TEACHING LEGAL PROFESSIONALISM: A COMPARATIVE STUDY OF TEACHING PROFESSIONAL VALUES AND LESSONS FOR LEGAL EDUCATION

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Abstract

The Legal Education and Training Review highlighted concerns across all sectors, from academics to practitioners over a lack of understanding of professionalism and ethics. Building on a review of two other professions, medicine and accountancy, this paper suggests an approach to embedding, through formative assessment, an approach to promote the development of the complex nature of being a professional and of professional ethics in practice.

Introduction

> In the UK LLB …we still, on the whole, relegate ethical inquiry and practice to vocational courses; and we have little impact on and almost no input to professional educational initiatives.
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> (Maharg, 2007:4)

What does it mean to teach professional conduct, values and ethics? What does it mean in the specific context of legal education? As part of a wider research project on the changing landscape of the legal profession, it became apparent that there is a pressing need to examine how we currently teach the undergraduate LLB in Scotland.[1] Following the recession in 2008, there have been increasing complaints about the lack of responsiveness in law schools to the changes happening in the profession. Maharg writing just before the recession states that "many of our twenty-first century law schools still inhabit an industrial system of education inherited from a twentieth century mired in nineteenth century structures – a system that is entrenched by the massification of higher education" (2007:5).

 In June 2013, the Legal Education and Training Review (LETR) was published. LETR focuses on legal education and provision in England and Wales. However, it is relevant and will influence legal education teaching in Scotland. Amongst a range of concerns identified the review raised concern over the lack of educational provision on professional values and ethics in the undergraduate degree (LLB). LETR highlights the emphasis on these areas at the qualification stages of training. The LETR recommended that students would benefit from earlier exposure to ideas of professional conduct, ethics and values. However, no specific

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[1] This project is ongoing and seeks to look at how the changing nature of legal practice can be appropriately reflected in the undergraduate degree.

proposals on how to address this concern were offered. At present, the focus of the undergraduate LLB is on the substantial areas of law and the production of legal knowledge.

In Scotland, following a review of legal education, the Diploma in Legal Practice currently provides the main introduction to core professional values. Therefore, there is, following LETR, a similar need to consider how we teach students about professional conduct, ethics and values during the undergraduate LLB. However, what is meant by "professional values, conduct and ethics" in the Scottish legal educational context is open to a range of interpretations and perspectives that impact on the teaching of these core attributes of the "professional" lawyer.

Two professions that focus on professional values as part of their undergraduate teaching are medicine and accountancy. This paper draws on educational literature on teaching values and ethics general and from both of these disciplines to consider what lessons may be learned and applied when developing and embedding teaching on and of professional conduct, values and ethics in the undergraduate LLB. In addition, the paper draws on legal academic writing from the USA where the law degree is a postgraduate degree and arguably a more vocationally orientated qualification than the LLB in the UK. Whilst acknowledging the differences between the UK, Scotland and the USA in terms of the LLB, the sociology of professions and professionalism has been shaped and influenced by research undertaken in the USA since the 1930s.

The paper is set out in four sections. The first briefly considers what is meant by profession or professionalism. The next section focusses on law, medicine and accountancy. Section 3 identifies key lessons that emerge from comparison of the three disciplines. Finally, the conclusion sets out an argument for building into legal education an element of formative assessment that explicitly links an aspect of professionalism with a piece of assessment that provides feedback for the student to reflect on.

Professions and Professionalism
In this section, consideration is given to how "professionalism" and professional work is conceptualised in three professions.

Law
In 1996 a central recommendation of the Lord Chancellor's Advisory Committee on Legal Education and Conduct's *First Report on Legal Education and Training* was that LLB should be an independent liberal education rather than as a vocational degree. Seventeen years later the LETR raises deep concerns over professional values. This oscillation in views on the purpose of the law degree is important for our discussion of how to teach professional values. How indeed when there is no agreement, or competing claims, on what the LLB degree should contain, or indeed seek to do, in terms of preparing the student for a life in

the legal profession. This focus on the vocational aspects of the LLB needs to be tempered. In Scotland, the Law Society of Scotland views the LLB degree as providing a liberal education rather than as a vocational degree. Irrespective of whether or not the LLB is either a liberal education or a vocational degree there is a need to consider what is meant by professional values and ethics.

Sullivan (2005) suggests that professional work has several distinguishing characteristics. A core feature, according to Sullivan, is that professionals engage in making complex decisions that draw on their technical knowledge, skills and informed judgement. Typically, professions are largely self-regulated with a system of controlled entry and being licensed or certified to practice. For example, the Law Society of Scotland sets the requirements for benchmarking and approving LLB degrees for authorised law schools, as well as having oversight of the postgraduate training at designated institutions.

In addition to the entry requirements, professional work is usually governed by ethical codes. According to Sullivan, ethical codes together with the process of certification and continuing professional education assure the client that the professionals are held to high ethical and performance standards (Sullivan, 2005:1 – 6). It therefore follows that doctors are obliged to follow ethical codes and processes of certification. The 1992 MacCrate Report in the USA stated that "lawyers should be committed to "contributing to the profession's fulfilment of its responsibility to enhance the capacity of law and legal institutions to do justice" (MacCrate, 1992:161).

However, whilst the features of "professional work" suggested by Sullivan are recognisable it is worth noting that a standard definition of professionalism does not exist. Terrell and Wildman (1992) note that professionalism is, on the one hand, about how the work is carried out and, on the other, the underlying values and traditions associated with the profession that have shaped its approach to the work.[2] Nelson and Trubek (1992:17-18) suggest that for lawyers, "professionalism" has been defined as "the set of norms, traditions and practices that lawyers have constructed to establish and maintain their identities as professionals and their jurisdiction over legal work". This would be recognised by lawyers from a range of jurisdictions.

More recently, LETR noted that professionalism/ethics was one of the two areas "often mentioned as lacking among new recruits". Professionalism and professional ethics, as well as its regulation, were "seen as a critical defining feature of professional service" (LETR, 2013: 34). Significantly, LETR noted that these concerns were expressed across the legal

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[2] This is an aspect of other research being undertaken by the author on the changing nature of legal practice and implicit within that research are concerns over the meaning of professionalism and professional practice. As familiar practices and models of lawyering are increasingly challenged by new and emerging ways of seeking legal advice, this raises important questions over professional ethics and values. These are beyond the scope of this paper.

sector from legal academics to practitioners. One academic stated that "… they need high ethical standards. And I think again the way it is becoming a business and not a profession is meaning that those matters are being neglected" (LETR, 2013: 35). This concern was echoed by a solicitor who commented that "Our concern, I think, is with commercial providers coming into the legal market that they will adopt a very business attitude to the delivery of legal services, just like any other commodity and will lose the professional ethos of really putting your client first" (LETR, 2013: 35). This final comment is important for it highlights wider concerns about the changing nature of legal practice and the delivery of legal services reflecting wider, rapid, changes that present challenges to the legal profession. Susskind and Susskind (2015) present a compelling argument for the future diversification of the legal profession, amongst others, that does have implications for legal education and professional ethics. The implications of their argument are outwith the scope of this paper, however, the changing nature of professions set out by Susskind and Susskind has implications not only for the professions, but how they are taught and how they can effectively ensure that professional ethics and values are not diluted.

Medicine and "Good Medical Practice"
As a profession, medicine is associated with a range of professional and ethical standards. At the core of medical practice is the importance of making medical judgements in the best interest of the patient or "doing no harm". The study of the main descriptive and prescriptive approaches to judgement and decision-making in clinical medicine draws on a range of disciplines and is not confined to the medical practitioners. In this section, recent guidance from the General Medical Council ("GMC") and its associated website and teaching materials are considered.

In March 2013, the GMC issued "*Good Medical Practice*". This guidance sets out the GMC's approach to the professional duties of a doctor. The guidance expressly states that it applies to student doctors. This is important for it builds into the education and socialisation of the student doctor an awareness and deepening (it is to be hoped) understanding of the professional values by which they will be expected to practice. In setting out the guidance's approach to "professionalism in action", the emphasis is on the duty owed by the doctor to his patient (2013: 4). The language used to describe a good doctor is significant. A good doctor is "competent". Competency is achieved by the doctor "keep[ing] their knowledge and skills up to date, establish[ing] and maintain[ing] good relationships with patients and colleagues". In addition, the good doctor must be "honest and trustworthy" (GMC, 2013: 4).

There is not an aspect of that which seems unreasonable or surprising. However, the final paragraph presents these values or features of the good doctor in a different way. "You must use your judgement in applying the principles to the various situations you will face…You must be prepared to explain and justify your decisions and actions". For revalidation, the

good doctor "must demonstrate that [they] work in line with the principles and values set out in this guidance" (2013: 5).

The presentation of the professional values is noteworthy for its framework approach. Four domains are set out as core to the professionalism and values of all medical practitioners. The four domains are:

* Knowledge, skills and performance;
* Safety and quality;
* Communication, partnership and teamwork; and
* Maintaining trust.

As a final comment on the Good Medical Practice guidance, it is evident from the guide and its references that the GMC have spent considerable time, effort and thought on professional practice since 2008. The range of guidance notes prepared by the GMC range from guidance on developing teachers and trainers in undergraduate medical education (2011) to more recent ones on the use of social media (2013). It is important to note the investment by the GMC as a professional regulatory body demonstrates the importance of a planned, reasoned approach to the teaching of professional values.

Accountancy: The Challenge
Unlike medicine or law there is no one governing body that sets standards and regulates professional behaviour. It is partly due to the fragmented nature of the profession that bodies, such as the Royal Institute of Chartered Accountants (Scotland) are held in high regard globally. Although there are standards of conduct that are promulgated by different accountancy bodies, the lack of a single unified professional body makes it difficult to say which code of practice applies across the profession. In discussion with accountancy professionals and academics it quickly became apparent that it would be misguided to focus on one code of practice and use it to set a benchmark for teaching professional values in accountancy. To address this consideration is given to accountancy literature on teaching professional values in the following section.

Professionalism, Values and Ethics Considered
Professsionalism, professional values and ethics in legal education, medicine and accountancy are highly contested. This section provides a broad overview of professionalism and the teaching of professional values in law, medicine and accounting drawn from academic and professional reports from beyond the UK and Scotland.

Law
There is a substantial literature that considers the impact on legal professionalism that has highlighted the implication of "billable hours" and the commercialisation of law. One of the

most striking aspects of this literature is the focus on the relationship between legal education and Big Firms. The role of law schools, notably in the US literature, is criticised for their failing to support the development of an "ethos of professionalism among law students" (Montgomery, 2008: 338). It is striking to note how critical the academic literature, notably but not exclusively in the USA, is of legal education and its failure to engage with developing professionalism. It is argued that, in both substance and pedagogy, law schools' predominant emphasis is on analytical skills and reasoning through broad exposure to a range of legal areas. A survey of law texts aimed at Year 1 law students quickly demonstrates the importance placed on "critical reading" and legal reasoning. However, there is less emphasis on the wider ongoing development of a professional ethos.

A number of authors note the difference between legal and medical education. Acknowledging their different histories, medical students are primarily educated within clinical hospitals combining the academic and scientific with encountering other members of the profession and patients. This process of socialisation or enculturation ensures that medical students begin developing their professional skills before graduation. This is in sharp contrast to law students. Few law students have professional encounters before entering the profession. Only a small percentage will have experience of law clinics or pro bono work. As the LETR (2013) notes there is a gap at present in legal education around developing a professional ethos and understanding among law students.

After over fifty site visits to study how professional schools educate lawyers, doctors, engineers and nurses, the president of the Carnegie Foundation for the Advancement of Teaching, Lee Shulman noted that "the most overlooked aspect of professional preparation was the formation of a professional identity with a moral core of service and responsibility" (Shulman, 2010: ix) around which the student was taught. In 2007, the Carnegie Foundation published *"Educating Lawyers"*. It argues that legal education needs a more integrated, holistic approach towards educating lawyers. To do this there is a need to elevate education for practice and professional identity to the same level as education for legal analysis. In the same year, a report by the Clinical Legal Education Association, *"Best Practices for Legal Education"*, emphasised the importance of teaching practice and professionalism at the centre of legal education.

"Law schools are inadequately developing an ethos of professionalism in law students." (Montgomery, 2008: 323). In a general review of legal writing on professionalism and legal pedagogy this statement by Montgomery summarises the general view presented by legal writers. Concerns over the lack of legal teaching focussed on legal professionalism appear to be cyclical. In Scotland we can see it in discussions over the Diploma and recent changes to its structure. Yet despite the changes there remain consistent criticisms of the perceived lack of understanding amongst law graduates of the standards expected of them as "young professionals". During a series of interviews conducted with partners in a number of large

legal firms in Scotland a consistent theme emerged about concerns over the apparent inability of trainee and newly qualified lawyers to understand the interrelationship between their conduct as professionals and professional values.[3] In England, there have been a number of major reviews of which the LETR is simply the most recent. Although the LETR was focussed on England and Wales, it is important that law teachers and law schools in Scotland reflect on the LETR and changes introduced because it will impact on legal education in Scotland.

The American Bar Association (ABA) published in 1986 the Stanley Commission on Professionalism. The report documented a perceived decline in professionalism among attorneys. It set out a series of initiatives for laws schools and law firms to address the problem. Six years later improving professionalism was a key concern of the ABA MacCrate Task Force in 1992. Again, the MacCrate Task Force proposed a professional education continuum beginning in law school, and continuing with the profession, to increase important skills and to strengthen professional values. The report suggests that professional values (or legal ethics) encompass three things: a body of (legal) knowledge, a fundamental lawyering skill and a set of values (ABA 1992: 211- 212).

The MacCrate Report influenced legal teaching in the USA throughout the 1990s and into the early twenty first century. In 1995 Duke University Law School hosted a conference focussed on teaching professional values (Symposium, 1995). Bruce Green (1998) noted that whilst there is a large literature on legal ethics there is less focus on what to teach. There is a lack of agreement about the core elements that should be standard across law schools. The MacCrate Report was broad in its approach and thereby created ambiguity over what should be taught. Green notes the emphasis on teaching legal ethics in American law schools and their general failure to engage students. He proposed a more context based approach to learning with professional values and ethics being spread across all core courses. Green is persuasive yet on reviewing later articles it is unclear how far the approach proposed has been adopted by law schools. However, Wilkins highlighted an interesting approach to teaching professional values across two disciplines: medicine and law. In an innovative course that brought together law and medical students to work together at Harvard University, new insights were created for students and staff about the nature of professional decision making and ethics (Wilkins, 1995).

More recent legal education scholarship has highlighted the expansion of law schools, and questioned the motivation of law schools for the steep increase in tuition fees (Tamanaha, 2012). The economic downturn in 2008 impacted heavily on the legal job market and law graduates from outside the Golden Circle of law schools (Yale, Stanford, Harvard, Princeton,

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[3] A series of ten interviews with lawyers working in Dispute Resolution were conducted by the author as part of an on-going research project looking at the expectations of firms in terms of the knowledge and skills required in new LLB graduates.

Cornell) have found it difficult to find positions in major law firms. As a result, the focus of legal education literature has turned to consider the role and purpose of law degrees. In part this reflects increasing criticism from students over the cost of law degrees against future earnings. However, Hamilton and Monson (2012) have carried out important qualitative work among entering law students, early-career lawyers and acknowledged legal practitioners about their understanding of professionalism. Their analysis of the findings is interesting for illustrating the changing understanding of professionalism across the three groups. Whilst they are cautious about their findings, "stage-appropriate educational engagements" is important (Hamilton and Monson, 2012: 384). For this to work traditional methods of legal pedagogy need to be reconsidered. They argue, convincingly that there needs to be a move towards student centred moral discourse. A key element in their outlined approach was the use of open ended questions that allowed students to discuss practical concerns (a lesson identified from medical teaching).

Medicine

Professional values constitute the social capital of medicine.

(Royal College of Physicians of London, 2005: 43)

Reviewing the medical education literature, it is striking to note how many calls there are for improved teaching of professionalism to medical students, residents and during continuing professional development (Cruess and Cruess, 1997a, 1997b; General Medical Council, 2001; Royal College of Physicians of London, 2005). These calls arise from public dissatisfaction with the performance of the medical profession in areas where they have direct responsibility—such as self-regulation—as well as the public's perception that members of the profession are less altruistic than in previous times (Starr, 1984).

From the point of view of the medical profession, the entry of the state and the corporate sector into the medical marketplace have significantly changed the social contract, leading to a belief that the traditional values of the profession are under threat and hence must be actively taught and promoted (Cruess and Cruess, 1997a, 1997b; Royal College of Physicians of London, 2005). Professionalism was traditionally transmitted using respected role models. This method depended for its success on the presence of shared values in a relatively homogeneous medical profession serving a similarly homogeneous society, a situation that no longer exists. Thus role modelling, which remains an immensely powerful tool (Wright et al., 1998; Wright and Carrese, 2001), is no longer sufficient. It is now felt that professionalism must also be taught explicitly.

In the decade following 2000, a range of new approaches to teaching medial professionalism were developed. Maudsley and Strivens (2004) have proposed that, of the educational theories available, 'situated learning' theory seems to describe the most effective model to assist in the design of programs which have as their objective the transformation of students

from members of the lay public (or non-experts) to expert members of a profession, with both appropriate skills and a commitment to a common set of values. It suggests that learning should be embedded in authentic activities which help to transform knowledge from the abstract and theoretical to the usable and useful. It is argued by its supporters that there should be a balance between explicit teaching of a subject and activities in which the knowledge learned is used in an authentic context (Brown et al., 1989). While the theory is applicable to all forms of learning, it seems particularly appropriate to educating for the professions, which are communities or cultures joined by ''intricate, socially constructed webs of belief'' (Brown et al., 1989: 33). An individual's desire to learn is engaged and can be linked to the intention to join the community of medical professionals.

One contemporary school of thought has emphasized that professionalism needs to be taught explicitly, utilizing either definitions or outlining professionalism as a list of traits or characteristics (Cruess and Cruess, 1997a; Swick, 2000). The objective is to ensure that every physician understands the nature of professionalism, its basis in morality, the reasons for its existence, its characteristics, and the obligations necessary to sustain it. This can be termed the cognitive base of professionalism: in terms of the theory, the subject to be learned is first articulated.

Others have stated that the teaching of professionalism should be approached primarily as a moral endeavour of role modelling, efforts to promote self-awareness, community service, and other methods of acquiring experiential knowledge (Coulehan, 2005; Huddle, 2005). Explicit teaching receives less attention. They seek to embed the learning in an authentic activity, emphasizing the usefulness of the knowledge.

Professionalism is fundamental to the process of socialization during which individuals acquire the values, attitudes, interests, skills and knowledge—the culture—of the groups of which they seek to become a member (Hafferty, 2003). As situated learning theory suggests, a balance must be struck between teaching the cognitive base explicitly and providing opportunities where learning can occur in an authentic context (Brown et al., 1989; Ludmerer, 1999; Maudsley and Strivens, 2004). Cruess and Cruess (2006) outline a number of key areas that underpin the new approaches to teaching professional values to doctors. These key areas are: institutional support, cognitive base, experiential learning, role modelling, continuity, faculty development, evaluation and the environment. Each of these key areas are applicable to other professions, highlighting that medical education provides useful and relevant models for legal education because of the shared goals of professional formation or professionalism of students.

Accountancy
A significant number of studies indicate that accountants, as a group, seem to exhibit lower levels of moral reasoning than other professional groups (Eynon et al., 1997). Poneman

(1992), for example, suggest that accountants' moral maturity lags behind that of other professional groups. Other studies investigate the contribution that accounting and business education has made to this worrying observation and in particular the extent to which accounting education inhibits accountants' ethical development (Gray et al., 1994). Mayer (1988) in particular found that business students do not recognize the broader social responsibility issues associated with professionalism.

Loeb goes as far as to suggest that students have been indoctrinated into believing simply that 'the role of business in society is to produce goods and services at a profit' (1991: 78) and that ethics and social responsibility are unimportant considerations in corporate decision-making unless they have a direct impact on production or profits. Merritt implies that the propagation of these kinds of ideas has 'tainted students by making them mercenary in their approach to their craft' (1991:625). She contends there is a clear indication that business degrees are associated with lower ethical standards and he concludes that 'business schools have not done an adequate job of preparing students to respond ethically to the complex issues that arise in the work environment'(1991:625). However, the profession is also to blame for not insisting that ethics forms a greater part of the broader professional curriculum. Hauptman and Hill (1991:38) somewhat scathingly conclude that the professions are operating as 'amoral economic pressure groups immune from ethical concerns'[4], and as a consequence, public opinion is becoming increasingly characterized by high levels of cynicism.

Taken together, these studies present the somewhat disturbing possibility that conventional accounting education has a negative impact on students' ethical predispositions (Arlow, 1991). Fleming, for example, concludes that 'the tendency of the evidence is to suggest, if anything, that accountants either occupy the middle ground or lean towards an amoral ethical position' (1996: 215). These studies suggest that both qualified accountants and accounting students tend to view the everyday practice of accounting as an amoral activity (McPhail, 2001; 2002). Some researchers argue that poor quality accounting education contributed to scandals such as Enron (Low et al., 2008). The worry over the nature and impact of accounting education persists (Williams, 2003). Low and colleagues (2008), for example, lament the continuing inability of accounting and business education to prepare accountants for the ethical capacities they require to engage with complex ethical issues.

Yet, as noted, following a number of major scandals (for example, Enron) ethical education of accountants is key to restoring credibility to the profession (McPhail, 2001). In terms of teaching professionalism and ethics, the focus is mainly at the postgraduate and professional qualification stage, rather than during undergraduate studies. At present, according to Accountancy colleagues, professional values and ethics are generally taught through case

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[4] Hauptman and Hill use a phrase from L Newton (1982:37).

studies and peer discussions. Although professional codes are referred to there is, from the available literature, a range of views on how effective the codes are at developing professional values among accountants. Jennings (2004) suggests that the limited research on professional values and ethics training indicates that new approaches are needed in order to integrate a better understanding in students. Jennings notes that her review of the existing literature has identified the following as possible areas for further development in accountancy studies: moral reasoning, virtue ethics, ethical reasoning and codes of conduct. It was recognised that perceptions of accountant integrity affected the profession's integrity, independence and perceived objectivity. For Jennings this presents the profession with a major challenge: how to provide high quality and consistent standards of ethics education to protect the value of the accountancy qualification. A global study into the development and maintenance of ethical standards resulted in the publication by the International Federation of Accountants – International Education Standard (hereafter the IFAC-IES) *"Professional Ethics Values and Standards"* (Jackling et al., 2007).

The *"Professional Ethics Values and Standards"* emphasises developing ethical competence. It sets out two approaches: topic based and stage by stage. The first sets out a number of key topics, for example, an ethical framework, decision making and social issues. The second assesses ethical understanding as an integrated part of the accountancy curriculum. This second approach starts with undergraduate teaching and seeks to assess students through summative and formative methods. However, it is unclear to what extent this report has influenced existing accountancy undergraduate teaching. Of course, the IFAC-IES is just one of many competing international professional bodies with no direct power to make formal requirements on accountancy degree providers.

Drawing the literature together
While the studies discussed above indicate some level of concern over the ethical maturity of accountants in particular, there appears to be similar unease within the other professional bodies under consideration over the level of ethical competence of their members. A review of legal education studies reveals a considerable level of concern over the ethics of lawyers. Kronman (1993) and Webb (1996) have both expressed concern at the unethical behaviour of lawyers and Smith concludes that being a lawyer, 'inevitably corrupts lawyers' characters!' (1990: 70). The medical literature too contains many expressions of concern that doctors' education may diminish their ethical sensitivity. Miles and colleagues (1989; see also Hafferty and Franks 1994; Parker 1995), for example, blame the scientific and technical focus of the medical degree syllabus for increased cynicism among medical students and declining 'humanistic sensitivity' of doctors. Hafferty and Franks (1994) conclude that the professional culture of medics has become ethically compromised.

There appears, therefore, to be a significant level of concern across many of the traditional professions over the ethical characteristics of their members. However, the interesting issue

here is, of course, not which profession is more or less ethical than another. Rather, what lessons can we learn from these professions for the development in undergraduate education of an understanding, appreciation for and embedding of professional values that will be further developed in professional life?

Lessons Learned

Developing an understanding

Learning theorists argue that expertise is best developed through leaning by doing (Green 1998; Hamilton and Monson 2012; Cruess and Cruess, 1997a). Learning by doing is always to some degree formative. Effective learning requires practice, feedback and a response to the feedback on that practice. Importantly, and something that can be easily overlooked in this, is that the lecturer/instructor/tutor should communicate as clearly as possible the aims as well as the content of what is being taught. This clarity of the aims or the goal is essential because it isthe process of doing, feedback, reflection, repeating, that constitute the practice being learned. It could be as simple as how to interview a client or more complex such as drafting a letter of advice.

Reviewing the literature, it is clear that the process of assessment is crucial. What is being assessed, and why it is being assessed, conveys to the student what is important about the subject and how to engage with it. What becomes evident is the importance of pedagogy in forming, and shaping the perception, imagination and behaviour of students. The importance of formative assessment as a means of encouraging deeper learning suggests possible approaches to legal education that may enable law students to develop their own understanding of something as complex and integrative as professionalism.

This is reflected in work currently being undertaken at a number of universities. The HEA Strategic Law Summit in January 2014 highlighted a range of innovative projects that seek to incorporate practical legal skills development with professional and ethical considerations. The projects used online scenarios and case management tools to record the student's work. The quality of documents was assessed. However, equally important was the rationale recorded by the student for a particular approach or suggested course of legal action or advice. To capture these important elements, students kept a reflective log throughout the course. Although the ability to be reflective varies from student to student, the reflective logs did provide the module leader with assessable material from which to comment on the professional aspects of the work undertaken. At first students were sceptical of the proposed module structure and this was recorded in their logs. However, towards the end and on reflecting back over the module, a significant number of students commented on their learning.

Moral development models: Kohlberg and its critique

There are two main models of moral development, though they tend not to be fully developed through to how to be put into practice in the educational setting. The two models are Kohlberg and Gilligan. Both are briefly outlined below. It is argued that, rather than one model being simply adopted, good professional values education should reflect a blend of both models. By developing a new professional practice module for accountancy and law students an opportunity arose in which to consider these models and what they suggest may be needed in terms of aligning the course outcomes, assessment and the underlying values that we want to embed in the module.

One of the problems with the studies discussed above is how they determine whether one person or profession is more or less ethical than another. They appear to imply some objective scale of morality. A considerable number of the comparative studies like those above draw on the work of Lawrence Kohlberg and his model of Cognitive Moral Development (CMD) (Hamilton and Monson, 2012; see also Ponemon 1990). Kohlberg's model is used to gauge an individual's moral maturity based on their responses to a series of hypothetical dilemmas. The model itself consists of six discrete predispositions. CMD has been applied to students studying different disciplines and practitioners from different professions. Ponemon (1990), for example, found that accountants' moral reasoning capacity increases until they reach the stage of manager or partner, at which point it decreases.

While Kohlberg's model is prominent within the literature on accounting and law, there is a growing body of work that critiques his position. To begin with, there is some debate as to whether a different level of moral reasoning necessarily results in different types of behaviour (Reiter 1996). However, at a more fundamental level, Reiter (1996) critiques the model itself. She contrasts Kohlberg's conceptualization of moral development with that of Gilligan. Reiter (1996) suggests that, while Kohlberg conceptualizes progress in moral thinking in terms of increased abstraction and autonomy, Gilligan's 'ethics of care' presents a more embedded and empathic view of ethical development. Gilligan was particularly concerned that Kohlberg's model appeared to be developed primarily from studies of male volunteers.

Both Gilligan's and Kohlberg's work is relevant to thinking about how we teach and develop professionalism and professional values. Kohlberg and Gilligan enable us to reflect on how we might conceptualize the professional and ethical development of the individual student. It requires us to consider what we mean by an "ethical" lawyer (accountant, doctor etc)? When we consider the work of the Scottish Solicitors Legal Complaints Commission and public calls by aggrieved members of the public for new codes of practice, Kohlberg's model suggests that simply following ethical codes would represent quite a low level of ethical maturity. Both models provide us with different ways of beginning to think about the kinds

of attributes that could characterize professional and ethical maturity, so the notion of moral development is both complex and contested.

There are also obvious educational implications depending on the type of model espoused by the profession. Reiter (1996) suggests that the majority of ethics education within accounting has been underpinned by the Kohlberg model. Developing an ethics of care, as Reiter rightly points out, requires quite a significantly different form of educational practice. The current approach to teaching professional values and ethics in law schools in Scotland is underpinned by Kohlberg's model. So picking up from Reiter 1996), How do you educate for empathy? In law that should not be a problem we can draw on real cases that raise a range of professional and ethical problems. However, at present, do we link those aspects in to our teaching highlighting professional values and ethics? There lies the challenge for legal education. In the final section initial recommendations for embedding professional values in legal education are set out.

Conclusion - Embedding Professional Values
In the context of legal education this refers to either the Diploma in Legal Practice (in Scotland) or the various postgraduate/vocational law degrees offered in England and Wales. These assumptions appear to contrast with the recent focus by the GMC on embedding professional values into the undergraduate medical curriculum. Yet, there are questions over how well this focus on professional values in undergraduate teaching works or is recognised.

Below, a series of recommendations drawn from the literature and supplemented by interviews with other legal academics and professionals are outlined. The focus of the recommendations highlights the need to consider how ethics and professional values can be incrementally incorporated into the LLB Programme. Through this approach it is suggested that law students will complete the LLB with an understanding of how to approach ethical situations and challenges, recognise the importance of professional values that may at times be in opposition to the commercial drivers of fee income and client retention and provide a strong basis for further learning during the Diploma in Legal Practice.

In setting out the recommendations, three questions suggested by Professor Nigel Duncan at the HEA Strategic Law Summit (2014) have been adapted. The questions are:
- Why do we want to introduce ethics into the undergraduate law curriculum?
- Who should we aim to serve through ethics teaching in legal education?
- What does it mean to be teaching ethics in legal education?

These questions are considered in more depth below.

Why do we want to introduce ethics into the undergraduate law curriculum?

From the readings discussed above, it is clear that our approach to teaching professional values and ethics should seek to enable the student to think, reason, and to feel, as opposed to, "what to think". This may be to as a minimum make students aware of ethical strains and issues inherent to the materials involved in their study of law. Linking the study of aspects of law to wider social, political and economic issues can both enable students (perhaps encouraging them to volunteer, take part in a law clinic or similar extra-curricular activity). This aspect is important for students have to learn how to connect, to empathise with their clients and a range of other people in their professional working lives. By gradually illustrating the relationship between general ethics and professional ethics and values the students can come to appreciate this aspect of their studies and its relevancy to them in the longer term.

To obtain these aims in practice consideration needs to be given to the following:

- What subject matter (content) is suitable for teaching and learning to think, feel, and act?
- What medium do we use for teaching ethical reasoning, ethical sensitivity, and ethical efficacy?
- How should we assess these learning outcomes?
- Who should we aim to serve through ethics/professional values teaching in legal education?

The first question is less problematic. As with looking at the LLB Programme in terms of the wider capabilities that we expect modules to develop in our students, similarly the ethical/professional aspect can be identified for each module enabling students to reflect on the ethical values and considerations.

It would be all too easy to adopt a "preaching" tone when seeking to educate students about professional values and ethics. Therefore, consideration of how we can prepare suitable tutorial questions that allow the students ownership of their ethical development is important. This will require the developing and sharing of resources and collaboration across modules to enable an incremental understanding of ethical issues. A key aspect will also be the design of a range of assessments which engage and encourage the students to develop their own reflections on their own emerging sense of professional values and approach to ethical issues. Any assessments used should be formative in nature and provide the student with feedback that allows the student to reflect constructively on the assessment.

Can we teach people to act ethically? This question appears constantly in the literature and remains unresolved. However, drawing on Rest and Narvaez (1991) there are four necessary to ethical action:

- Moral Sensitivity – awareness of the moral dimensions of the situation;
- Moral Judgement – ethical reasoning, familiar to us from Kohlberg's work on the subject;

- Moral Motivation – wanting to act morally - this may involve putting concerns about ethical rectitude above, for example, money, or professional success, or the approval of superiors; and
- Moral Character – the ability to see it through.

Steps (1) – (3) awareness, reasoning, and motivation may all be amenable to teaching and learning and (with careful preparation) assessment. However, on reflection and following discussion with a range of legal academics Step (4) – ethical behaviour in life – presents a range of challenges for assessment.

Building on the discussion set out above, it is suggested that a key recommendation when designing new or revising existing LLB Programme modules is that the following three elements should act as a template.

- Perception or awareness of ethical issues (Sensitivity), what is this about?
- Reasoning in a manner that encourages developmental growth (Judgment), how do we handle this situation?
- Caring about moral (ethical) values (Motivation), why is it important and how
  does that influence our actions?

Perhaps a fourth, the efficacy in acting upon moral (ethical) values (Character) could be added though again questions of how assessable this aspect would be arise.

In terms of applying these features to the current LLB Programme at the author's own institution should there be a new stand-alone module on ethics? Or should particular modules, for example, Contract Law, Family Law (both Level 7), Human Rights and Business Law (both Level 8) incorporate a theme or an aspect of professional values/ethics. Alternatively, perhaps a more pervasive approach across all modules should be adopted thereby ensuring that all students throughout their four years come across and have to consider professional values and ethics. This approach would build on research undertaken by the Carnegie Foundation that highlighted the effectiveness of curriculums that "map an integrative journey for students" and in which the faculty members "model and coach students" toward a holistic ethical professional identity (Hamilton and Monson, 2012:383).

For the present perhaps a combination of a stand-alone module and selected modules would help address the risk of overlooking professional values or the adoption of a silo approach by students who do not see the applicability across what they learn and achieve a degree of integration. In the longer term the final option may be achievable.

Closing remarks

Reviewing the materials from the two professions identified for comparison in this study, parallels between the UK Professional Standards Framework and the domains identified and set out by the General Medical Council (2013) can be identified.[5] At present how law schools and law lecturers approach the concept of professionalism will reflect their own learning cultures and environments. As discussed above, there is an unresolved (possibly unresolvable) tension between the academic study of law and the study of law for practice. The academic literature from the USA shows that this is not unique to teaching law in Scotland. However, it is an important discussion that needs to be developed within and between law schools, the professional regulatory bodies and the legal profession.

In the introduction, changes to the contemporary legal landscape were outlined. New challenges and opportunities outlined by Susskind and Susskind (2015) have significant implications for how law is taught and how the teaching of law requires to be kept under review. From reviewing some of the literature across the three professions, it is clear that although there are concerns about how to teach professional values and ethics and debates over how to do so there is consensus that these are, and should, be integral to the development of all students. Singer notes that the "difficulty or strain ought to be welcomed by any properly educated person" (2013: 29). Therefore, the need to integrate the teaching of professional values and ethics into undergraduate education in an explicit way appears to be accepted. Based on a review of the wider literature, this paper outlines a possible approach to developing a new Learning, Teaching and Assessment approach for the LLB Programme that embeds professional values and ethical issues in the core modules.

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[5] Higher Education Authority – UK Professional Standards Framework.
https://www.heacademy.ac.uk/recognition-accreditation/uk-professional-standards-framework-ukpsf

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