level. However, the most widely recognised models of how this teaching might be delivered are those used at the vocational stage of training and in continuing professional development courses. As discussed above, there are many different skills that make up the oral communication skills needed as a lawyer. In order to explore how a social, historical and cultural perspective might affect oral communication skills teaching, this paper will use advocacy training as an example.

The LETR reported that standards of advocacy training on the Bar Professional Training Course and “through the Inns of Court were generally very well regarded” (Webb et al., 2013: 41). Consequently, it is reasonable to conclude that these successful methods will be expanded not only into training for other branches of the legal profession (Webb et al., 2013) but also to earlier points in the legal training process. However, it is argued that if the advocacy training skills process is viewed through the lens of the activity theory framework outlined above it becomes clear that it is not appropriate to attempt to transplant vocational skills to the undergraduate stage of the learning process.

The most prominent approach to legal advocacy training in England and Wales is the Hampel Method. The Bar Standards Board requires that the “students must have been trained in accordance with the Hampel Method so that they are properly prepared when they come to the compulsory advocacy course in the first six months of their pupillage” (Bar Standards Board, 2016: 62). The Hampel Method is the method recommended by the Inns of Court College of Advocacy (ICCA) (Bar Standards Board, 2016) which states that it is a “systematic six-stage method devised by Professor George Hampel QC of the Australian Bar” (Inns of Court College of Advocacy, 2018). The six stages which are to be used by a trainer in an advocacy training session are described as follows:

Headline: Identifying one particular aspect of the performance to be addressed.

Playback: Reproducing verbatim that identified aspect of the performance.

Reason: Explaining why this issue needs to be addressed.

Remedy: Explaining how to improve this aspect of the performance.

Demonstration: Demonstrating how to apply the remedy to the specific problem.

Replay: The pupil performs again, applying the remedy.

(Inns of Court College of Advocacy, 2018)

This approach needs to be viewed in the context of professional training where an experienced practitioner is helping a new practitioner to use the correct technique, perhaps

in a single limited session. The learner performs, the practitioner demonstrates what the learner needs to correct and then explains the issue and demonstrates appropriate technique. The learner then has an opportunity to repeat the performance. Although many of the trainers involved in this activity may be experienced educators, the technique does not require teaching experience. Instead it offers the learner the opportunity to get direct access to the knowledge and experience of senior colleagues. In activity theory terms the training session can perhaps be viewed as a limited action in the wider activity of the learner developing their lawyer skills. In the training session the goal is to hone a limited technique mediated by the skill and knowledge of an experienced practitioner.

The Bar Standards Board requires that the Hampel Method be used as part of the Bar Professional Training Course (Bar Standards Board, 2016). Concerns have been expressed about how well a training technique designed for short encounters between a senior practitioner and a junior practitioner translate into a longer vocational course of study (Davies & Welsh, 2016). Davies and Welsh (2016) argue that what they describe as the behaviourist model of the Hampel Method should be replaced, at least in the context of the vocational stage of training, with a more constructivist approach which allows more constructive dialogue between tutor and student and offers a more reflective approach to their skills development (Davies & Welsh, 2016). For Davies and Welsh (2016) this would offer a learning experience more in line with Kolb's experiential learning cycle. To a limited extent the Bar Standards Board recognises that the needs of the vocational stage of study may well require an adjusted version of the Hampel Method to fit with week-by-week teaching and to permit wider feedback and praise (Bar Standards Board, 2016). It is questionable whether these adjustments to a professional training process give sufficient weight to relevant learning theory. If Hampel Method techniques are applied to the context of an undergraduate law programme, it can readily be seen that these concerns are amplified. In Figure 4 the application of the Hampel Method to an undergraduate law cohort has been plotted on an expanded activity framework. From the suggested example in Figure 4 a number issues become apparent. It is questionable whether there is a clear object to the activity. In particular, it is unclear whether the Hampel Method is suitable for teaching advocacy to undergraduate law students with no existing advocacy knowledge. Further, there is a tension between a technique designed to hone the skills of junior practising advocates and the actual knowledge, experience and judgement that can reasonably be expected of undergraduate law students.

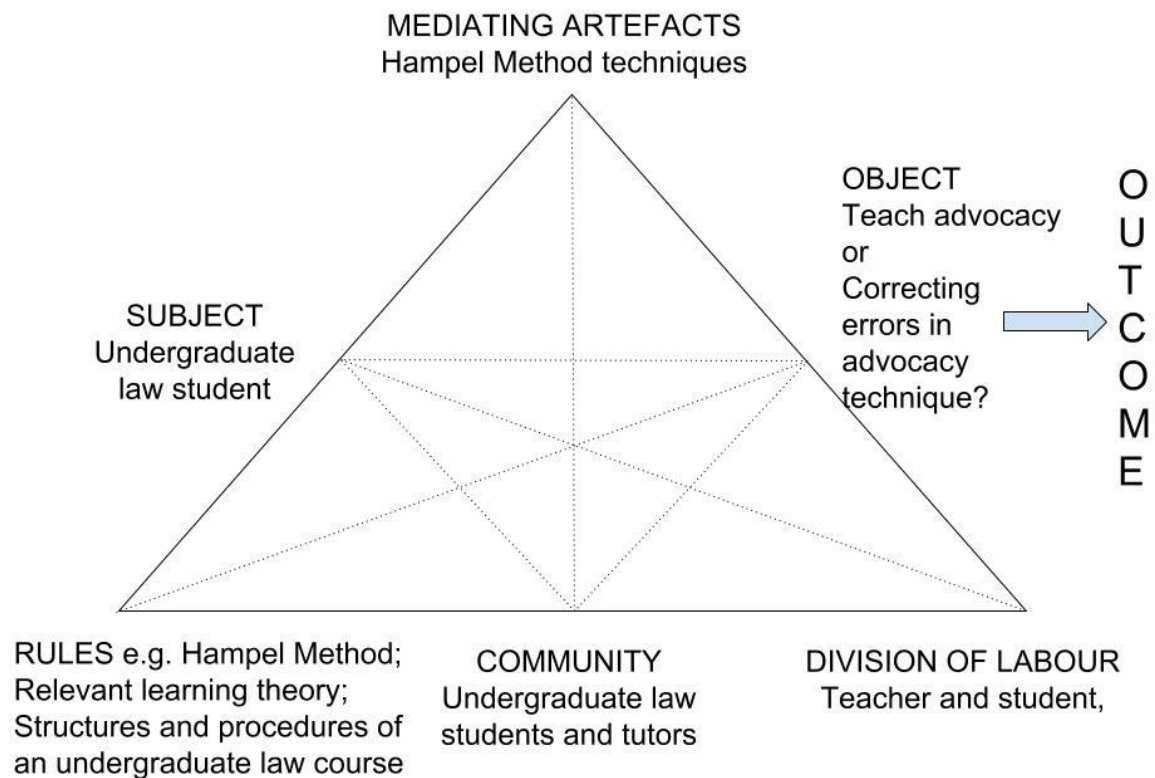


Figure 4 - Activity system showing the Hampel Method in an undergraduate context (based on Engeström 2014)

The role of any intervention at the undergraduate and vocational stage of legal education should not be to try to adapt the Hampel Method but rather to equip students with the necessary knowledge, experience and judgement so that they are ready for the next stage of their career - whether that be further legal education or another career route. With legal skills development at the undergraduate stage, the key element here is judgement or more specifically evaluative judgement (Tai et al, 2017). Evaluative judgement can be defined as “the capability to make decisions about the quality of work of self and others” (Tai et al, 2017: 5). For the undergraduate new both to law and legal oral communication this involves gaining an understanding of ‘quality’ in a legal context before they can start to make decisions about their work or the work of others. In terms of evaluative judgement, the junior practitioner being trained using the Hampel Method is in a very different place to the undergraduate law student. For the junior practitioner, like Leont’ev’s marksman who has learned to squeeze the trigger smoothly, this decision making process becomes unconscious as they gain “significant experience and expertise in making evaluative judgements in a specific area” (Tai et al, 2017: 6). For the undergraduate, understanding the many facets of what constitutes an effective oral performance in a legal context and how they might deliver such a performance themselves presents a significant challenge. Indeed, the many ingredients that make up a good quality advocacy performance may be difficult to articulate in a meaningful way to new

students as “standards of quality are contextually bound within disciplinary notions of knowledge and professional practice” (Ajjawi et al, 2018: 9). Interventions need to offer the opportunity for students to develop their ability to make evaluative judgements “as a way of *being* that is contextual, social and cultural” (Ajjawi et al, 2018: 9).

### **Teaching oral communication skills at undergraduate level – One Potential Model**

Oral communication and advocacy skills training at the undergraduate stage of legal education should be aimed at equipping students with an understanding of notions of quality in a legal context to enable them to develop their ability to make evaluative judgements in relation to their own work and the work of others. There is, of course, a range of interventions which could be developed from this starting point. What is suggested here is one such approach which can be supported by the wider literature on oral communication skills and learning theory.

It has already been seen that Davies and Welsh (2016) have called for more constructivist approaches and a closer link to Kolb’s experiential learning cycle to help students to manage their own development. Such constructivist approaches link with wider themes of self-regulation and reflection in the use of feedback and formative assessment in the higher education literature (e.g. Nicol & Macfarlane-Dick, 2006). However, it is submitted that while developing students’ independent learning skills through constructivist approaches is important, there also needs to be recognition of the social and cultural context in which these legal skills are situated. Within studies of oral communication skills away from law, themes such as self-efficacy, reflection and self-regulation are prominent. For example, social cognitive theorists argue that people develop complex behaviours such as presentation skills through the observation and performance of modelled patterns of behaviour, ultimately reaching a point where they can self-regulate their performance (Bandura, 2005; De Grez et al., 2012; De Grez et al., 2009). The observations in question can include self-observation (Bandura, 1991). Directly or indirectly many of the above ideas already inform oral communication teaching strategies which often focus on observation, performance and reflection designed to develop students as independent and self-regulating public speakers. However, existing “teaching strategies can be refined to explicitly promote learners’ evaluative judgements and shared understandings of standards” (Ajjawi et al, 2018: 15). In activity theory terms, the object of the activity should be the development of evaluative judgement skills which allow students to make decisions about the quality of their own performances and the performances of others. Making development of evaluative judgement skills the object of the activity will promote the development of oral communication skills as a wider outcome. In this way students will graduate equipped with skills that are valuable both to further legal education and other career routes.

Figure 5 offers an activity system where familiar teaching approaches have been refined to promote the development of evaluative judgement in a legal context. Within this framework

students are required to perform, engage in peer-review and reflect on both their own performances and the performances of others. Disciplinary notions of knowledge and quality can be explored through use of wider exemplars (e.g. videos of advocates and court visits) and tutor feedback and developed through the ongoing performance and review process within the activity. The ephemeral nature of classroom performances can be countered by use of video recording (Barker & Sparrow, 2016) to allow more nuanced reflection and review.

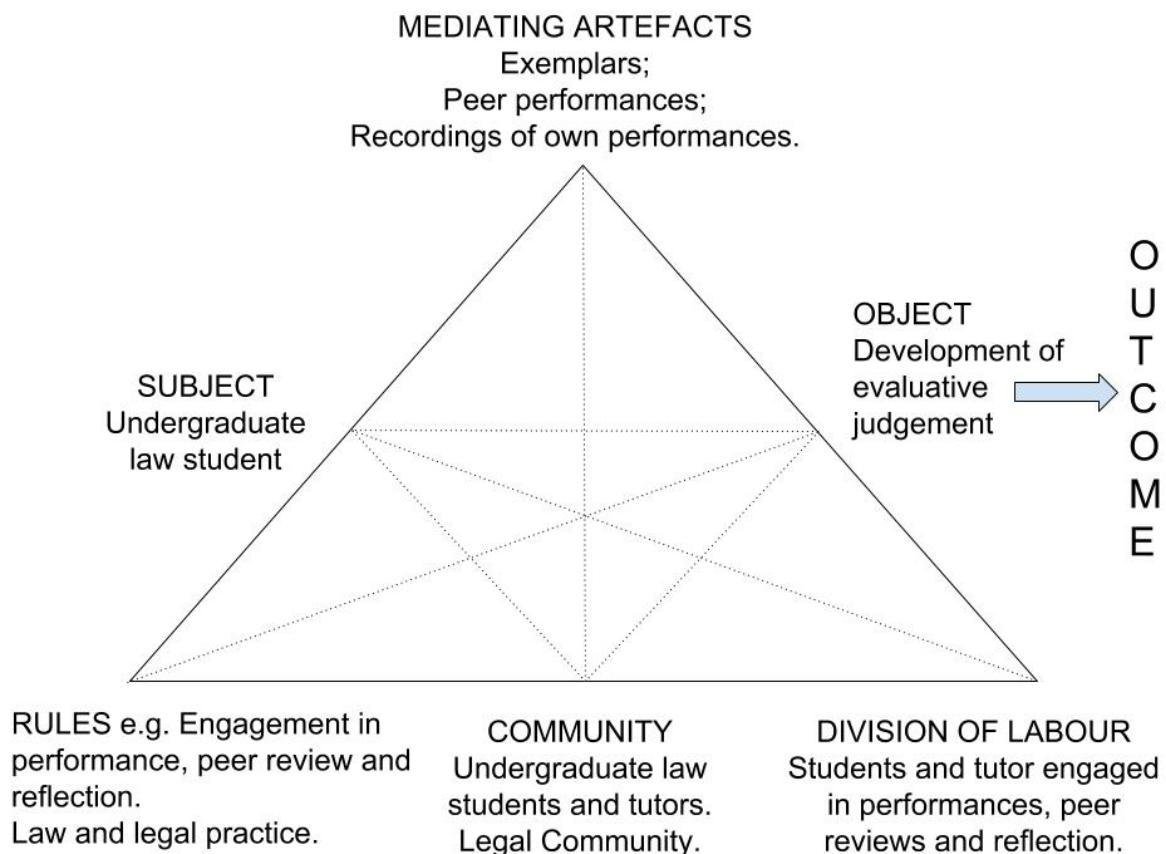


Figure 5 - Activity system showing oral presentation skills activity designed to develop evaluative judgement (based on Engeström 2014).

## Conclusion

It has been argued that oral presentation skills teaching should be “viewed as social practice situated in a specific historical and socio-cultural context” (Havnes, 2004: 162). While this analysis is based on the work of Vygotsky and Leont’ev in the twentieth century, it is possible to discern the social context of oral communication skills development being expressed in the writing of Cicero. However, the temptation to view oral communication skills as individual and innate rather than as collective and capable of being learned has created challenges for successful teaching interventions particularly at the novice stage.

Using activity theory as a lens to help evaluate, design and re-evaluate our undergraduate oral communication skills teaching practices does not mean that any particular activity theory based teaching interventions need to be put in place. Designers of undergraduate programmes who wish to teach oral communication skills can use a range of approaches based on any learning theories appropriate to the undergraduate context. Activity theory helps to conceptualise and analyse oral skills development and design ways to support the learning of those skills.

Undergraduate teaching of oral communication skills need not be just an early introduction to skills that will be developed in earnest at a later stage of legal training. On the contrary such teaching should be aimed at equipping students with an understanding of what constitutes good quality in legal oral communications and the skills to make evaluative judgements of both their own performances and the performances of others. Through this process law graduates will be prepared for the next stage of their career, whether that be vocational legal training or a role outside of legal practice.

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## **IMPERATIVES FOR RE-POSITIONING AND SUSTAINABILITY OF NIGERIAN UNIVERSITIES LAW FACULTIES**

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Law (Oleh Campus), Nigeria**

### **ABSTRACT**

Imperatives calls for the provision of requisites for Nigerian Universities Law Faculties (NULF). Repositioning connotes that Universities are unable to meet some of its core goals since its establishment by government. Sustainability calls for the existence and continued existence of the core goals of Universities. These imperatives are the formation of Faculty Based Association (FBA), active role of Nigerian Bar Association (NBA) among others. This will lead to the provision of funds and creation of endowment specifically to meet some of the needs of NULF since government can no longer provide adequate funds for the running of Universities. The article canvassed that the imperatives for the repositioning and sustainability of NULF is hinged on the active support and mutual partnership between FBA, NALT, NBA, CBA etc and NULF. This will translate to transformative changes in making NULF great centres of pedagogy for imparting of necessary skills on students for the advancement of legal education and society.

**KEY WORDS:** Imperatives, Re-Positioning, Sustainability, Nigerian Universities Law Faculties (NULF), Faculty Based Associations (FBA), Nigerian Association of Law Teachers (NALT), Nigerian Bar Association (NBA), Community Based Associations (CBA).

### **INTRODUCTION**

The mandate of the National Universities Commission (NUC) include among others to give approval for the commencement of faculties in Nigerian Universities including law faculties. The NUC is also saddled with the responsibility of setting benchmark minimum academic standards. The NUC philosophy and objectives of the discipline are that: The Law programme is designed to ensure that the graduate of Law will have good general knowledge of Law including a clear understanding of the place and importance of law in society. All human activities social, economic, political, etc., take place within legal framework. It is therefore necessary that the student of law should also have a broad general knowledge and exposure to other disciplines in the process of acquiring legal education. The programme should introduce students to the general knowledge in law, acquaint them with principles of judicial process and legal development, and equip them with the basic tools of legal analysis and methods.

Universities based on statutory law establishing them after accreditation by NUC can award certificates to fit and proper law students who must have undergone a four year

course (Direct entry)<sup>1</sup> and a five year course (UMTE)<sup>2</sup>. The degree awarded is the Bachelors of Law Degree (LL.B).

The Council of Legal Education (CLE) on the other hand has the responsibility for the legal education of persons seeking to become members of the legal profession after graduating from recognized a NULF. In consequence of this, the CLE is empowered to issue a qualifying certificate to a person which when issued signifies the successful completion of a course of practical training in the Nigerian Law School and is eligible for call to the Nigerian Bar.

It should be noted that the accreditation of a law degree programme by the NUC does not automatically translate into its accreditation or recognition by the CLE. This probably explains why there is a clamour for the amendment of the Council of Legal Education Act, so as to give the CLE some measure of control over academic programmes (Law) in Nigerian universities. As it is, there is no legal obligation on the part of the NUC to consult the CLE in approving the establishment of any NULF. Although such NULF when established must also satisfy the CLE's minimum requirement in terms of curriculum and facilities before it is accredited.

Thus, while the NUC has the power to approve establishment of new faculties and accreditation of existing ones based on its parameters, the CLE equally has the power to deny accreditation of the same programme approved by the NUC based on its own parameters too.

NULF are established and accredited by the NUC and CLE to produce lawyers who would see and use the study of law as a catalyst for social engineering for the positive advancement of society for the general good and well-being of man<sup>3</sup> in all ramifications.

The efforts of the NULF in surmounting and discharging these responsibilities placed on them has been commendable. However, a lot still has to be done in the area of adequate funding amongst others in solving myriads of challenges still prevalent in NULF. The purpose is to attain a state of equilibrium in NULF necessary for teaching, learning in this modern age for the attainment of set goals needed for the transformation of NULF through the formation of FBA, the active roles of NBA, NALT, CBA, Consultancy units and conference marking, use of teaching for promotion and others.

## CHALLENGES IN NULF

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<sup>1</sup> Holders of first degree from the University or holders of Higher National Degree (HND) or Ordinary National Diploma (OND) Degree or holders of other higher degree admitted to study law.

<sup>2</sup> Unified Tertiary Matriculation Examinations (UTME). Those who possess secondary school results obtained from

WAEC, NECO or awaiting results of examinations that they have taken, usually sit for and write this examination (UTME.)

<sup>3</sup> It is used in a broad sense to cover mankind.

The 1999 Constitution of the Federal Republic of Nigeria (as amended) under its **objectives and directive principles of state policy**) highlighted the citizens' aspirations for access to educational opportunities and in addition access to a free **university education** (*tertiary education*) when it reiterated the educational objectives of the Nigerian State as presented below .

*Section 18(1) (c) provides that the Government shall direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels and provision of free university education.*

For all intents and purposes, the constitutional provisions despite its **non-justiciable clauses** are political statement of great national importance. It is an ideological commitment and a **social contract** designed to guide public policies towards promoting and enhancing citizens' access to public education for the pursuit of common good and good life.

A review of the Nigerian situation as it relates on the part of government however indicated that the government has failed from sustaining its constitutional roles in the poor funding of the education sector. Providing free education at the University level has been unattainable.

The major and persisting problem among others facing Nigerian Universities with a corresponding effect on NULF is inadequate funding by government to provide financial resources to meet basic needs of providing modern learning and teaching equipment. With the present gross underfunding of Universities, it is futile to expect most law Faculties to meet the approved minimum standards with respect to physical and library facilities especially. With many law teachers moving out of Law faculties after a few years' service because of inadequate remuneration and poor conditions of service, it is impossible for most law faculties to comply with the prescribed staff/student ratio of 1:20 if they are minded to recruit the right calibre of staff (Okonkwo,1985).

Inadequate facilities include, 'poor funding, lack of basic infrastructure, poor power supply, lack of standard lecture halls, lack of information technology equipment and poorly equipped libraries'(Omaka,2012).

Public Universities since their establishment have been fully been funded by the government. This is so because government wants public universities to be accessible by the citizenry at very low costs. This is compounded by the fact that most Nigerians think that it is the sole responsibility of government to fund university education. Government at the federal and state levels in bowing to the wishes and yearnings of the citizenry establish most often Universities that they are unable to fund adequately leaving such Universities in pitiable and deplorable conditions.

The fact that education costs money can hardly be denied. Quality education requires quality infrastructure, excellent and well-remunerated teachers, adequate curriculum development and planning amongst others. Most Nigerians demand the best quality education, even though they are also aware that quality education is most expensive (Babalola, 2014).

In a bid to solve this problem of inadequate funding, the government established the Tertiary Education Trust Fund (TETFund), an intervention agency under the Tertiary Education Trust Fund (Establishment) Act, 2011. It is charged with the responsibility for managing, disbursing and monitoring the education tax to public tertiary institutions in Nigeria. To enable the TETFund to achieve the above objectives, the TETFund Act, 2011 imposes a 2 percent (2%) Education Tax on the assessable profit of all registered companies in Nigeria. The Federal Inland Revenue Service (FIRS) is empowered by the Act to assess and collect Education Tax. The mandate of the TETFund as provided in Section 7(1)(a) to (e) of the TETFund Act, 2011 is to administer and disburse the amount in the fund to federal and state tertiary educational institutions, specifically for the provision and maintenance of the following: essential physical infrastructure for teaching and learning, instructional material and equipment, research and publication, academic staff training and development, any other need which, in the opinion of the Board of Trustees is critical and essential for the improvement of quality and maintenance of standards in the higher educational institutions, stimulating, supporting and enhancing improvement activities in educational foundation areas like teacher education, teaching practice, library development.

Although, the Nigerian government has tried its best within limited resources in the funding of the educator sector. Much is still left to be done in re-positioning and sustaining the requisites for sound legal education in all ramifications i.e. provision of physical infrastructures and availability of the needed manpower in terms of adequate staffing to achieving the desired results.

Therefore, there is the need to look for alternative funding other than the government. This may be achieved by means of establishing and re-awakening the FBA, NBA, NALT etc to become sensitive to their roles through deliberate actions taken by NULF by liaising with these bodies. It is expected that this synergy will produce tangible results by lifting academic standards in NULF.

## **CHARTING THE WAY OUT: THE IMPERATIVES**

### **a. Formation of Faculty Based Association**

One of the things that must be in place is the formation of FBA. A novel idea postulated by the author of this article. This should comprise of graduate students of the NULF who are committed to share common identities as graduates of same faculty and who upon the completion of their studies or graduation come together to join or form themselves an organization geared towards uplifting the name of the faculty by promoting high quality

teaching and scholarship. This can be actualized. Its formation will assist greatly in fostering more bond of fraternity amongst graduates of NULF. It will further provide necessary funds needed in achieving the set goals of NULF. Although, the FBA seems similar to Alumni Associations of Universities but the FBA will be specific in nature and its spheres of operations limited only to NULF through the provision of basic tools needed for excellent learning. Alumni Associations on their part perform vast functions in the general University community.

**The FBA can play the roles of** Alumni Associations which have intervened by putting funds and efforts into developing infrastructure, maintenance, and supply of basic equipment so that institutional environment can be more conducive for learning.

Many Alumni because of the dedication and gratitude they have for their institutions, they are often generous with fundraising efforts. These financial donations provide life-changing scholarships and bursaries to talented students who may otherwise have to give up their studies. They are also enable universities to provide students with advanced facilities and equipment for teaching and pioneering research (Cannon, 2015). The FBA have critical roles to play to ensuring that NULF are better placed to seek and impact transformative knowledge since inadequate funding is a major problem facing NULF and the University system.

Consequently, funds realized from FBA can be used to provide functional e-Library and the attendant benefits of this are enormous and are discussed hereunder.

### **Functional e-Library**

The establishment of libraries in the Nigerian Universities system began in 1948 with the coming into existence of University of Ibadan, Nigerian premier University.

As pointed out, since independence in 1960, there has been an unrelenting upsurge in the establishment of educational institutions at all levels, especially University education (Aguolu 1996,261).

Presently, most e-libraries in NULF are not functioning based mainly on re-subscription after expiration of such subscription on data base. This is because subscribing to such data bases cost much coupled with the meagre budget provision to the sector as result of economic downturn in the Nigerian economy. Most often data bases subscription such as Lexis Nexis online, law companion per year cost millions of naira installed primarily for the purposes of NUC and CLE accreditation. Immediately, after the accreditation, such e-library stop functioning as a result of non-subscription status or as a result of major or minor fault occasioned by the facility which may not be attended to until the commencement of another round of accreditation possibly two years later in the case of interim accreditation and five years later in the case of full accreditation. Paucity of funds usually mar such institutions not to renew such subscription after expiration. This is the pathetic condition faced by NULF.



On its part ,the Nigerian government through the NUC initiated various programmes designed to lunch selected Universities such as University of Jos, Ahmadu Bello University of Calabar, University of Nigeria, Federal University, Yola, Obafemi Awolowo University as a start-up into information global world.

Among the projects include automation of University libraries using Management Information Systems (MIS) and Nigerian Universities Network (NUNET) (Nok, 2006). NUNET was aimed at developing a viable local and wide area network in each institution.

However, despite the aforementioned effort, it was observed that the NUC Virtual Library project initiated in early 2002, and the UNESCO Virtual Library Pilot Project initiated in 2003 were some of the various initiatives by the Nigerian Ministry of Education regarding Virtual (electronic) libraries for higher institutions in Nigeria, but yet none of the efforts had yielded any functional virtual (electronic) library at that time (Gbaje, 2007,42).

This laudable project may possibly have failed after take-off due to unavailability of provision of funds. Suffice to add that Schiller was one of the first writers to use the expression “virtual library” which she defined in 1992, simply as “libraries in which computer and telecommunications technologies make access to a wide range of information resources possible” (Daniel, 2000, 56). Today this same concept is referred to variously as 'digital library', 'electronic library', 'community network', or simply as 'library without walls'. It is an experience of 'virtual reality' (Ogunsola, 2015). Therefore, the imperative need for the provision of e-library is vital as University libraries are the “heart and heartbeat” of their Universities.

The reality of the above will culminate in teachers in the developing world in NULF changing their teaching styles and acquire internet skills as new technologies transform classrooms (Ojedokun and Owolabi 2003, 43). Further, it will lead to teachers learning new skills to teach students on how to search for and use information from the internet. Internet’s seemingly infinite information offers access to up-to-date research reports and global knowledge (Nwokedi, 2007, 13).

Therefore, mini or micro- computers ,the internet and the use of communication tools such as e-mail, fax, computer, and video conferencing will overcome barriers of space and time and opens new possibilities for learning. All these will now become invaluable tools for learning, teaching and research (including collaborative research) in NULF. Bearing in mind that Universities are institutions for knowledge generation and its transfer to society have been central to development, contributing ideas, skills, technology and expertise in many spheres of human endeavour (Jega 2007, 25).

Another innovation that needs to be use is education videos during lectures. This will transform the engagement levels of students and create a greatly enhanced learning experience. Through the use of video during lectures, students will be more alert, motivated

and focused. There are recognised connections between visual content, memory knowledge and students' ability to retain new information. The growing use of videos during lectures is a key aspect of successful active learning (Educational publishers, 2010).

### **ACTIVE ROLE OF THE NIGERIAN BAR ASSOCIATION (NBA)**

Suffice to state pointedly that another important thing that must be done is that NULF has to liaise with the NBA actively to seeing that such collaboration will lead to it attaining its set goals.

The Nigerian Bar Association (NBA) is a professional, non-profit, umbrella association which is comprised of all lawyers called to the Nigerian Bar. Its mission is to use the law as an instrument for social change in Nigeria. Its institutional core objectives is to promote and advance quality and functional legal education, continuing legal education, advocacy and progressive jurisprudence and create and maintain an endowment fund for the proper observance and discharge of any of these aims

The NBA can create such endowment through solicitations from wealthy individuals and corporate bodies. The endowment should be specifically use to solving some salient needs of NULF. This is in fulfilling NBA's mission and core objectives.

Furthermore, Nigerian Association of Law Teachers (NALT), a professional body which represents the interests of law teachers has amongst its objectives an obligation to promote excellence in research and legal teaching in Nigeria. NALT can also create an endowment. History tells us that the early Universities such as Harvard<sup>4</sup>, Yale and Oxford were funded and still being funded by scholars and wealthy people or groups of people and generally by people who are interested in learning.

The endowment from NBA and NALT can specifically be used in handling the following undermentioned activities crucial to the existence and survival of NULF.

### **Conference Attendance**

Papers delivered in conferences should be in theory and practice. The theory aspect must align and compliment practice. This will be more benefiting to NULF.

Attendance at conferences is encouraged as the gains are enormous. A teacher becomes more susceptible to the reception of new ideas in his profession. He comes across older colleagues and learn greatly by tapping into their wealth of experience in their chosen field .New relationship are formed leading to the exchange of information which maybe vital at

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<sup>4</sup> Harvard University endowment at 2015 was put at \$37.6 Billion. The largest academic endowment in the world and managed by Havard Management Company Inc, a Harvard-owned investment management company.

a certain stage in one's career. It is a personal investment in one's career as knowledge learnt will be shared with law students in NULF in the course of teaching.

### **Overseas Exchange Programmes**

Student exchange study programmes may be embarked upon for shorter duration for weeks or sometimes for a period of one year. Exchange programs involve students swapping their places at their NULF with other students from a partner institution. It may be offered as a core or an elective part of their course. Exchange enables students to add to the knowledge that they have learnt by trying new learning techniques in a different learning environment.

In same vein, NULF can become places of excellent teaching and learning through funds generated from the establishment of consultancy units. These units can handle legal briefs, conveyancing and drafting jobs and others. The funds realized can be channelled to satisfying urgent and necessary needs of NULF.

NULF can also enjoy greater benefits through Community Based Associations (CBA) situate within the location where these NULF are sited. They can also play major roles. Funds provided by these CBA can also be deployed into vital areas needs of NULF for the full realization of its set objectives. A good instance of this is the countless laudable assistance by a CBA<sup>5</sup> to Delsu Law Faculty.

### **PERFORMANCE APPRAISAL FOR PROMOTION**

The *status quo* must change in NULF that is the non-use of grading points for teaching for promotion purposes. The evaluation criteria used in evaluating lecturers in Nigerian tertiary institutions, today have failed to enhance the quality of performance and credibility of graduates of tertiary institutions because such evaluation methods tend to give low priority to teaching (Igbojekwe 2015,627).

The quality of teaching in Nigeria is apparently poor, and this is attributed to the fact that teaching performance and other in-class behaviours are never recognized criteria when considering University teachers for promotion or reward (Oranu 1983,106).

However, assessment of productivity in Nigerian Universities is based mainly on research and publications rather than teaching competence alone, and consequently advancement in the job depends mainly on the individual's research output (Owuamanam and Owuamanam 2008, 27). Both scholars assert that the most attractive reward perceived by the staff is still promotion and that promotion will improve the staff objective and performance (Salmuni, Mustaffa and Kamis 2007, 1281).

Students in developing countries participate in teaching evaluation. Students are the

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<sup>5</sup> Isoko Development Union (IDU), a CBA operating within the locality the Law Faculty is located at Oleh in Isoko

South Local Government Area of Delta State, Nigeria. They have provided funds at different occasions running into millions and they are still willing to provide more.

consumers of teaching (services) and thus, are in a better position to evaluate teaching excellence (Oranu 1983, 106).

It is submitted that it is illogical that teaching which, is the primary assignment of teachers in NULF is never used for consideration in time of promotion for teachers. This is ludicrous and unfathomable in NULF. Suffice to also add that evaluation of teachers carried out by students as part of quality control in NULF in Nigerian Universities is also never used as a promotion criteria for the promotion of teachers. We think both should form an integral part for promoting teachers in NULF thereby negating the ancient axiom of “publish or perish” used in academic circle in NULF.

### **CONFERENCE MARKING**

The present mode of marking of examination scripts i.e. the law lecturer who teaches a particular course also marks scripts for that course in NULF should be jettisoned and conference marking of scripts should be adopted in NULF.

Few cases of malpractice in administration of examinations occur in NULF. Cases of patronage either by way of extortion, seduction and social deviance also abound lecturers and students. There also exist cases of sexual abuse. Lecturers secretly demanding sex from female students in order to award them good marks usually referred to as ‘sex for marks’<sup>6</sup>. There are also instances where it is the female student that make such amorous moves by seducing lecturers in order to obtain good grades. This is done by such female students as a way of escaping the rigours of attending classes, studying, writing and passing examinations.

Many of such cases are largely unreported as a result of fear of reprisal by lecturers. Even where reported, the culprits are treated with kid gloves and go unpunished in some cases. A lecturer against whom a student compiles compelling evidence may in some cases earn the sympathy of his colleagues and go unpunished. However, the reverse is the case in some instances where the big stick is wielded on such lecturers. Victims may sometimes succumb to the wishes of the lecturer than reporting him to the authorities, sometimes as a result of threats from the lecturer. In some cases, lecturers may even team up to deal with such student for having the audacity to disparage their colleague.

This erodes confidence in the NULF, and leads to mediocrity thereby undermining the core values for which Universities are established.

The scenarios depicted above is as a result of the practice employed in NULF in the marking of examination scripts. Such scripts are taken to the office or home by the lecturer/Examiner of the course after the end of such examination. Thereafter, he marks, enters the scores and grades of the students who have taken the examination. He submits the scripts and scores to his Head of Department. This must be done within or by fourteen

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<sup>6</sup> A Professor was dismissed from the Obafemi Awolowo University, Ile-Ife in June 2018 over the issue of ‘sex for marks’.

days after the last paper was written in the faculty examinations. Noticeable in this style of script marking is that the lecturer may be greatly influenced or tempted to award undeserved marks to a particular student. He knows the script of a student he is marking per time by checking through the examination attendance sheet containing the names of all the students who took the examination. This style of script marking breeds nepotism and mediocrity in the NULF and does not augur well for proper learning and dissemination of knowledge. It kills reading culture and hard work among students as grades are sometimes awarded based arbitrarily on tainted considerations and yardstick.

There is the need therefore to introduce “conference marking”<sup>7</sup> of examination scripts in NULF. This is a system where the scripts are subjected to marking in a hall or an office by a group of lecturer based on the prepared marking scheme by the course examiner. The scripts are usually kept in the HOD’s office after the examinations have been written. We call this style of marking of scripts, “impersonal style of marking or anonymous style of marking”. It is so-called because the teacher does not know the person’s script he is marking per time. Fairness will be highly exhibited in the marking of such scripts. This style of marking should be adopted by NULF to raise academic standards.

#### **ADEQUATE AND UNINTERRUPTED POWER SUPPLY**

Interrupted power supply is a national problem that has been a source of embarrassment to the government and the citizenry.

Dominant energy source in the Nigeria’s electric power industry is from gas-thermal power plants and the remainder in hydropower plants. This unfortunate condition of Nigeria’s very old, non-efficient electric power grid is that there are frequent blackouts without any 4 warning, including power being lost due to the grid maintainability problems. Issues that have led to Nigeria’s power shortage, which is arguably one of the largest in the world, include significant power infrastructure deficits, overuse and poor maintenance of existing electricity assets, inadequate management capabilities and dearth of technical skills (Duke, 2015).

Constant electric power supply should be prioritized in NULF premises to promote effective teaching and learning. Interrupted power supply greatly affects the electronic library as the web servers that host locally digitized contents and proxy server that provide authentication and remote access to subscribed electronic resources need to be connected constantly to power supply.

Offices and classrooms are usually hot in most months of the year. Fans and air conditioners are unable to function because of interrupted power supply. Where big generators are installed to service such NULFS buildings, it is put off after few hours because of the high cost of diesel needed to power it. The reason being that resources are meagre to service all the needs of NULFS. Meaningful academic work and research cannot be done in such harsh condition.

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<sup>7</sup> This is the practice that has been in use in the Nigerian Law School.

**COMMITTED LECTURERS**

Poor attitude to work by lecturers is equally devastating to students. Some lecturers are underperforming both in the classrooms and at the management level (Anele, 2013).

In the classrooms, some lecturers do not know the course very well and do not prepare for their lectures. They spend most of their time in private law practice or business and come to the University once a week regardless of the Time-table. Some law lecturers hardly read students answer scripts let alone assignments due to indolence, over bloated number of students and unrealistic deadlines by university authorities for submission of results (Madubuike-Ekwe, 2017). Oftentimes marks are awarded arbitrarily with scant regard for actual knowledge displayed by the student. This explains why some students with second class upper degrees cannot write an ordinary letter of employment without committing grammatical blunders (Anele, 2013).

At the management level, some Senior Academics and Professors in management positions of Universities i.e. Head of departments, Deans and Vice Chancellors mismanage the little funds allocated to their faculty instead of using it to improve education. A few years ago, a Dean of a law faculty was given money to equip the faculty for an accreditation visit; he ordered textbooks but could not pay the bookseller. Upon investigation, the University authorities discovered that the Dean had embezzled the money: He used the money to take the most expensive chieftaincy title in his village and bought five Sports Utility Vehicles (SUV) for himself and family. As a result, the Law faculty failed the accreditation (Ogundele, 2013).

Some Senior Lecturers and Professors connive with the National Universities Commission (NUC) to license new universities and accredit Law programmes without careful planning and thorough consideration of the faculty and facilities required for qualitative university education (Anele, 2013). Approving half-baked Universities and faculties just because of the explosion in the number of candidates seeking University admission is a waste of time, money and human resources. Yet, NUC continues to approve such Universities and programmes with the active support of senior academics and Professors who do not care as long as their financial interest is protected. Lecturers ethicize key positions in the University such as Head of departments, Deans and Vice-Chancellors. Some lecturers insist that the occupier of these positions should come from the ethnic group in which the University is located. In recruitment and promotion, several Head of departments, Deans and Provosts sacrifice merit on the altar of ethnicity. Some lecturers give preferential treatment to students from their ethnic group while grading exams scripts, tests and take home assignments. This explains why some Universities do not hire their first class or second class upper graduates, as lecturers, because they know how the graduates got that class of degree (Anele, 2013). All these impact negatively on our university graduates.

Contrariwise, the remuneration package of NULF teachers should be enhanced greatly. Gone are the days when the popular axiom that teachers reward is in heaven no longer holds. Teachers rewards should be on earth and when they get to heaven, they receive heaven's reward too.

## CONCLUSION

The imperatives pertaining to the repositioning and sustainability of NULF have been listed and examined in this article. The formation of FBA, active roles of NBA, NALT, CBA to become active partners with NULF through the provision of funds and creation of endowment by them for use by the ultimate beneficiary NULF.

However, other imperatives pertaining to the repositioning and sustainability of NULF such as conference marking, performance appraisal for promotion etcetera are not necessarily tied to provision of funds should be fully embraced and put into practice.

The overall aim of all the imperatives is to reposition and make NULF sustainable in attaining and delivering its set goals in this 21<sup>st</sup> century and beyond. The ultimate beneficiaries being NULF that is the teachers, students, legal education and society in general.

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**A MODEL FOR RESPONDING TO UK AND INTERNATIONAL LAW  
STUDENTS' GREAT(ER) EXPECTATIONS IN WALES'  
INTERNATIONALISED LEARNING ENVIRONMENT**

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**ABSTRACT**

Whilst previous studies have sought to understand UK Law student expectations, to date, none have explored such within the context of an internationalised legal education environment; nor how international student expectations compare to UK native learners.<sup>8</sup> This study, which collates findings as to student expectations from 2013-2017, as well as how these changed throughout the year, finds that the majority of UK students focused on their career aspirations and employability. Meanwhile the expectations held by most international students focused on their desire to develop academic knowledge from other jurisdictions, and in some cases to improve language skills. The challenge facing facilitators was how to promote internationalisation, whilst reflecting more of what students' expected, within the remit of learning outcomes. This investigation demonstrates that, owing to current threats to the internationalised legal education system in Wales, there is a pressing need to appreciate and respond to the expectation-reality gap for all learners, via appropriate teaching and extra-curricular interventions. This article proposes a model that draws upon pedagogical theory and new empirical data to fully promote internationalisation and facilitate deeper, effective learning experiences for the benefit of all students. The results of which are transferrable to other Law Schools throughout the Commonwealth which have an international mix of learners.

**INTRODUCTION**

This action-based project advances existing research into the expectation-reality gap within UK legal education; expressly through exploring similarities and differences in these gaps when accounting for a student's country of origin. It adopts the same methodology as previous empirical studies on the subject.<sup>9</sup>

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<sup>8</sup> For UK home student study see: K Dutton et al, 'Great Expectations: Managing Student Expectations and Enhancing Engagement with Undergraduate Study' (Higher Education Academy 2012) available online: <[https://www.slideshare.net/HEA\\_Law/the-expectationreality-gap-and-undergraduate-law-student-experiences](https://www.slideshare.net/HEA_Law/the-expectationreality-gap-and-undergraduate-law-student-experiences)> accessed 6 March 2017.

<sup>9</sup> *Ibid*, see also: CB Kandiko and M Mawer, 'Student Expectations and Perceptions of Higher Education' (Quality Assurance Agency 2013) available online:

This information was collected via quantitative survey responses from first year LLB Law students between 2013 and 2017. Whilst international student representation fluctuated over this period, there was an average ratio of 73% UK to 27% international student representation from 26 different countries.<sup>10</sup> The results evidence that the class had high expectations as to the number of group work activities they were going to take part in, as well as the number of presentations they were going to be asked to make. As the current LLB programme does not offer a means of incorporating more summative practical experiences, other than mooting, this invention implemented an extra-curricular *Legal World Series* project. *The Legal World Series* is a student led, multi-culturally themed, conference and social activities initiative, whereby several student regional coordinators were each given the task of planning a minimum two-hour 'continent themed' event. The aim of this initiative was to strengthen peer-to-peer learning experiences, as well as facilitate further opportunities to promote internationalisation.

### Reasons for the Study

There are two reasons why this empirical investigation, and subsequent extra-curricular intervention, was conducted: firstly, so as to realise the benefits of having an integrated classroom, where international learners can share ideas with UK students, rather than sitting in culturally/nationality segregated groups. The underlying objective was to help promote internationalisation via peer-to-peer experiences.

The second reason is the context of today's Higher Education environment in Wales. Combined, Welsh Universities have 21.5% non-UK students directly contributing to their income (a figure which is 2.5% higher than the overall UK average).<sup>11</sup> Amongst these numbers, Law is consistently acknowledged as one of the top ten subjects to study within the UK; with the subject often ranked the second most popular choice for school leavers (second only to medical sciences).<sup>12</sup> Whilst the study of Law is often assumed to be jurisdiction specific; there are significant reasons why Wales should, and has, taken an internationalised approach to the delivery of legal education. All Law Schools in Wales offer a variety of electives, both at undergraduate and postgraduate level, beyond just the foundation subjects. Subjects such as international public and private Law; and strategic partnerships with leading EU Law Schools;<sup>13</sup> are widening the appeal and reputation of Law Schools in Wales as centres of

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<<https://www.kcl.ac.uk/study/learningteaching/kli/People/Research/DL/QAARReport.pdf>> accessed 6 March 2017; and C Dangerfield, 'Expectation and Experience: A View from the Students' (Salford Students' Union, HE Zone Committee, NUS, 2012).

<sup>10</sup> Namely: Wales, England, Scotland, Northern Ireland, Ireland, Cyprus, The Netherlands, Greece, Romania, Bulgaria, Czech Republic, Germany, France, Spain, Italy, Nigeria, Bangladesh, Thailand, Greece, Romania, USA, Canada, Bahrain, India, Pakistan, Australia.

<sup>11</sup> HESA, 'Higher Education Student Statistics: UK, 2016-17 – Where students come from and go to study' (HESA, 11 January 2018) available online at: <<https://www.hesa.ac.uk/news/11-01-2018/sfr247-higher-education-student-statistics/location>>.

<sup>12</sup> The Complete University Guide 'Top 10 Most Popular Courses in the UK' (2018) available online at: <<https://www.thecompleteuniversityguide.co.uk/courses/top-10-most-popular-courses-in-the-uk/>>.

<sup>13</sup> Such as the joint French Law and English Law double degree programme offered by Bangor University and Universite Toulouse 1 Capitole (France), which was awarded the Prix Universitaire Robertson-Horsington award

excellence. In doing so, they have attracted more international students. The delivery of such international specialisms in Wales is in no small part attributable to the assiduousness of non-UK lecturers teaching within Wales. In return, UK students benefit from an 'internationalised outlook' through opportunities to mix with a more diverse group of peers; a wider international mix of lecturers, teaching a vast array of specialisms and international subjects; greater opportunities to travel abroad as part of their degree, including via the *Erasmus Plus* exchange; as well as enhanced employability skills and career prospects post-graduation (with a greater awareness of the opportunities available for UK Law students both at home and overseas). However in the coming years, Wales' internationalised legal education is set to face significant challenges, including (but not limited to): threats to the current Qualifying Law Degree LLB programme (in a move towards the Solicitors Qualifying Examination (SQE) model, which does not place significant value on knowledge of European Union Law);<sup>14</sup> the marketisation of Higher Education which ranks pass rates, retention and progression above other traditional University values (via Teaching Excellence Framework (TEF) metrics); as well as the current 'hostile environment'<sup>15</sup> for foreign nationals owing to the political climate of Brexit. Under such pressures, the benefits and value of an internationalised legal education to the future generation of Lawyers in Wales is under threat.<sup>16</sup> It is therefore pertinent and of importance that Welsh and UK Law Schools refocus their attention on narrowing the gap between student expectations and the reality of studying on their courses, in order to ensure a positive student experience for both UK and international students.

### PEDAGOGICAL UNDERPINNING

Internationalisation can be defined as, 'the process of integrating an international, intercultural and/or global dimension in the goals, functions (teaching, learning research, services) and delivery of Higher Education.'<sup>17</sup> The international movement of students can be attributed to the 'inability' of the indigenous education systems in most developing countries to satisfy growing demands for degrees.<sup>18</sup> This means that students are increasingly looking towards Western nations to secure places in Higher Education. By 2020 it is predicted by some that China and India will be unable to supply the 20 and 9 million University places

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by the Franco-British Lawyers Society. See further: <<https://fbles.eu/2017/05/01/fbels-awards-2017-prix-universitaire-robertson-horsington-to-universite-toulouse1-capitole/>>.

<sup>14</sup> In the Solicitor Regulation Authority consultation, the 6 SQE Stage 1 assessments (identified as the 6 functioning legal knowledge assessments were: i) Principles of Professional Conduct, Public and Administrative law, and the Legal Systems of England and Wales; ii) Dispute Resolution in Contract or Tort; iii) Property Law and Practice; iv) Commercial and Corporate Law and Practice; v) Wills and the Administration of Estates and Trusts; and vi) Criminal Law and Practice. EU law does not appear to stand alone as a specific recognised area of knowledge.

<sup>15</sup> See for example, 'The Observer view on Theresa May's hateful 'hostile environment' immigration policy' *The Guardian* 22 April 2018.

<sup>16</sup> For a UK wide position, see J Guth and T Hervey, 'Threats to internationalised legal education in the twenty-first century UK' (2018) 53 *The Law Teacher* 1. For analysis see: C James and J Koo, 'The EU Law "Core" Module: Surviving the Perfect Storm of Brexit and the SQE' (2017) 52 *The Law Teacher* 68.

<sup>17</sup> See: J Knight, *Higher Education in Turmoil: The Changing World of Internationalization* (Sense Publishers, Rotterdam 2008), and for further analysis: J Knight, 'Five Myths About Internationalization' (International Higher Education, Boston College Centre for International Education Boston, 2011) pp. 14-15.

<sup>18</sup> S Page, G Rajkhowa and P Webb, 'Bridging the Gap: Expectation versus Reality for International MBA Students Studying in the United Kingdom' (Chester University Business School 2013).

respectively needed for their own student populations.<sup>19</sup> Figures from February 2009 show an 8% increase in demand in international students' desire to study at Western Universities, with the UK, at least prior to the Brexit Referendum result, often being amongst the first choices for students from most of these countries.<sup>20</sup> Despite this increasing international student community, commentators have noted that, holistically, some Universities appear to have done little to account for the cultural differences of international students.<sup>21</sup> Furthermore, previous studies have shown that failure to address these new challenges when they arise will result in a sub-optimum learning experience for students.<sup>22</sup> This research responds to these concerns by highlighting differences in UK and international student expectations, and thereafter facilitating an opportunity for inclusivity, across nationalities and cultures.

The theoretical underpinning for these investigations largely stem from Biggs, and his principles for 'setting the stage for effective teaching.'<sup>23</sup> More specifically his findings on teaching international students, where he discusses the challenges of a multi-cultural class, and how social-cultural adjustments can be a stressful problem for international students. In this regard, students from different cultures see 'questions differently.' For example, learners from Asia appear to be more inclined to favour descriptive 'rote-learning', which does not lend itself well to analytical problem-solving. In striving to achieve best practice, Biggs comments that lecturers report difficulties in teaching international students. These include not only language barriers, but also learning-related problems that are seen as 'cultural' in origin, such as reliance on rote-learning, passivity and teacher dependence.

The authors of this research were aware of similar challenges specific to legal education. For example, amongst the French native learners, particularly when structuring problem question responses. These students found it challenging to follow an Issue, Rule/Law, Application, Conclusion (IRAC/ILAC) structure, namely because they had been taught in their own jurisdiction to follow a Rule, Issue, Application (RIA) method. They claimed to be taught to

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<sup>19</sup> A O'Brien et al, 'A study into the factors influencing the choice-making process of Indian students when selecting an international university for graduate studies using grounded theory' (University of Delft, Holland 2007) available online at:

<<https://chesterrep.openrepository.com/bitstream/handle/10034/37772/o'brien,+webb,+page+&+proctor++conference+paper+july+2007.pdf;jsessionid=F29C099DDF53C552A36A0DCA2A7EA408?sequence=11>>

Accessed 6<sup>th</sup> June 2019.

<sup>20</sup> See: S Clear and M Parker, 'Home v International Law Student Expectations' (Association of Law Teachers' Annual Conference 2017) available online at: <<http://www.lawteacher.ac.uk/docs/2017/Stephen-Clear-ALT-Slides-Complete.pdf>> accessed 6<sup>th</sup> June 2019; and H Spencer-Oatey and D Dauber, 'Internationalisation and the development of 'global graduates': hearing the students' voices' (GlobalPAD Warwick, 2017) available online at: <<http://www.warwick.ac.uk/globalpadintercultural>> accessed 6<sup>th</sup> June 2019. For empirical analysis of the potential impact of Brexit on legal education (using Wales as a case study) please see: S Clear, D Cahill and G Clifford, 'Mapping the Effects of Brexit on Legal Education in Wales' (19<sup>th</sup> November 2018) The Law Teacher journal available online at:

<<https://www.tandfonline.com/doi/full/10.1080/03069400.2018.1537171>> accessed 6<sup>th</sup> June 2019.

<sup>21</sup> See: R D Williams and A Lee (eds) *Internationalizing Higher Education* (Sense Publishers 2015).

<sup>22</sup> P Ramburuth and R Mladenovic, 'Exploring the relationship between students' orientations to learning, the structure of students' learning outcomes and subsequent academic performance' (2004) 13 *Accounting Education* 507.

<sup>23</sup> J Biggs, *Teaching for Quality Learning at University* (2<sup>nd</sup> edn Open University Press 2004) Ch 7.

never arrive at a conclusion as to the legal possibilities, as doing so would be to portray 'arrogance', as if they were trying to fulfil the role of the judge. These complexities can also be further exasperated for international learners when accounting for the specialism of legal study. An international learner is not only posed with the challenges of learning English, but moreover learning Legal English with its complex terminology that many native lay people may not be familiar with.

However, as Biggs recognises, these perceptions of international learners are, like most stereotypes, distortions of the reality. Rather, international students, much like UK students, have some similar learning experiences. That is not to say that misunderstandings will not arise when lecturers and learners come from different cultural backgrounds, but rather that an inclusive view of teaching will minimise them.<sup>24</sup> In order to facilitate this, the *Legal World Series* project was viewed as a 'stepping-stone' towards embracing cultural differences within the classroom, and empowering students to be part of an inclusive learning community.

### **The Theoretical Underpinning of the Student Expectation v Reality Study**

The pedagogical underpinning for the empirical surveys stems from previous research into the experiences of UK Law students.<sup>25</sup> These projects were based upon the premise that expectation-reality gaps have particular pertinence for Law students (Sam Banks, 1999). They also identified that expectation was a key influence upon student experience and engagement (Biggs 1999). The reality of studying Law should largely mirror what students were expecting at the start of the course as if this gap is 'closed' then there could be potential benefits to student performance and retention.<sup>26</sup> Other benefits include gaining a holistic understanding of what students expect from studying at undergraduate level (Pawson and Tilley 1997). Owing to reduced numbers of non-UK students within Dutton's study, their investigations were not able to explore similarities and differences in UK and international students' expectations. Such previous research limitations form the foundation for this new study.

Nonetheless, in embarking on these investigations, it was pertinent to appreciate that students are not a homogenous group, and have varying expectations, which do not necessarily reflecting what they need or want.<sup>27</sup> As Dutton put it:

...in a system that puts students at its centre, meeting their expectations becomes the key to success...but simply responding poses dangers of commodification or

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<sup>24</sup> See further: J Biggs, *Teaching for Quality Learning at University* (2<sup>nd</sup> edn Open University Press 2004) p 120.

<sup>25</sup> K Dutton et al, 'Great Expectations: Managing Student Expectations and Enhancing Engagement with Undergraduate Study' (Higher Education Academy 2012) available online: <[https://www.slideshare.net/HEA\\_Law/the-expectationreality-gap-and-undergraduate-law-student-experiences](https://www.slideshare.net/HEA_Law/the-expectationreality-gap-and-undergraduate-law-student-experiences)> accessed 6 March 2017.

<sup>26</sup> This suggestion is also supported by P Wakeling and G Hampden-Thompson, 'Transition to Higher Degrees Across the UK: An Analysis of National, Institutional and Individual Differences' (Higher Education Academy Research Series, April 2013).

<sup>27</sup> C Dangerfield, 'Expectation and Experience: A View from the Students' (Salford Students' Union, HE Zone Committee, NUS, 2012).

reduction in quality; we must understand and manage expectation to enhance both experience and engagement.<sup>28</sup>

In translating such findings to our study, this project is not just about recognising the expectation-reality gap, but also about managing those expectations in a realistic fashion.

### **The Theoretical Underpinning of Peer-to-Peer Learning Exercises**

The *Legal World Series* is a student-led initiative whereby learners share their existing knowledge and engage in peer-to-peer learning. Throughout HEA reports the message that students learn best from practical and interactive experiences is repeated.<sup>29</sup> Peer-to-peer learning is where there is an open sharing of knowledge, experiences and practices amongst learners to support one another's understanding and development.

Two of the most prevalent UK theorists to conceptualise the benefits of peer-to-peer learning are Capstick and Fleming.<sup>30</sup> Their research group has explored the benefits to a learner's personal development when presented with plentiful peer-to-peer activities. The importance of such research is summarised by Wirth and Perkins:<sup>31</sup>

...we test our learning through action...That is our brain gets feedback about our thinking when we put ideas into action...this is also a good reason...for learning in groups; learning in social environments results in richer neural networks.<sup>32</sup>

If active teamwork can lead to richer neural networks, teamwork via the *Legal World Series* project should assist students in deepening their understanding of fundamental legal concepts, and thereafter assist them in attaining higher marks. As students are pedagogically believed to learn best when they are performing tasks together, the *Legal World Series* project was designed with this purpose in mind i.e. to help promote an atmosphere of open sharing of knowledge, where facilitators can share delight in learners' peer-to-peer exchange of ideas and success.

### **EMPIRICAL INVESTIGATION METHODOLOGY**

So as to understand the first years' expectations, surveys were carried out in 2013-14 and then repeated again in 2016-17. In order to identify any potential changes in these expectations over the course of the academic year, three questionnaires were distributed.

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<sup>28</sup> K Dutton et al, 'Great Expectations: Managing Student Expectations and Enhancing Engagement with Undergraduate Study' (Higher Education Academy 2012) available online: <[https://www.slideshare.net/HEA\\_Law/the-expectationreality-gap-and-undergraduate-law-student-experiences](https://www.slideshare.net/HEA_Law/the-expectationreality-gap-and-undergraduate-law-student-experiences)> accessed 6 March 2017.

<sup>29</sup> V Gunn, A Fisk, 'Considering teaching excellence in higher education: 2007-2013. A literature review since the CHERI report 2007' (Higher Education Academy Research Series, 2013).

<sup>30</sup> S Capstick, 'Benefits and Shortcomings of Peer Assisted Learning (PAL in Higher Education: an appraisal by students' (Bournemouth University, 2004) S Capstick, H Flemming and J Hurne, 'Implementing Peer Assisted Learning in Higher Education: The experience of a new university and a model for the achievement of a mainstream programme' (Bournemouth University, 2004).

<sup>31</sup> KR Wirth and D Perkins, 'Learning to Learn' (Manchester College, University of North Dakota, 2012).

<sup>32</sup> KR Wirth and D Perkins, 'Learning to Learn' (Manchester College, University of North Dakota, 2012).

The first captured the responses at the start of the academic year, in October. The second was distributed at the start of semester two, in January, and the final questionnaire was handed out at the end of the academic year, in March, just before the start of the examination period. So as to achieve as greater consistency as possible, these questionnaires were distributed to the same class, namely Legal Skills.<sup>33</sup> The questionnaire asked students to identify their 'country of origin' and 'native language', so as to allow for comparative analysis within our findings. Students were asked about expectations as to contact time; independent reading; assignments; group projects and presentations. Furthermore, at the start of the academic year, the questionnaire asked students to summarise, in one sentence, their expectations of studying on the LLB programme. In later versions (in January and March) this final question was replaced so as to enquire as to the students' preferences as to group work over independent study.

### **EXPECTATION SURVEY RESULTS**

For the purposes of this article, the findings on expectations about presentations and group work and has been focussed upon.

#### ***Student Expectations v Reality: Number of Presentations per Year***

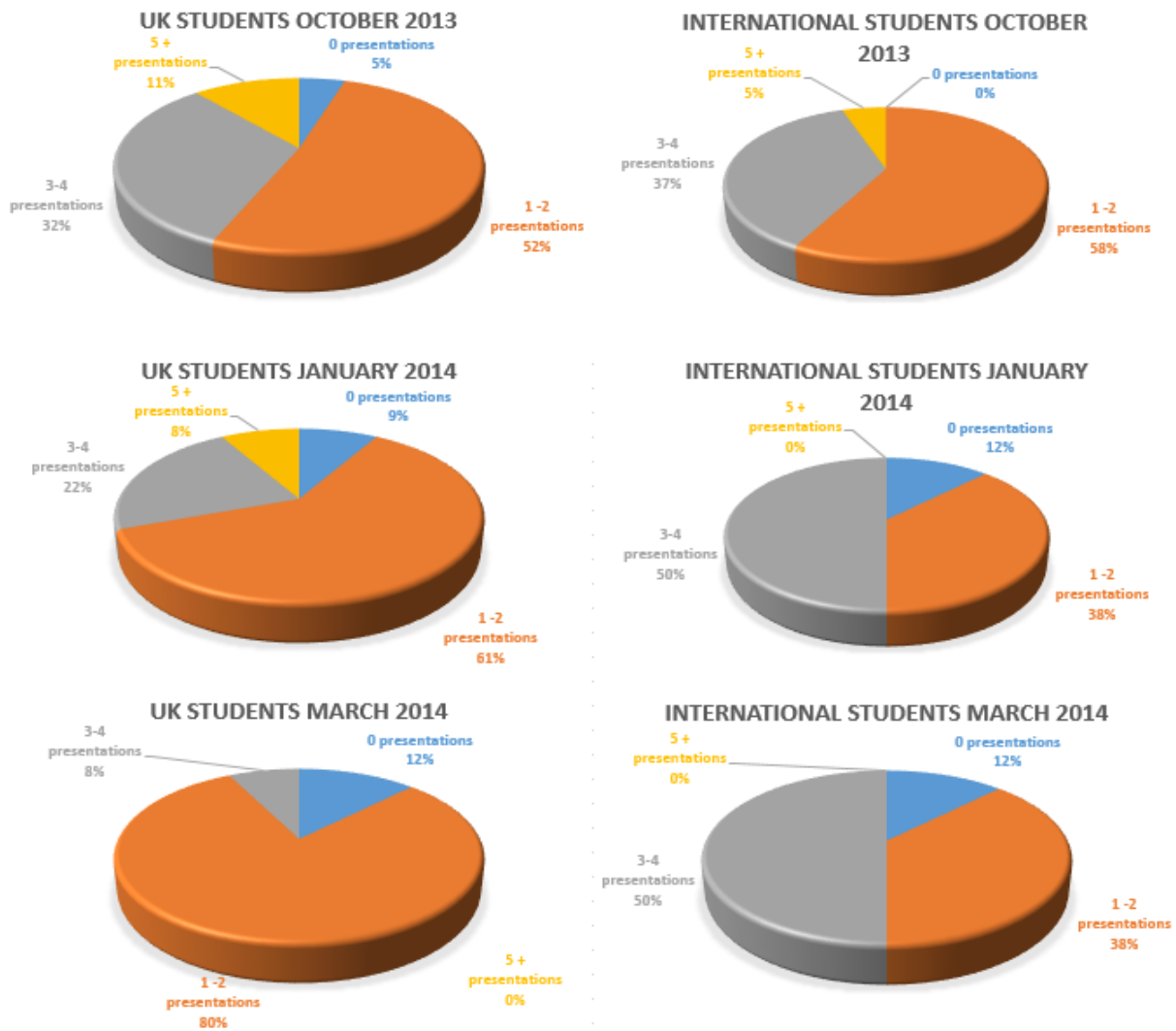
In reality, at Bangor Law School, our first year students make one or two presentations per year. Like many Law Schools, we follow the traditional methods of assessment of essay writing, combined with an exam paper for the majority of our modules.

The charts below set out the changing expectations over the course of two academic sessions, and demonstrate that we do not meet the expectations held by many students with regard to the requirement to deliver presentations. The first set of charts show our 2013-14 findings, shown below.

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<sup>33</sup> It is noted that the number of respondents within each of the three questionnaire period fluctuates. This is owing to early withdrawals from the course, non-attendance on the day, and some one semester only visiting Erasmus and Experiences students leaving Bangor after January.

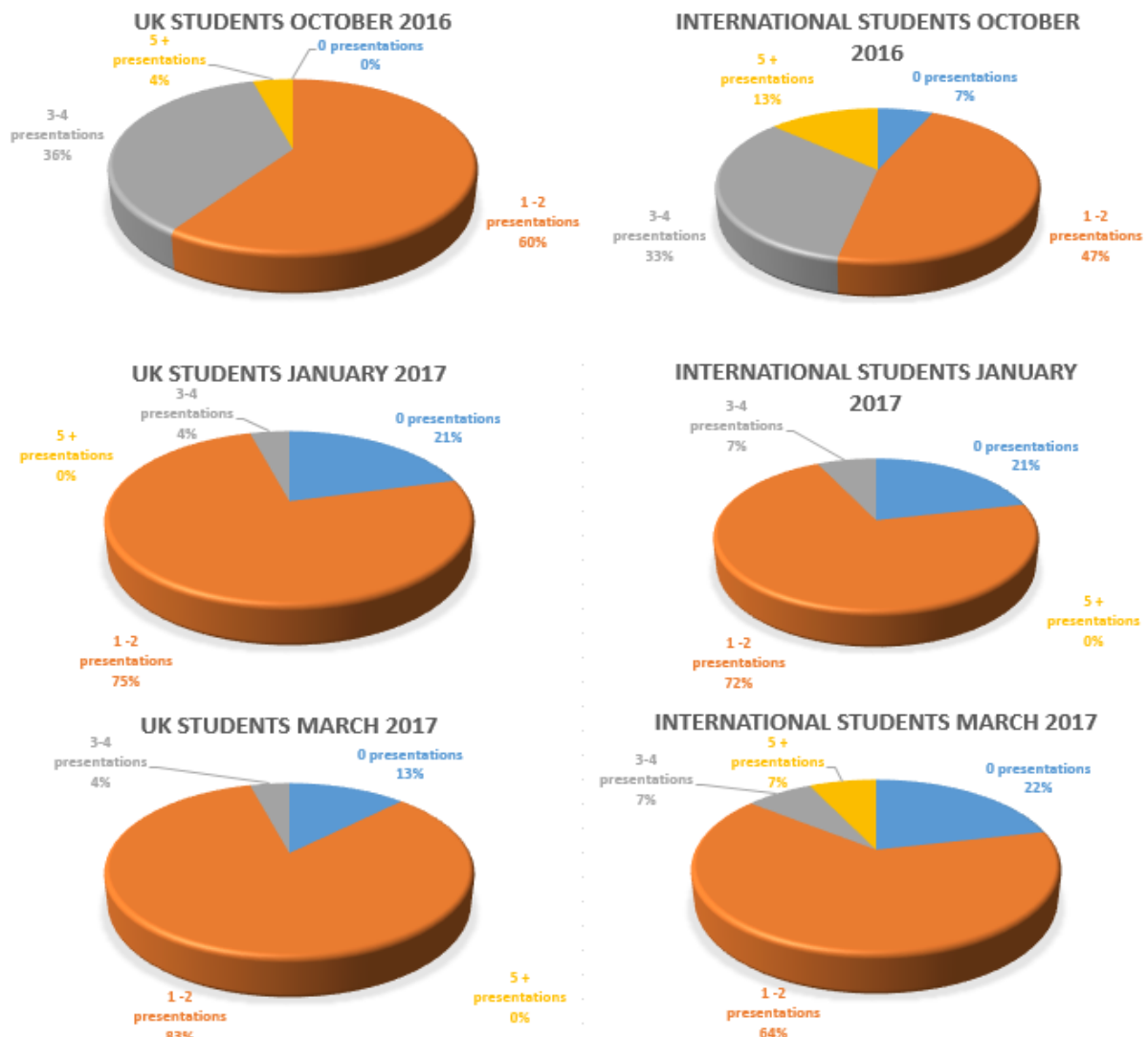




In our initial study, the trend of expectations held by our UK students is downwards. At the start of the year, 43% expected to make three or presentations, compared to the 8% in this category by the end of the survey. The expectations held by our UK students fell in line with reality.

Conversely, the expectations held by our international students rose during the academic year. At the start of the year, 42% of the cohort held a higher expectation than the reality, with a steady 50% of the cohort expecting to deliver three or more presentations from January onwards.

At this stage, we were able to conclude that we were not meeting expectations with regard to the delivery of presentations. The study was repeated in 2016-17, the results are set out below.



In our more recent study, the expectations held by our UK students dropped again in order to fall in line with reality. At the start of the academic year, 40% of our UK students expected to make three or more presentations, this fell to just 4% by the start of semester one. The expectations held by our international students began in a consistent manner to the previous study, 46% of this group expected to make three or more presentations. However, in this study, those expectations fell in line with reality as the year progressed.

Once again, consistent with the findings of 2013-14, we were able to conclude that student expectations of the programme with regard to the delivery of presentations were not met.

These figures can be usefully supplemented by responses from our cohort when asked to summarise, in one sentence, their expectations of studying on the LLB programme. Below are a selection of representative comments taken from both surveys:

#### **UK Students:**

*‘Expect to learn more analytical skills, as well as the ability to speak clearly and concisely.’*

*‘An active course, going beyond the curriculum, to enhance my chances of qualifying as a barrister. ’*

*‘To gain a broad understanding of the skills needed to progress into the law profession.’*

*‘To learn how to enhance my debating and writing skills.’*

***International Students:***

*‘Be able to understand and have a confident speech in all courses I choose.’*

*‘I would like to improve my spoken skills and my technical knowledge in law.’*

*‘Learn and practice law, in order to use real life practice in the future.’*

*‘Learn about the law in other countries, especially the UK and EU Law’*

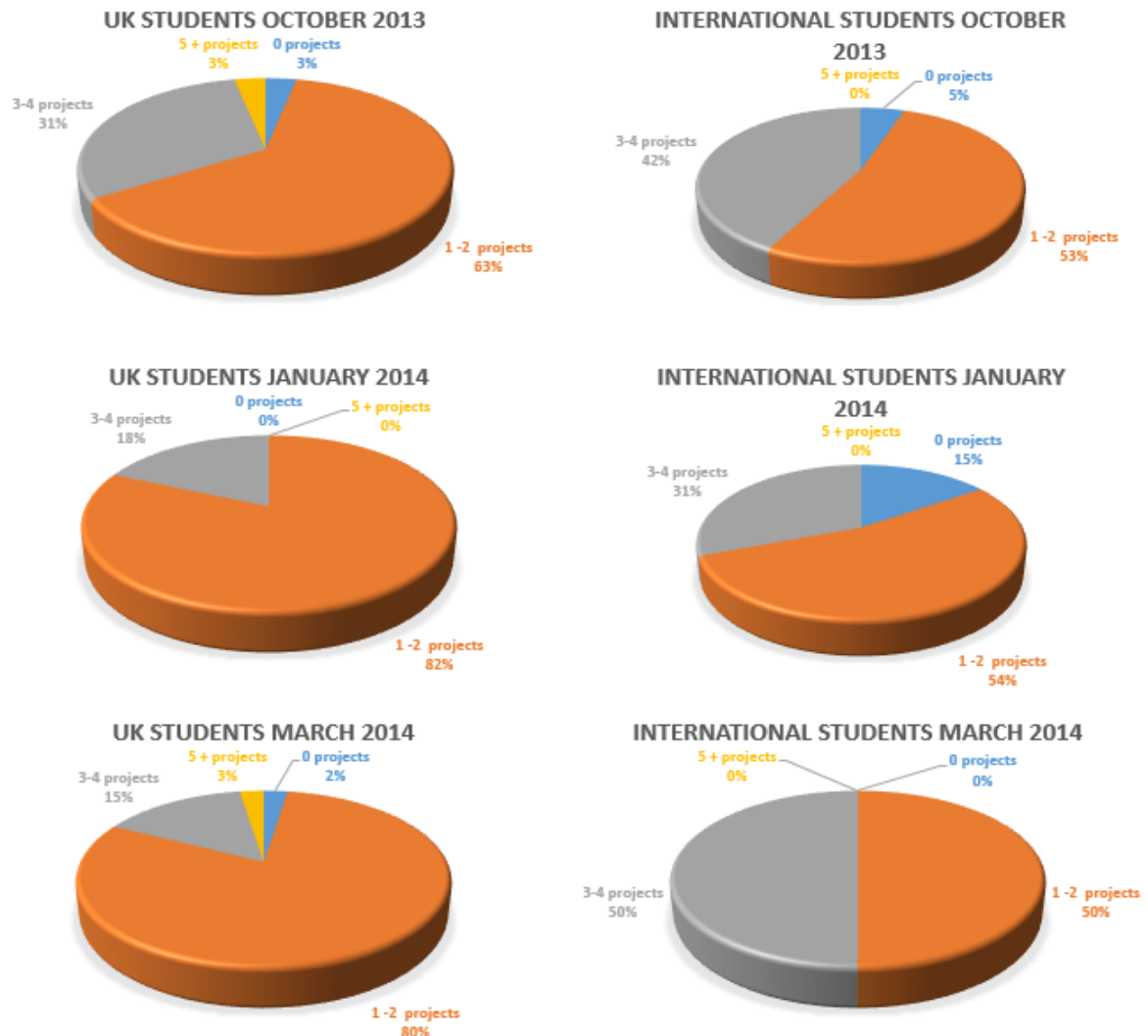
It is evident that the vast majority of our students had higher expectations than the reality of one to two presentations per year when they first started to study Law. This study has also identified that international students in particular have higher expectations with regard to the number of presentations they expect to make, and often for specific language issues.

***Student Expectations v Reality: Number of Group Projects per Year***

The following charts set out our data from 2013-14 and 2016-17 with regard to expectations held about group project activities on the programme. The reality is that students would

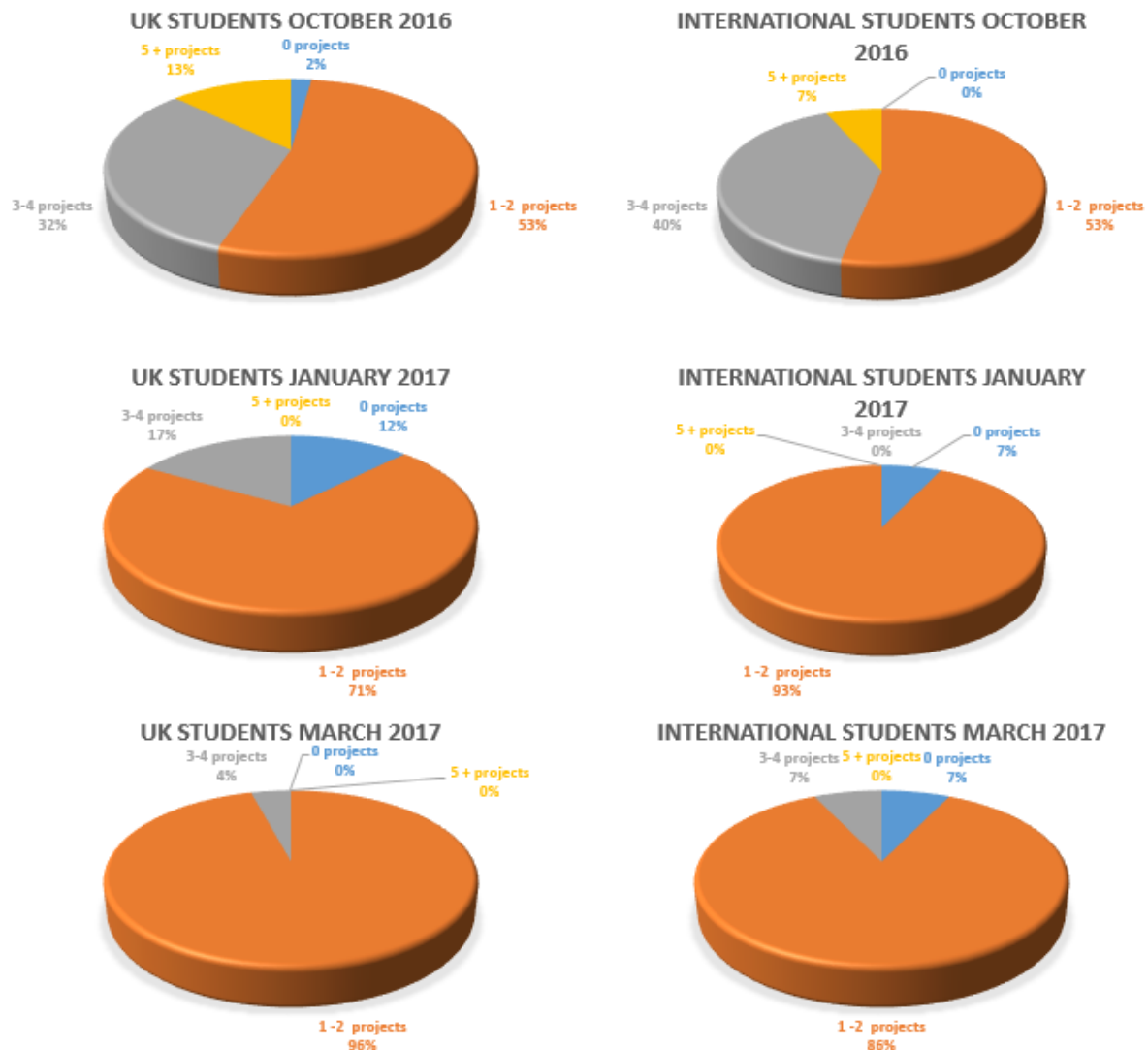
engage with one to two group projects per year. Again, the data demonstrates that we do not meet the expectations of many students. The first set of charts show our 2013-14 findings.

As can be seen above, the expectations of the UK students largely fell in line with the reality



of one to two projects per year. On the whole, a larger proportion of our international students expected to be engaged with more group projects than the reality of the course, with the most striking result of 50% holding this higher expectation in March 2014, compared to just 18% of our UK students.

The results from 2016-17 are set out below.



When looking at UK students, 45% start out with higher expectations than the reality of one to two presentations per year, this fell to just 4% by the end of the year. For international students, 47% started with a higher expectation than reality, and this fell to just 7% by the end of the year.

Whilst there are some fluctuations across the two sets of results, it is possible to conclude that students arrive with higher expectations about group work activities than we deliver in the programme.

As identified by Burns, engaging students with group work can aid internationalisation by fostering a sense of social belonging for all students, and international students in particular.<sup>34</sup> The need for community is set out by Pickford: 'An excellent learning community requires a focus on social integration, encouraging students to feel a sense of belonging and to learn with and from others through teaching approaches that involve regular interaction,

<sup>34</sup> V Burns, 'Developing skills for successful international groupwork' The Higher Education Academy <[https://www.heacademy.ac.uk/system/files/birmingham\\_burns\\_connections\\_final\\_report.pdf](https://www.heacademy.ac.uk/system/files/birmingham_burns_connections_final_report.pdf)>.

integrated feedback, and opportunities for students to develop as collaborative learners.’<sup>35</sup> It is perhaps the desire to gain this sense of belonging that increases the expectations held by international students with regard to the provision of group tasks. Further pedagogical benefits of teamwork have been discussed earlier in this article.

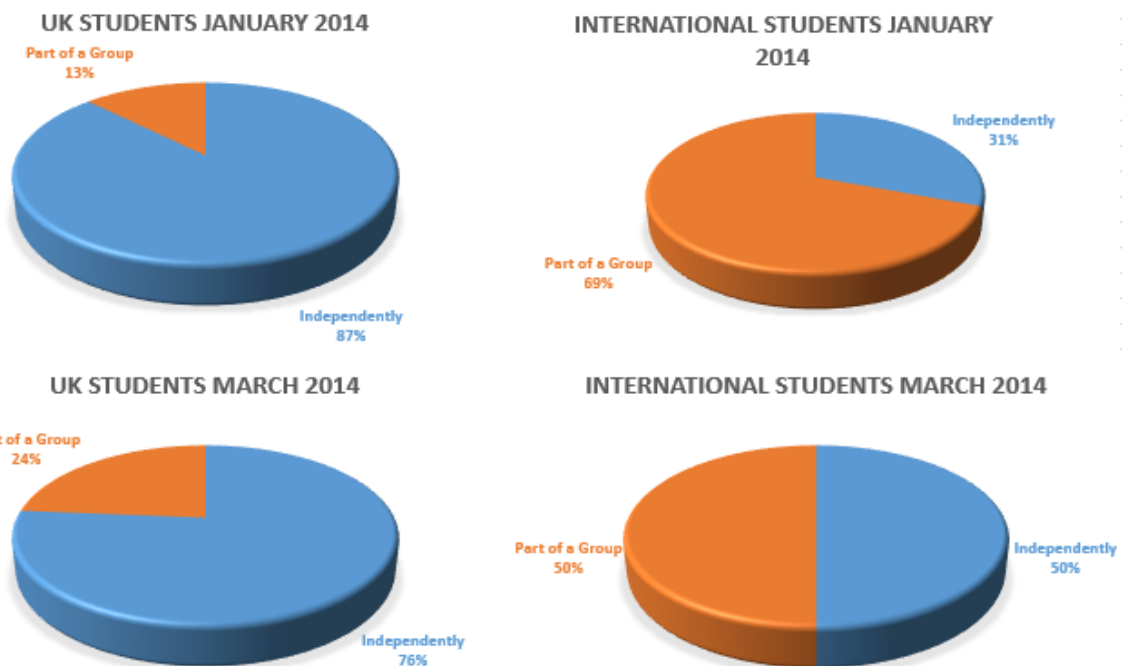
***Student Preferences: Independent v Group Work***

The culmination of this study asked students whether they preferred to work independently or as part of a group, this question was posed in January and March in both studies. It is notable that overall a larger proportion of International students prefer to work as part of a group compared to their UK peers.

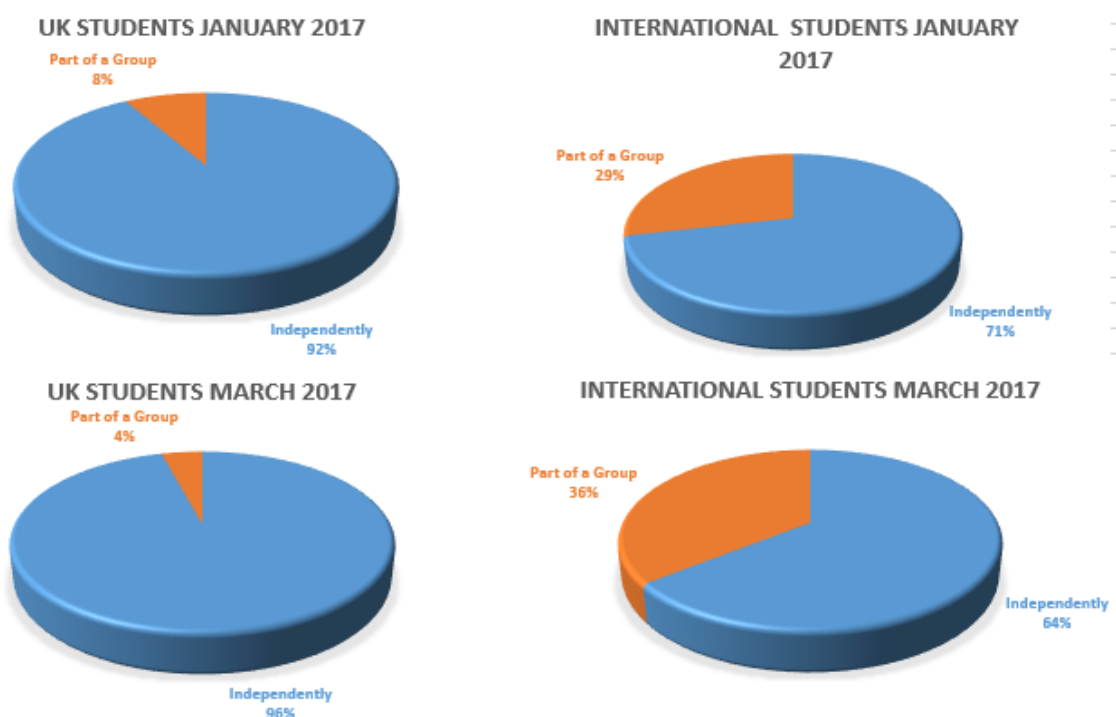
This was particularly striking in January 2014, where 69% of our international students stated that they preferred to work as part of a group. However, this trend can be observed across the results from both studies, as shown in the charts for 2013-14 and 2016-17 below.

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<sup>35</sup> R Pickford, ‘A Blueprint for Teaching Excellence’ *Journal of Perspectives in Applied Academic Practice* 2018, 100.



Many students expect that there will be some practical element to their Law degree. The



findings show that many students have un-met expectations with regard to the requirement of making presentations and engage in group work activities. It is also notable that international students expect the LLB programme to enable them to develop their spoken English.

Pichinnaz and Hirte comment, 'Legal education should give the students the keys to know how to acquire new legal knowledge in the future. Therefore, law schools should enable

lifelong learning by giving the tools to get to that aim.<sup>36</sup> By delivering a presentation and working as part of a team, students will improve their public speaking skills by delivering a succinct and clear legal argument. Confidence and a sense of belonging can also be increased by completing this exercise. The ability to communicate in this manner will improve chances of employability in the legal profession and beyond.<sup>37</sup>

The process of preparing a well-structured and robust argument requires thorough research, and so students' ability to gather relevant information is improved. Given the limited time students may have to present their argument they have to ensure that only pertinent points are selected. In order to carry out this research process the students must initially engage in problem solving so as to deduce the strengths and weaknesses on either side of the argument.<sup>38</sup> Finally, and often overlooked, such a task can enhance the collegiate spirit of the cohort and promote healthy competition amongst students.

Spitzmiller suggests, '...the greatest obstacle non-native-English speakers face is mastering the technical jargon and complex English structure typical of legal communications.'<sup>39</sup> The provision of presentation skills within the LLB programme gives students the opportunity to practice their oral presentation skills, in addition to the use of legal terminology. Raimo comments, '...international students' experiences of UK universities begin well before they join us. Unlike many of our home students, international students rarely get the chance to visit our campuses before they make their possibly-life-changing investment in our universities.'<sup>40</sup> For this reason, it is possible to suggest at this stage that the provision of presentation skills can help to meet a very important expectation held by international students.

One of the findings to come from Dutton's research was that students had low recognition of the 'traditional skills' necessary for success and instead showed high priority to practical skills. The skills developed through delivering a presentation can meet many of the pedagogical benefits associated to the 'traditional skills' and understanding the theory of Law.

With regard to expectations and reality more generally, it is suggested that greater clarity could be achieved by setting firm boundaries<sup>41</sup> as to the reality of studying Law very early on

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<sup>36</sup> Pascal Pichonnaz and Heribert Hirte, 'Where is law taught? Who teaches law? An exchange of experiences of the institutions in which law is being taught and of the persons who teach law' *European Journal of Education*, Volume 3, Issue 1, 2006.

<sup>37</sup> See, *Setting Standards: The future of legal services education and training regulation in England and Wales* (Legal Education and Training Review, 2013).

<sup>38</sup> See generally David Pope and Dan Hill, *Mooting and Advocacy Skills* (2nd edn, Sweet and Maxwell 2011) 1.2 - 1.13.

<sup>39</sup> Rebecca Spitzmiller, 'The Phillip C Jessup International Law Moot Court Competition: A tool for teaching / learning legal English' *European Journal of Legal Education*, Volume 3, Issue 2, 2006.

<sup>40</sup> Vincenzo Raimo, 'Rising student expectations? University international offices now all about it' *The Guardian Higher Education Blog* 2013.

<sup>41</sup> See for example, Jackie Lane, 'Do we deliver on Law student expectations? If not, how can we work to achieve this?' In: 45th Annual Conference of the Association of Law Teachers, *Legal Education: Making a Difference*, Clare College, Cambridge, 2010: 'To ensure that students know what to expect when they begin their studies, a plan should be developed to make certain that students are given the right information. A



in the course. This research also demonstrates that this may need to be repeated and reinforced throughout the academic year due to the fluctuations observed in the results discussed above. The study has demonstrated the need to respond to expectations with regard to group work activities and the development of presentation skills. Furthermore, this study has demonstrated the reasoning behind the expectations held by both UK and international students by assessing student comments. It is suggested that many expectations can be met by making small changes to the structure of some modules, the requirement of non-assessed oral presentations, moots or debates within tutorial sessions for example. However, this article proposes that changes can also be made by means of extra-curricular initiatives, which contribute towards the wider learning environment within a Law School. Implementing such changes via non-summative means, which only carry HEAR credit, also facilitates greater flexibility to give students more of what they wanted and expected as part of being a student at a Law School in Wales.

### THE LEGAL WORLD PROJECT

Responding to these high student expectations, as part of summatively assessed work, was somewhat restricted by qualifying law degree requirements, and how the programmes had been institutionally validated for both UK and overseas professional regulatory bodies' recognition. Instead, and in recognition of the internationalisation objective of this model, an optional extra-curricular intervention was introduced, the *Legal World Series*. Across the *Series* a total of seven events were delivered by seven student coordinators, between January and May each year.<sup>42</sup> Students were invited to apply for each of the coordinator positions by submitting their Curriculum Vitae and a covering letter. A briefing session was held for those students who were interested in applying, where it was explained that the coordinators would be expected to work as part of a team in delivering a minimum two hour conference and social programme that would promote internationalisation, inclusivity and cultural understanding. The attendees were advised that to be a student coordinator for a specific region they did not have to originate from a specific country within that area; they just had to have an interest in promoting awareness as to its customs. The group were also advised that what featured within the programme was entirely up to them, with the only condition being that the papers had to have a legal theme. After this meeting, seven student coordinators were appointed. They were reminded that whilst they were not securing academic credit for their role, they were able to gain Higher Education Achievement Report (HEAR) recognition for their contributions and commitment.

The concept behind this project was to be entirely 'student-led'. So as to appreciate the benefits recognised by Healey, Flint and Harrington, namely that seeing students as partners within the learning environment can lead to richer learning processes and engagement.<sup>43</sup>

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partnership statement or learning agreement should be made available to students as early as possible, and given a high profile - possibly at the point of enrolment or even earlier, at interview or in the prospectus. This should set firm boundaries.'

<sup>42</sup> These regions were divided as follows: Africa, United Kingdom, Europe, the Middle East, the Americas and Canada, Australia and the Oceania, and Asia.

<sup>43</sup> M Healey, A Flint, K Harrington, 'Engagement through partnership: students as partners in learning and teaching in higher education' (Higher Education Academy Report 2014)

Such an approach to teaching has led to the HEA producing a *Framework for Partnership in Learning and Teaching* in July 2014. This report identifies empowerment, inclusivity, community and responsibility as key partnership principles and values for effective learning experiences.<sup>44</sup> This project evidences all of these values by putting students at the centre of the experience, through coordinating their own events, as well as empowering learners to present their own papers. The group were advised that both of the authors would be the only staff attending the events, so as to keep the *Series* student focused, and so as not make presenters feel unduly nervous. Surprisingly this was unwelcome by some of the more confident student coordinators, with some wanting the entire faculty to attend. It was therefore later agreed that the individual coordinators were responsible for liaising with their presenters and inviting staff members if they wished them to be there. As the project was entirely voluntary, the *Series* also comprised of themed social events, so as to boost attendance and promote networking and internationalisation. From empirical investigations into international student engagement, it was known that some members of Asian communities were deterred from attending events that were described as 'social activities.'<sup>45</sup> We therefore described such activities as opportunities to network and enhance interpersonal skills.

### 5.1 Reviewing the *Legal World Series* Project

The project was implemented in semester one of the 2014/15 academic year, in order to directly respond to the high student expectations evidenced within our previous year's survey. Across the *Series* a total of 34 students from 21 different countries presented a variety of topics. Furthermore, in collaboration with 10 Student Union clubs and societies, such as Street Law, the Cooking Society, BU Dance, and the Afro-Caribbean Society, seven themed social events were delivered, including 'A Taste of Africa', Chinese tea, Middle Eastern films, salsa dancing classes, and afternoon British tea. Combined, students delivered 15.5 hours of extra-curricular activities in 2014. Over the course of the *Series* a total of 138 students attended from 25 different countries.

In order to assess the success of these initiatives, event feedback forms were distributed at the end of each event. These invited students to comment upon their reasons for attending, what they had learnt, what they felt went well; and what could be improved upon. These questions were asked so as to gauge the effectiveness of the peer learning exercises, and assess the extent to which students were achieving internationalisation in their outlook.

Overall the feedback was complimentary as to the success of the project, with several written comments referring to a desire to organise a longer programme and include more speakers. The Africa event had the largest number of attendees (but also had the most participants originating from the region in the audience). From the feedback it is clear that peer-to-peer support was strongest amongst the African students. The Europe and Asia events had the largest mix of attendees from the most diverse number of countries. In both of these sessions, where the possibility to promote internationalisation was most opportune, written comments most frequently referred to meeting new people and learning about different

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<sup>44</sup> Higher Education Academy, 'Framework for partnership in learning and teaching in higher education' (HEA July 2014)

<sup>45</sup> M Vittori, 'Share and Inspire: Engaging International Students' (Bangor University, 2013).

cultures as a benefit of the events. The Middle East and Australia events had the fewest attendees, and lowest mix of nationalities. The majority of attendees said they enjoyed the activities, with most of the non-EU students saying that felt empowered to present at future events. 33% of those presenting said it was their first time doing so. 94% said they had learnt something new by attending. 58% of attendees said they met someone new as a result of attending an event. Furthermore, 98% said they wanted more or similar initiatives to run in subsequent years. Such positive feedback is testament that this approach of responding to student expectations is fruitful across both UK and international learners.

In addition, several culture specific observations can be made. Firstly, from the reasons for attending the event, 'support for a friend who was presenting' was most commonly cited at the Africa event, in addition 87% of African respondents across the programme said they attended to support a colleague. The written comments from African students at the Africa event were very complimentary as to their peers' performances within their presentations. A colligate learning environment, and support for each other in working together as a group to deliver on a joint task, was strongest amongst the African students. This finding was particularly prevalent amongst the Sudanese students as to the quality of the Sudanese speaker's presentation. By contrast European students, throughout the course of the programme, were critical of their peers' performances, and frequently referred to how the sessions could have been improved. By contrast to the Africa event, the feedback from the Europe session suggests a higher degree of competitiveness and criticism of each other when working as a group.

### **Facilitators' Observations of the *Legal World Series* Project**

From a facilitators' perspective several observations can be made as to the success of these initiatives. Firstly students were innovative and creative in utilising a variety of visual aids throughout their presentations, such as interactive maps, videos and sound bites. However in the future there may be a need to vet such material, so as to avoid causing offence, or cultural controversy. For example, within one of the Middle East presentations, a heated debate was ignited by discussions in relation to religious texts and Kurdistan. Whilst these discussions were academically grounded, there may be a need to revisit this. There may also be a need to put together guidelines as to the images that can be used. Some feedback referred to a need to be more sensitive when showing images and videos of genocide or a murder scene in Romania. Another respondent referred to the need for censorship when including American slang.

In terms of the future, from a quality assurance perspective, the facilitators feel the benefits of these initiatives could be more greatly appreciated by aligning student papers with course content, so as to advance some of the discussions. For example, at the UK event some of the presentations about devolution in Scotland and Wales were oversimplified. It is however noted that restricting presentations in this fashion may affect engagement or participation, and thus inhibit some of the internationalisation aims of the project.

Other observations pertain to the group dynamic amongst the student coordinators. On the whole, such was one of support and teamwork. The majority of the students attended each

other's sessions and actively contributed towards group discussions. Interestingly, the two student coordinators who did not attend other coordinator's sessions also had the fewest number of attendees at their events. Both of these coordinators also gave themselves speaking sessions. This indicates that the publicity and marketing initiatives used by the majority of the group worked in securing a high turnout (unsurprisingly from each of their respective regions). Equally, it was evident that learners were only willing to reciprocate teamwork when they felt the individual student coordinator responsible for an event was a team player, or had helped them in the delivery of their event. Those who did not work as part of the team isolated themselves and, consequently, had the fewest number of attendees.

Finally, several of the student coordinators asked to bring in guest speakers. These requests were denied as the project needed to remain student-led, and distinguishable from the Law School's Guest Lecture programme. It was also felt that having guest practitioners in the room whilst students were presenting might deter some groups from fully participating. This is saving one exception, that being part of the Americas event where USA Attorney Levin, (Snoop Dogg's lawyer) was permitted to deliver a guest paper via Skype as part of the event's social programme, after the student presentations (so as to increase student attendance). Nevertheless, the coordinators' desire to invite guest speakers as part of their programme is interesting, suggesting that in order for the Law School to increase attendance at guest lectures, students should be involved in the planning and coordinating such events, as partners and stakeholders.<sup>46</sup>

## **6. Concluding Thought: How to Addressing Internationalisation via Student Expectations**

Comparing the empirical investigations in 2013/14 to 2016/17 shows that expectations do not remain static, and that repeated studies are required in order to keep track of changing expectations. Nonetheless, the quantitative questionnaire method remains an effective methodology for facilitators to understand students' expectations as to the delivery of the LLB programme, and thereafter either attempt to meet such expectations, or narrow the expectation-reality gap, as far as it is possible to do so. What is interesting is that different trends appear in different cohorts, and therefore it is not possible for us to generalise the expectations of all UK and international students. Therefore, it is imperative to ensure that there are a range of assessment methods, across the course, in addition to the provision of student-led group work activities, including extra-curricular projects.

So as to assess the impact of the group work initiatives, and the wider perceptions of peer-to-peer learning activities, the later versions of the expectation-reality survey sought to investigate any potential changes in student opinions. The January 2014 survey asked whether students favoured working as part of a team or independently. Prior to the introduction of the *Legal World Series* project, international students significantly favoured

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<sup>46</sup> Such is consistent with the thoughts of M Healey, A Flint, K Harrington, 'Engagement through partnership: students as partners in learning and teaching in higher education' (Higher Education Academy Report 2014), in relation to seeing students as partners in their learning journey; and E Mowlam, 'Supporting Student Law Societies and Extra-Curricular Activities and Students' in C Ashford and J Guth, *The Legal Academic's Handbook* (Palgrave, 2016) p118, in relation to student projects and societies being key to achieving collegiate harmony amongst all the Law School's stakeholders.

group work. By contrast, the majority of home students favoured working independently. These findings were replicated in both January and March 2014, and again in January and March 2017. It should be noted, that, post this intervention, the demand for group work projects, and presentation opportunities, has remained so strong that UK and international students have voluntarily elected to continue with the *Legal World Series* project via the Student Law Society, entirely student-led and without any staff intervention or oversight. Such is further evidence that the aims and objectives of this model, expressly to achieve student-led internationalisation, have been somewhat achieved.

In assessing the success of this model, while there are differing opinions amongst students as to whether they prefer working as part of a team or independently, it is clear that there is a demand for colligate teamwork events such as the *Legal World Series*, with 68% of the surveys across all seven events favouring the benefits of running the initiative. In reflecting upon the findings of the surveys, whilst not everyone wanted to engage in a group work activity, with some instead preferring to work independently, most students did nonetheless expect group work or presentations to feature as part of their LLB study, so as to appreciate the key skills development and benefits explored within this article.

For those that did attend the *Series*, the students evidently enjoyed the events and wanted more. In terms of assessing whether internationalisation was achieved within the Law School, students felt they had learnt more about different cultures, and met new people. This method of utilising pedagogy alongside empirical investigation to improve internationalisation within the lecture hall appears to have been a success, and is an approach that other Commonwealth Law Schools with an international mix of learners could use.

However, perhaps the greatest reward, from the facilitators' perspective, is witnessing the classroom dynamic change after these events. The majority of the student coordinators, a mixed group of nationalities, could be seen on campus revising together around exam time. Furthermore, classroom discussions amongst the cohort are now livelier and evidence greater confidence, with less cultural segregation as to where students are sitting in the lecture hall. Within module tutorials and workshops, international students compare jurisdictional insights as to the similarities and differences between the legal position in England and Wales and other systems. Whilst it is not possible to solely attribute this project to these benefits, it is evident that internationalisation is, at least at a *prima-facie* level, more prevalent post the *Legal World Series* action-based group work and presentation skills project than before 2014.

**Revisiting the Prohibition of Private Practice for Public Officers in  
Nigeria and its implication on provision of technical services: The Case  
of Law Lecturers**

By

**Bethel Uzoma Ihugba\*, Shuaibu Danwanka\*\* and Samuel Oguiche\***

**ABSTRACT**

*The purpose of this paper is to explore the issue of private practice while working in the public service, using law lecturers as case study. The paper explores this question relying on critical analysis of legislative provisions and the rationale behind attempts at prohibiting this practice. To put the debate in context and understand the universality or otherwise of the position canvassed, examples are drawn from two other jurisdictions with regulatory frameworks on second employment. The paper finds that the main concern of law makers is conflict of interest and how it can be managed where it arises. The paper concludes that total prohibition is not the best approach and that management of conflicts of interest are possible in the Nigerian through regulations and policy guidelines. The paper also makes suggestions of better alternative legislative provisions with particular reference to Nigeria.*

**Key Words:** *Conflict of Interest, Private Practice, Second Employment, Public Service*

**INTRODUCTION**

Legal education, like most professional education, involves a balanced combination of practice knowledge and (theory) legal knowledge. This supposedly calls for a skill set that equips the law lecturer to teach law practice, legal doctrines and principles. This means that the law lecturer should ordinarily also be an active legal practitioner; a second job from where to develop practice experience with which the lecturer feeds his other profession as a law lecturer.

To explore these questions, the paper is structured as follows. The first section which is the introduction. Next section examines the law in Nigeria on second employment for public officers, with particular reference to law lecturers also working as lawyers. This is followed by a discussion on the best approach to resolve the seeming contradictions and challenges in the law. Finally, in the conclusion and recommendation section which specifically recommends some legislative amendments.

**THE LAW ON PRIVATE PRACTICE AND LECTURERSHIP IN NIGERIA**

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According to Section 2(b) of Fifth **Schedule**, Code of Conduct for Public Officers provided under the Constitution of the Federal Republic of Nigeria 1999 (CFRN) as amended, public officers are not allowed to engage in private practice with exception to farming. Section 2(b) provides thus: *“Without prejudice to the generality of the foregoing paragraph, a public officer shall not-...(b) except where he is not employed on full time basis engage or participate in the management of or running of any private business, profession or trade but nothing in this sub-paragraph shall prevent a public officer from engaging in farming.* This provision is significant in two ways. These are its coverage of all public officers and its prohibition of *“private business, profession or trade”*, Public officers include both professionals and non-professionals working for the government in any capacity. Section 19 of the Code of Conduct for Public Officers, under the CFRN 1999 defines public officer as *“a person holding any of the offices specified in Part II of this Schedule”*. Under this Schedule 11, 16 groups of public officers are identified. Amongst these groups, the group relevant to this paper is identified as: *“All staff of universities, colleges and institutions owned and financed by the Federal or State Governments or local government councils”*

There are arguments that this provision of the Constitution does not apply to law lecturers. This argument is based on the provision of the Regulated and other Professions (Private Practice Prohibition) Law Lecturers Exemption (NO. 2) Order 1992. This order was made to relax the provision of the Decree no 84 of the Federal Military Government of General Ibrahim Babangida. The Decree had prohibited public officers from engaging in private practice, subject to some limited exceptions. The Decree under section 1(5), however, empowered the President to by order vary the list of professionals or government officers covered by this law. Since the President was, in effect at that time, the Legislature, any order issued by him had the effect of law. If this be the case, it can therefore be argued, as contended by some, that the Order is an extant Statute and therefore continues to exempt law lecturers from the prohibition from private practice.

The other argument however, is that the Order was repealed along with its parent law by the Constitution of the Federal Republic of Nigeria (Certain Consequential Repeals) Decree No 63 of 1999 and thereby has no legal value (Rebecca E. B., 2007 : 6-7). This interpretation is further supported by the provision of the *section 1 (2) and (3) of the CFRN 1999* to the effect that: *“This Constitution is supreme and its provisions shall have binding force on the authorities and persons throughout the Federal Republic of Nigeria” and, “If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall, to the extent of the inconsistency, be void”*

The contradictions arises from the provision of section 2(b) of the Code of Conduct for Public Officers provided under the Constitution of the Federal Republic of Nigeria 1999 (CFRN). Also **Section 16(1) (d)** appear to support this interpretation because it is in favour of gainful economic engagement of citizens in that it provides that *(1) The State shall, within the context of the ideals and objectives for which provisions are made in this Constitution. (d) without*

*prejudice to the right of any person to participate in areas of the economy within the major sector of the economy, protect the right of every citizen to engage in any economic activities outside the major sectors of the economy.* This provision does not contemplate a blanket prohibition against second employment.

The second significant wording of section 2(b) is the use the words “private business, profession or trade”. These wordings are quite broad and sweeping. This is because the constitution failed to define *private business, profession or trade*, suggesting it is also a blanket prohibition of any such business, profession or trade irrespective of whether it has any impact on the competence, fair judgement, and professionalism of the public officer. This is an area that may need resolution.

### **Implications of the prohibitions**

Assuming, but not conceding, that the provisions of the Constitution bans all private practice by public officers, the questions therefore is how does this affect service delivery. To answer this question it may be instructive to recall the effect of the ban by the 1984 Decree and the rationale for the amendment by the 1992 order.

Evidence showed that upon the ban, there was massive exodus of lawyers from lecturing positions (Rebecca E. B., 2007: 3). This was seen as an unanticipated negative to the intent of the ban. The perception was that if the exodus was not stemmed, it would greatly and irreparably affect the quality of lawyers. This is in consonance with the argument that most law students learn from the conduct of their law teachers and the best way to learn is from law teachers who actually have the opportunity to practice law and display the right professional conduct to their students (Norman, (1980: 624)). In the case of Nigeria, poor quality law lecturers due to lack of practical experience of the law will inevitably affect the quality of lawyers that will end up working for the government and or as private practitioners (Okolie (No Date): 6)).

The other argument was that exposure to active private practice keeps lecturers abreast with the latest issues challenging the law, opens up opportunity to introduce ideas that will develop the law and contribute to law reform (Albert et al., (1912: 256)). It gave them real and first-hand experience of the effect of legislation on society and there interpretation and application by courts. This experience are then applied in the teaching of law students (Albert et al., (1912: 256)). It has been argued that law lecturers owe students and society to teach in such a way that students understand the practical implications of law on society and how the negative impacts can be reduced (Okolie ((No Date):): 6). This duty cannot be effectively performed by lecturers who have no practical experience of the implications of law and how it operates in society (Norman (1980: 628)).



This raises the question of why the attempt to stop law lecturers from active legal practice. Although this is not stated in the Code of Conduct provisions, the answer can be deciphered from *Rules of Professional Conduct for Legal Practitioners*. For instance, *Rule 8 of the Rules of Professional Conduct for Legal Practitioners 2007*, conduct provides as follows:

8. ----- (1) A lawyer, whilst a servant or in a salaried employment of any kind, shall not appear as advocate in a court or judicial tribunal **for his employer** except where the lawyer is employed as a legal officer in a Government department.

(2) A lawyer, whilst a servant or in a salaried employment, shall not prepare, sign, or frank pleadings, applications, instruments, agreements, contracts, deeds, letters, memoranda, reports, legal opinion or similar instruments or processes or file any such document **for his employer**.

(3) A director of a registered company shall not appear as an advocate in court or judicial tribunal **for his company**.

(4) A lawyer in full-time salaried employment may represent **his employer** as an officer or agent in cases where the **employer** is permitted by law to appear by an officer or agent, and in such cases, the lawyer shall not wear robes.

(5) An officer in the Armed Forces who is a lawyer may discharge any duties devolving on him as such officer and may appear at a court martial as long as he does so in his capacity as an officer and not as a lawyer.

A careful look at the above provisions discloses the major objectives of the Rules are to avoid monopoly of work for salaried in-house legal practitioners and reduce the opportunity for, and any semblance of, conflict of interest between the practice of law and the rendering of professional service to an employer (Abdulkarim (2015:16)). It seeks to ensure that such lawyers are objective and fair in their representation of their employer. This is because, in reality, the above provisions does not restrict private practice but rather restricts the rendering of private practice to an employer. This means therefore that the rendering of private practice to any person other than an employer is permissible within the provisions of the *Rules of Professional Conduct for Legal Practitioners* (Abdulkarim (2015.:16)).

It is thus argued that, the provision of section 2(b) of the *Code of Conduct for Public Officers* provided under the Constitution of the Federal Republic of Nigeria 1999 (CFRN) should be read in the same spirit. Thus the question should be whether there is an opportunity for conflict of interest while practicing as a lawyer and at the same time lecturing. If the answer is in the negative, then there should be no reason a lawyer should be estopped from legal practice simply because he or she is also a lecturer. However, if on the other hand, there is potential for conflict of interests, two questions arise thus:

1. Is there a need for a lawyer in legal practice to also work as a lecturer?
2. Is there anyway the conflict of interest can be resolved or avoided without estopping legal practitioners from legal practice?

These questions are addressed below as:

**The need for a lawyer in legal practice to also work as a lecturer.**

The answer to the above question is in the affirmative. This is a practice generally accepted. Over 50% of law lecturers are also practicing legal practitioners. These group of lawyers range from the most junior legal practitioners to the most senior. A roll call of senior advocates of the federation indicates that a good number of them are also senior academics and professors of law. Thus if these group of practitioners can gain excellence in two different fields of service, lecturing and practicing, then it is a path worth following.

The other important benefit is that active legal practice helps to hone the skill of a lawyer either as a solicitor or a barrister. This is the skill set a law lecturer is expected to impart on law students. It will be detrimental for a lawyer who has no experience of how the law operates and impacts on everyday life of individuals to educate future lawyers. The result will likely be the churning out of lawyers who cannot practicalise the theories they are taught.

The importance of continued practical experience is demonstrated in many law lecturer adverts in countries like the UK, Canada and the USA. Most law lecturer adverts in the UK require a lawyer with years of practice experience who still have the right to appear before a court of law. In fact registration with Solicitors Regulation Authority (SRA) in England and Wales is a prerequisite for most law lecturer positions, especially with regards to law lecturers in undergraduate programmes. An example is an advert for a law lecturer in Dispute Resolution, Professional Development programme at the University of Law London, requires that the candidate must "... will be a qualified solicitor or barrister with a genuine passion for quality and excellence, who can demonstrate successful legal practice experience" (The University of Law London, (2018: 1)).

The other aspect is that under the Nigerian constitution the state has a duty of harnessing the resources of the nation for the benefit of all in the society while citizens have the civic duty and fundamental right of every Nigerian to contribute the best he or she can to the country and to benefit the most, he or she can, from hard work without jeopardizing the interests of others (See Sections 16, 23 and 24 of the Constitution of the Federal Republic of Nigeria 1999). In other words, a healthy adult is free to engage in extra work of their own free will as far as no other person is not unduly deprived of work. The provision against second employment is obviously not in aid of these duties of harnessing natural resources and of full participation in all areas of the economy.

**Resolving the conflict of interest problem with a Second Employment**

As demonstrated above, generally speaking engaging in private business, profession or trade while working as a public officer is a civic duty that should be encouraged. However, its

prohibition in the Nigerian constitution suggests there are instances when such duty may run afoul of moral and statutory provisions. An example is when there is real or perceived conflict of interest. Careful research on the laws and codes of conduct against private practice or outside employment in other jurisdiction appear to show only this one peculiar circumstance. This means there is need to re-evaluate what consists a “private business, profession or trade” or qualify the words for the purpose of Section 2(b) of the Code of Conduct for Public Officers. Examples for the purposes of this paper are the Kenyan Law and the Canadian Employees code of conduct. Explanations of the positions in these two jurisdictions is demonstrated below.

**(a) Kenyan Law on Private Practice; Article 77(1) the Constitution of Kenya, 2010.**

The Kenyan laws are not against private practice or what it regards as gainful employment except under specific circumstances. Safe for the existence of such conditions, a Kenyan public officer is free to engage in private practice or have a second job. This is the position in the Kenyan Constitution and its Leadership and Integrity Act 2012. The Constitution of Kenya 2010, Article 77(1) provides thus: *A full-time state officer shall not participate in any other gainful employment.* A similar prohibition is made in section 26(1) of the Leadership and Integrity Act, No 19, 2012, thus: (1) Subject to subsection (2), a state officer who is serving on a full time basis shall not participate in any other gainful employment.

This provisions may seem like a blanket prohibition against second employment, but the definition of gainful employment proves otherwise. This is made clear by the Section 26(2) thus:

*(2) In this section, “**gainful employment**” means work that a person can pursue and perform for money or other form of compensation or remuneration **which is inherently incompatible with the responsibilities of the State office or which results in the impairment of the judgement of the State officer in the execution of the functions of the State office or results in a conflict of interest in terms of section 16.***

According to the above provisions, a Kenyan state officer can engage in any other job except where the job:

- a. is inherently incompatible with the responsibilities of the State office, or
- b. results in the impairment of the judgement of the State officer in the execution of the functions of the State office, results in a conflict of interest

The above provision supports the argument that a blanket prohibition is inimical to economic progress of a nation. It also recognises that blanket prohibition inhibits to a great extent the feeling of self-worth and fulfilment derived from giving the utmost and deriving the best benefit within ones legitimate capacity (See Section 16 CRRN 1999 as amended; Zain A. A. et al, 2016: 5637).

It is worth noting that the above prohibition in the Kenyan Constitution is limited to State officers and not public officers. In other words, the law is drafted in a way to affect only persons who the level of authority their office command and responsibility of their office are highly exposed to conflicts of interest while engaging in a second job. *Article 260 of the Kenyan Constitution 2010* defines State office to mean: *President; (b) Deputy President; (c) Cabinet Secretary; (d) Member of Parliament; (e) Judges and Magistrates; (f) member of a commission to which Chapter Fifteen applies; (g) holder of an independent office to which Chapter Fifteen applies (h) member of a county assembly, governor or deputy governor of a county, or other member of the executive committee of a county government; (i) Attorney-General; (j) Director of Public Prosecutions; (k) Secretary to the Cabinet; (l) Principal Secretary; (m) Chief of the Kenya Defence Forces; (n) commander of a service of the Kenya Defence Forces; (o) Director-General of the National Intelligence Service; (p) Inspector-General, and the Deputy Inspectors-General, of the National Police Service; or (q) an office established and designated as a State office by national legislation;*

This is unlike the Nigerian prohibition which in addition to similar offices listed under Article 260 of the Kenyan Constitution 2010 also puts a blanket ban on all staff of federal or state government funded universities, colleges and institutions from embarking private business, profession or trade (second employment) except farming. There are thus two but significant differences between ban on Public Officer second employment in Nigeria and a State Officer second employment in Kenya. Firstly, all the positions identified as State Offices are all included in the Nigerian definition of public officers except one- i.e. “All staff of universities, colleges and institutions owned and financed by the Federal or State Governments or local government council”.

In essence, the Kenyan classification is aimed at isolating public officers who hold government positions as either political office holders, political appointees, or independent officers whose position will in most circumstances not accommodate dual employment and most of whom have financial (discretionary) approval powers. This is not so with the Nigerian position as most staff of federal and state funded universities don't have this qualities. Secondly, under the Kenyan Constitution, restriction of the regulation against a specialized list of State officers, , only apply when the second employment is one where conflict of interest is likely, impairment of judgement is envisioned or when both jobs are inherently incompatible. The Nigeria provisions fails to provide a similar definition for “private business, profession or trade” thus making it a blanket prohibition against second employment.

An example may be a lawyer who is the director of public prosecutions who also has a private law firm where he accepts and defends clients facing criminal charges. Such a job will be inherently incompatible with ones position as a private defence lawyer who (or whose firm) also doubles as a Director of Public Prosecution for the government. But such will not be the case where one provides services as a solicitor for purely commercial transactions e.g.

conveyancing, notary, lecturer. However, some of these positions may be regulated on the grounds of conflict of interest. The most important point from the above analysis is that the restriction is not blanket but conditional. This is an aspect that may be built into the Nigerian Legal System.

**(b) Canadian Regulation on Second Employment.**

The Canadian constitution, unlike Nigerian constitution does not specifically prohibit taking a professional employment while working for the government. Rather government employment codes of conducts stipulate the circumstances when an individual may not take up a second employment while working for government. It is the employee's discretion to report any perceived conflict or seek for advice from appropriate authority on the implication of the second employment to his or her role as a government employee. Once reported, it is the appropriate authority who should then determine whether there exist a potential, real or perceived conflict of interest. According to the ***Public Works and Government Services Canada Code of Conduct***<sup>47</sup>, conflict of interest exists when there is: *"A situation in which an individual has other **competing financial, professional or personal** obligations or interests that **could interfere, or be perceived to interfere**, with his or her ability to **adequately perform required duties in a fair and objective manner**"*.

From the above three important ingredients must exist for there to be a conflict of interest. In other words it is not sufficient that the government employee has other financial or professional interests. Such interests must be in competition with his or her employment. Competition in itself is also not sufficient, it must be shown that it could be perceived that the competing interest would interfere with the individual's fair and objective performance of his or her job. In other words, if the individual could objectively perform his job, irrespective of whether such job is in competition for the individual's time, there cannot be said to be a conflict of interest.

To further introduce objectivity, transparency and accountability to the process, the Public Works and Government Services Canada Code of Conduct, requires that all government workers submit a Conflict of Interest Declaration Form before engaging in outside work. The declaration is a requirement for all perceived real, apparent and potential conflict of interest. Thus where there is no real, potential or apparent conflict of interest, no declaration is required

**RESOLVING THE NIGERIAN IMPASSE**

Presently, most professionals in Nigeria, medical doctors, legal practitioners, civil engineers and others who can afford to set up private business (and who are staff of government funded universities, colleges and educational institutions), are engaged in one form of outside

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<sup>47</sup> See Public Works and Government Services Canada Code of Conduct [www.tpsgc-pwgsc.gc.ca](http://www.tpsgc-pwgsc.gc.ca)

employment or the other. While this in itself is not wrong, a version of the interpretation of the Nigerian Constitution suggest that it is against the law. The question that should however be raised in determining the legality or otherwise of provision against outside employment should be “why the prohibition?”

A survey of external jurisdiction has demonstrated that the prohibition is intended to eliminate or at least reduce circumstances of real, potential or apparent conflict of interest while performing official duty as a government employee. Jack Maskell: 2<sup>48</sup>; Secondary Employment Policy, City and County of Swansea 1.2]<sup>49</sup>. This means therefore that it is a desirable alternative to eliminate or reduce conflict of interest without imposing an ineffective total ban on outside employment. Currently, this is the ineffective position Nigeria finds itself.

The irony of the situation is that the exemption of farming, which to a large extent has a higher potential of conflict of interests both with government employees that work in various Ministries of Agriculture and the fact that farming is a serious business that requires time (see generally Jarkko et al (2006)), commitment and dedication (Government of Newfoundland and Labrador: 1), contradicts this objective. If this is the case, the question therefore is whether the exemption of farming is achieving its goal and whether it is raising circumstances of conflict of interests, particularly as defined by the *Public Works and Government Services Canada Code of Conduct* i.e. *competing financial, professional or personal obligations*.

The answer to this question will require further research. However, for purposes of this paper, suffice it to say that the present law is ambiguous and ineffective. There is thus need to develop a more effective and efficient legislation. This will mean a law that would eliminate and regulate conflict of interest situations without depriving Nigeria and Nigerians the benefits of hard work, economic diversification, ingenuity, sustainable development initiatives and particularly in this case, the opportunity for law lecturers to contribute to development of the law, legal reform and training of well-rounded legal practitioners (Albert et al , 1912: 256).

## CONCLUSION AND RECOMMENDATIONS

As has been demonstrated above, the elimination of conflict of interests in government employment is a desirable objective. It amongst other benefits help to ensure effective and efficient utilisation of government resources. It also ensure that government resources are

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<sup>48</sup> See Codes of Conduct for Australian Public Service Employees; DPM Instruction No. 18-1, D.C. Official Code § 1-618.01 (2006 Repl.)

<sup>49</sup> See the Canadian and Kenyan positions discussed above. Government of South Australia, (2005) “Code of Conduct for South Australian Public Sector Employees” Commissioner for Public Employment Available at: [http://www.wch.sa.gov.au/research/committees/humanethics/documents/code\\_of\\_conduct.pdf](http://www.wch.sa.gov.au/research/committees/humanethics/documents/code_of_conduct.pdf) (accessed 16<sup>th</sup> October 2018)

applied objectively and fairly to all citizens without undue interference by outside interest or impaired judgement. On the other hand, outside employment has quite positive contributions. It helps to ensure sustainable development, reduces dependence on government, improves professionalism and gives a sense of fulfilment and accomplishment to individuals. This translates to a sense of national fulfilment and satisfaction which also translates to an improved sense of self-worth and social harmony. The benefits on both side of the argument are desirable, however achieving them require a calculated approach.

The forgoing examples from Kenya and Canada, and the observed ineffectiveness of the Nigerian position, demonstrates that the issue is not the total prohibition of outside or second employment but in the regulation of outside employment to reduce its negatives and encourage its positives. Accordingly, regulation must be aimed at avoiding the demerits of outside or second employment while promoting the merits. As shown, the demerits are the possibility of conflict of interests, potential impairment of fair judgement and perception of interference. In other words, if a Nigerian regulation can be crafted to achieve this aim, such law should be promoted and the present position discarded.

Accordingly, it is herein recommended that:

1. A new regulation be introduced that will require disclosure of real and potential conflict of interests. This should include outside or second employment and all financial and professional interests that may lead to perceived or real impaired judgement or conflict of interest.
2. A stricter restriction should be placed on senior government officers and independent heads of Government Agencies and Parastatals including heads of universities and colleges especially all such public offices that have a high threshold of financial approval. Junior staff and all staff not having budgetary approval or independent decision making powers e.g. Lecturers in universities, colleges and institutions, should be removed from the definition of public officers for purpose of this prohibition.
3. Adapting the Kenyan and Canadian approach, all public officers (other than State officers) be required to disclose **only** when there are potential or real conflict of interests.
4. An independent body be established to investigate any conflict of interests and report to a different body (code of conduct tribunal /Attorney General) for prosecution where necessary.
5. Public and State Officers be given opportunity to explain any identified conflict of interest failing which enforcement procedure is commenced. It is also recommended that section 2(b) of the Code of Conduct for public Officers under the CFRN be amended to make the engagement in prohibition effective only upon existence of conflict of interest.
6. The words "conflict of interest" should also be defined along the line of Canadian and Kenyan provisions
7. To this end the following redrafting is recommended:

Section 2(b) thus *"Without prejudice to the generality of the foregoing paragraph, a public officer shall not-... (b) except where he is not employed on full time basis engage or participate in the management of or running of any private business, profession or trade that may result*

*in a **conflict of interest** but nothing in this sub-paragraph shall prevent a public officer from engaging in farming.*

**Conflict of interest** here means ““A situation in which an individual has other competing financial, professional or personal obligations or interests that could interfere, or be perceived to interfere, with his or her ability to adequately perform required duties in a fair and objective manner””.

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***Eddy David Ventose v. The Chief Electoral Officer (Barbados)***  
**[2018] CCJ 13 (AJ)**

**Jill St George, PhD Candidate, University of Sussex**

**PARTIES:** Eddy Ventose (Appellant)  
Chief Electoral Officer of Barbados (Respondent)

**FACTS:**

This case concerned the electoral registration of Commonwealth citizens residing in Barbados. Eligibility to vote is governed by S7 Representation of the People Act Cap 12 (“ROPA”), with procedure dictated by secondary legislation. S7 states:

*Subject to this Act and any enactment imposing any disqualification for registration as an elector, a person is qualified to be registered as an elector for a constituency if, on the qualifying date, he*

- a) is a citizen of Barbados; or*
- b) is a Commonwealth citizen (other than a citizen of Barbados) who has resided in Barbados for a period of at least three years immediately before the qualifying date and*
- c) is 18 years of age or over; and*
- d) has resided in that constituency for a period of at least 3 months before that qualifying date, (...)*

The appellant, a St Lucian national and Commonwealth Citizen, applied to the Chief Electoral Officer (“CEO”) head of the Electoral and Boundaries Commission (“EBC”) on numerous occasions for entry onto the electoral register of Barbados as an elector. He had been employed in Barbados since 2006 and resided in the St James South constituency from 2010, however each of the appellant’s applications were refused. Agents for the CEO advised the appellant that it was a long-standing policy of the EBC to register Commonwealth citizens only if they were Barbadian citizens, permanent residents or holders of permitted immigrant status.

**PROCEDURAL HISTORY:**

The appellant sought a judicial review under the Administrative Justice Act Cap 109B (“AJA”). At first instance, Sir Marsten Gibson, Chief Justice of Barbados, sitting as a High Court judge, found that the appellant satisfied the requirements under S7 ROPA, and thus qualified to be registered as an elector. Gibson CJ ordered that the CEO register the appellant as an elector. On appeal, the Court of Appeal held that whilst the appellant had satisfied the requirements under the ROPA, the Act did not mandate the CEO to register the applicant as an elector. The CEO contested that the appellant did not have locus standi under S6(a) AJA, which requires

demonstration of interests having been adversely affected by an administrative act or omission. However, the Court of Appeal determined that his standing arose from S6 (b) AJA wherein his application was justified on the basis of public interest. The Court of Appeal ordered the CEO to “make a determination” on registration within 24 hours, and the appellant’s registration was refused.

The Caribbean Court of Justice (“CCJ”) under its appellate jurisdiction, considered the following:

1. Whether the appellant had locus standi under section 6(a) of the AJA?
2. Whether, upon satisfaction of the conditions laid down in S7 ROPA, the appellant was entitled as a right to be entered onto the electoral register?

**RULING:**

1. The appellant had locus standi in accordance with S6(a);
2. The long-standing policy of the EBC to register only those who were Barbadian citizens, permanent residents or holders of permitted immigrant status was ultra vires and thus unlawful; and
3. Once the statutory criteria had been fulfilled, it was not open for the CEO to add further criteria, investigate the details on his application form and determine that one was not qualified.

**REASONING:**

1. The ‘long-standing policy’ of the EBC constituted an administrative act as it was designed to preclude the appellant from obtaining registration as an elector despite his meeting the statutorily mandated requirements;
2. If there is a good reason for such a policy to exist, Parliament must alter the law prior to implementation by the EBC; and
3. The legal framework was unambiguous with regards the registration of electors. In accordance with Regulations, if an individual is eligible, the registering officer shall cause their name to be entered on the register, and if not, a refusal is issued. Where a determination of eligibility has been made, a registering officer is duty bound to cause the appellants name to be entered on the register.

**IMPACT AND ANALYSIS:**

1. The decision of the CCJ will have a wide-ranging impact in Barbados and potentially across the Caribbean region, depending on the construction of ROPA’s and their interpretation;
2. Discretion on the part of the EBC has been removed, and thus those eligible to vote has grown significantly;
3. The express removal of perceived discretionary power held by administrative bodies will ensure a properly executed democratic process, wherein the intention of Parliament on drafting the Act will be implemented rather than a wider, subjective test based on a policy determined by an administrative arm. This serves to increase transparency and ensure compliance with legislation as intended by Parliament; and

4. This case serves to reiterate the importance placed on the separation of powers, with the judiciary highlighting that only Parliament has the power to extend and amend the Act.

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