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CONTENTS

IN THIS ISSUE

This re-launched edition presents a number of papers from the Commonwealth Legal Education Association's 2015 Conference.

The issue opens with an article by Victoria Gleason and Elaine Campbell which explores the value of creativity within the law curriculum and draws on their experience of implementing two creative projects within a law clinic environment. They conclude that 'students need to be encouraged to unleash their creative skills' and emphasise the 'important role' that academics play in this.

Gleason and Campbell draw on the educational theory of constructivism as a theoretical justification for the place of creativity in the curriculum. Cath Sylvester's article acknowledges that the growth in inquiry-based learning also stems from a move towards a constructivist approach. Sylvester concludes the inquiry-based learning has a 'considerable amount to offer' in 'motivating students, encouraging deep learning and the development of analytical skills'. However, she acknowledges that its full extent and its relationship to the remainder of the law curriculum is 'still being explored'.

Dr Anthony Kakooza and Brian Dennison's article focuses on the practical challenges involved in implementing a revised law curriculum. They provide an overview of changes made by Uganda Christian University and presents the findings from an assessment of these changes. Their conclusion draws on lessons learnt from the process and urges that 'other law schools in the developing world should look for achievable ways to improve pedagogy'.

Professor Jenny Hamilton's article considers the wider organisational changes that have taken place within universities in the UK (and elsewhere). She focuses on the use of massive open online courses (MOOCs) and explores how 'professional boundaries are being redrawn'. She concludes that the 'established authority of the academics over pedagogy and practice in law' is likely to be challenged by emergent technologies and the role of non-academic 'managerial professionals'.

Professor Justus A. Sokefun and Ernest O. Ogbejeh continue the exploration of technology within legal education through their explanation of the challenges which the National Open University of Nigeria has faced in delivering its online distance learning programme. They

discuss the solutions which have been implemented and conclude that these challenges can be successfully overcome.

The final article is based on papers presented at a number of international conferences. In it, Dr Dan Berger and Professor Charles Wild discuss the benefits of using 'authentic assessment' within the law curriculum and provide guidance on how to assess 'critical reasoning' as a part of such assessment. They conclude by emphasising the role of such assessment in 'improving and monitoring teaching practice' leading to 'improved student academic performance on the law degree'.

The last two sections of this edition provide a case comment, case notes and book reviews. We are seeking to develop this section even further and particularly welcome submissions of case notes and comments on cases, new legislation and proposed law reforms likely to be of interest throughout the Commonwealth

We are delighted to have taken on the role of lead editors for the Journal of Commonwealth Law and Legal Education and welcome feedback and enquiries from potential authors and peer reviewers by email at JCLLE@open.ac.uk. Full author submission guidelines are given at the back of this edition.

Emma Jones and Francine Ryan
Lead Editors

THE RE-LAUNCH OF THE JOURNAL

On behalf of CLEA I would like extend our sincere thanks to the Open University in general, and the Lead Editors Emma Jones and Francine Ryan in particular, for launching the new electronic version of the *Journal of Commonwealth Law and Legal Education*. The *Journal* provides a valuable platform for academics from around the Commonwealth to share their teaching and research experiences and the present issue is no exception. Hopefully the *Journal* will also encourage colleagues from different Commonwealth jurisdictions to collaborate with each other in publications of mutual interest. I am eagerly looking forward to reading the contributions from different parts of the Commonwealth in this new format of the *Journal*.

Professor David McQuoid-Mason, President, Commonwealth Legal Education Association

On behalf of The Open University Law School I am delighted that our Law School is involved in the new electronic version of the *Journal of Commonwealth Law and Legal Education.* I am particularly grateful to my colleagues Emma Jones and Francine Ryan for taking the lead in this enterprise. The Journal provides a fantastic opportunity for academics across the Commonwealth to share their expertise and knowledge. I hope it will provide an opportunity for collaborations to develop both within countries and across national boundaries and I hope that The Open University Law School will be involved in many of these new partnerships.

Paul Catley, Head of The Open University Law School

CULTIVATING 21ST CENTURY LAW GRADUATES THROUGH CREATIVITY IN THE CURRICULUM

Victoria Gleason, Senior Lecturer in Law, Northumbria University and Elaine Campbell, Senior Lecturer in Law, Northumbria University

Based on our experience of implementing two creative projects within a legal clinic setting, we explore the concept of creativity and the theoretical and market justifications for incorporating it within the law curriculum. Today's graduates are entering a highly competitive job market and the law curriculum needs to evolve to ensure it cultivates the skills and attributes employers want. A 21st century law graduate needs more than just a working knowledge of the law and fostering students' creativity could help develop a range of non-academic skills. However, significantly, our projects suggest that students need to be encouraged to develop their creative potential. As academics we therefore have an important role to play in facilitating creativity and in producing modern, work-ready graduates. This paper should be of interest to anyone engaged in the teaching of law but also to any academics in other disciplines who are exploring ways of unleashing their students' creative potential.

Introduction

In higher education, words like 'creative' and 'innovative' are frequently and casually used in marketing literature, focus days and staff meetings, and funding applications. Yet, as educators, we rarely explore in any detail what being creative entails and why it is important for our students.

We are supervisors in a law clinic known as the Student Law Office. Clinical legal education is based on the idea that law students learn best when they are doing law, rather than learning theory with no appreciation of how it is put into practice. Law clinics allow students to provide free legal advice to the public. In the United Kingdom, the move to this type of educational model first emerged in the 1970s. However, even twenty years later only 8 out of 79 universities had some form of legal clinic (Giddings et al, 2011). More recently, however, clinical legal education in the United Kingdom has gone through a dramatic period of expansion. The 2014 LawWorks Law School and Clinic Pro Bono Report reported that at least 70% of all law schools in the United Kingdom were now engaged in some form of clinical activity.

The Student Law Office at Northumbria University is one of the longest running live client law clinics in the United Kingdom (Hall et al, 2004: 40). Today, all students enrolled on the four year degree at Northumbria Law School must take the Student Law Office module in their fourth (and final) year. This means that approximately 180 students each year arrive at the Student Law Office, a purpose built legal office, ready to provide pro bono advice and representation to members of the public. They are supervised by senior lecturers who are also qualified solicitors, barristers and clinical caseworkers. Students are divided into teams (known as 'firms') of six. Each firm deals with a specific area of law (employment, welfare benefits, housing etc.) and is led by a supervisor who is experienced in that area. Our firms

deal with company, commercial, intellectual property and information technology issues. They are typically known as the business and commercial firms or the Business Law Clinic.

On face value, one might argue that students engaging in the provision of free legal advice is already a creative endeavour. In this fluid environment, dealing with real people with real issues, students (and staff) must be flexible to the needs of the client. Students cannot retreat to the library for days on end, head stuck in a book. In contrast, they must be ready to react to correspondence from their client and/or opponent. They must be present in the clinic on a regular basis developing a strategic direction for their client's case. They must work together, pursuing the common goal of the provision of accurate and timely advice. Nevertheless, it is questionable as to whether this in itself is enough to claim an *active* quest for the development of creativity in our students. Creativity does not just mean letting students use coloured pens and post-it notes. How does this prepare our students for 21st Century employment? Creativity manifests itself when we give students the freedom to make their own decisions and create something of their own. By doing this we helping to create modern graduates who are able to satisfy employers' requirements for innovative thinking and an ability to develop business.

Our goal was to create explicit opportunities for students to be creative and thus develop attributes required of a 21st Century graduate. We developed two projects within the Business Law Clinic setting: a student-led blog and student-led team meetings. In this paper we set out theoretical conceptions which informed our understanding of creativity and bring this together with a reflective exploration of the outcomes of the projects. In Part I, we consider the meaning of creativity as a term. In Part II, we discuss the educational and market justifications for the encouragement of creativity in higher education. Part III sets out who we sought to inculcate creativity through the use of a blog and student-led meetings. Finally, Part IV links theory with practice, noting the parallels between students' conceptions of creativity and the outcomes of our projects.

Part I: Conceptions of Creativity

Before we start to discuss the justifications for creativity in the law curriculum and the framework we have used to promote it within our teaching, naturally we must first consider what we mean by the term 'creativity'. This may be more difficult than one would first assume as, according to Jackson and Sinclair (2006: 119), 'one of the problems with creativity it that it is difficult to understand and explain'. The Oxford Dictionary of English defines creativity as 'the use of imagination or original ideas to create something; inventiveness' (Stevenson, 2010). Whilst this may be a helpful starting point, dictionary definitions such as these are arguably of limited use as they do not take into account how people's conceptions of creativity may vary according to the context in which they are operating. Clearly what a law student in higher education would view as being creative is likely to vary from that of an art student. Dellas and Gaier (1970: 57) also argue that different types of creative talent might exist stating that 'the scientific creative probably excel[s] in different abilities from the aesthetic creative'. Accordingly, rather than searching for a conclusive 'textbook' definition of creativity, it may be more useful to explore the ideas and concepts generally associated with creativity by both students and academics.

Firstly, we will consider students' conceptions of creativity. A study conducted in two UK universities as part of the Imaginative Curriculum project[1] has helped to shed some light on the question of how students in higher education experience and understand creativity.[2] Oliver et al (2006) reported that many students engaged by the study struggled to explain what they thought creativity was and, rather than providing an explicit definition of creativity, typically employed 'ideas' to do so. Oliver et al present the findings of the study by grouping these 'ideas' of creativity together as follows: 'freedom from routine'; an 'expression of imagination'; 'something personal' i.e. which could have only been created by that person; 'independence'; 'risk'; 'superficiality' (primarily concerned with being free from having to justify decisions); 'commonplace' (as in everyone is creative every day) and, lastly, something which is 'infectious'.

In interpreting the results of the study Oliver et al suggest that generally they perceived a desire on the part of the students for courses which allowed them some space to take risks 'free from the need to justify decisions and where failure was an opportunity for learning rather than a problem' (Oliver et al, 2006: 57).   Whilst the study would perhaps have been more insightful for our purposes if the students sampled had specifically been law students[3], these 'ideas' of creativity appear to be as relevant to law as to any other discipline. Certainly the desire of the students to break free from the traditional constraints of didactic teaching is something we personally have experienced and will discuss further shortly.

Next we turn to our own conceptions of creativity as academics and consider if, and to what extent, they differ from that of our students. Two separate studies help us understand how academics conceptualise creativity. It should be noted that both studies involved law academics but it is not possible to distinguish their particular contribution from the overall results, which would have been particularly useful for our purposes. Firstly, a 2006 study explored UK National Teaching Fellows'[4] perceptions of creativity (The Creativity Centre Ltd, 2006).[5] Whilst many aspects of creativity were suggested by the National Teaching Fellows (NTFs), the four aspects of creativity most cited were reported as: 'imagination' (90%); 'seeing unusual connections' (86.7%), 'original ideas' (80%) and 'combining ideas' (80%).[6]

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[1] According to information available on the Imaginative Curriculum Resources Archive the aims of the Imaginative Curriculum project were to encourage creativity in higher education and to provide practical help and advice to academics who wished to do so. The project was apparently driven by the belief that creativity in students' learning is undervalued, and generally not recognised in UK higher education (except for areas like the visual and performing arts). Available at:
http://78.158.56.101/archive/palatine/resources/imagincurric/index.html (accessed 15 July 2015).

[2] For discussion of the methodology employed in the study please refer to Oliver et al (2006: 43).

[3] The sample was of a broad range of disciplines.

[4] The aim of the National Teaching Fellow Scheme in the UK is to recognise and celebrate academics who have made an outstanding impact on student learning and the teaching profession.

[5] For discussion of the methodology employed please refer to section 5 of the report.

[6] The percentages in square brackets reflect the extent to which each aspect matches the NTFs' concept of creativity. The other remaining aspects were: innovation (76.2%); thinking processes (72.2%); discovery (66.7%); invention (61.1%); generative thinking (53.3%); self expression (52.2%); valuable ideas (52.2%); sudden inspiration (51.1%); analytical thinking (44.4%); awareness of beauty (25.6%); aesthetic products (21.1%); unconscious activities (21.1%); tangible products (18.9%); mysterious processes (14.4%) and other (14.3%).

A separate study conducted under the auspices of the Imaginative Curriculum project also explored the academic's perspective of creativity and the curriculum (Edwards et al, 2006).[7] Edwards et al note that creativity is a "complex, contested concept" and reported that some academics in the study appeared confused by it and referred to the concept inconsistently (Edwards et al, 2006:60). However, most participants in the study considered that creativity included a number of 'features' including things like 'originality' and 'breaking with tradition'.[8] Whilst Edwards et al refer to these as 'main' features there were in fact 13 reported in total suggesting that the key features of creativity are hard to state concisely. Also, interestingly, the key features did not all coincide with the findings of the NTF study. Moreover, when we compare the results of these studies with the result of the student study, there appear to be some aspects of creativity that the academics have overlooked but which the students placed emphasis on: taking risks; being free from having to justify decisions and, something we personally have experienced, the infectiousness of creativity.

Whilst all the studies discussed above suggest some common conceptions of creativity, for example originality and imagination were both explicitly mentioned in two out of three of the studies , creativity is clearly subject to various interpretations and difficult to conceptualise, even for academics. Rather than being frustrated by this we believe this should be seen as an opportunity. Academics should feel empowered to construct their own conception of creativity, to interpret it as they wish and to introduce creativity in their courses in whatever way they feel appropriate. Our view is that creativity in teaching facilitates students to become more creative themselves and to develop some important life skills.

Part II: Theoretical and market justifications for creativity in the law curriculum

Theoretical justifications

One of the strongest justifications for inculcating creativity in the law curriculum is the pedagogic benefit for the students. In particular, it supports a constructivist approach to learning. This is where students are given the opportunity to build their own understanding, knowledge and learning, instead of "acquiring it pre-packaged and ready made" (Exley & Dennick, 2004: 5). The role of the tutor is commonly seen to be that of authoritarian knowledge deliverer. Their function is to stand at the front of the class dispensing knowledge to students who should merely swallow as much of that data as they can, ready to regurgitate it at a later exam. Constructivism, in contrast, puts the student at the centre of the learning process. As Campbell (2015a: 9) notes, a student-centred approach leads to a move from surface (or superficial) to deep learning, an active rather than passive student body, a high level of student choice, and the encouragement of creativity. It is a positive cycle: creativity supports constructivism in teaching which in turn encourages creativity.

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[7] For discussion of the methodology employed in the study please refer to Edwards, M. et al (2006, p.59).
[8] Other suggested main features were: 'a quality of newness', 'related traditions of work', 'different by degree', 'personally new', 'expressed through a product', 'recognised', 'useful', 'ethical', 'trivial', 'hard', 'motherhood and apple pie'.

Figure 1: The Creativity and Constructivism Cycle

CREATIVITY
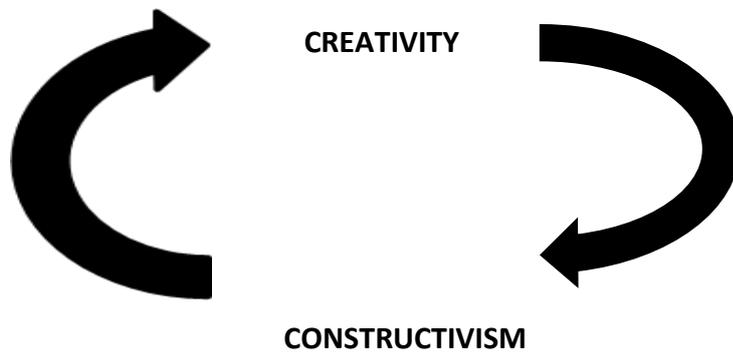
CONSTRUCTIVISM

It is easy to believe that contemporary teaching methods will automatically align with constructivism. The theory of constructivism is widely taught as part of professional development courses for academics working in higher education. Indeed, it was introduced at one of the first sessions that we attended as new teachers in our university. The majority of teachers in higher education want to position themselves as modern educators and act as consultants in learning rather than dictators. However, as Owen (in Collier, 1983: 93) notes, "a teacher may take the putative role of 'consultant' while in reality, acting merely as a 'postman' who dutifully delivers worksheets to his students each week before disappearing to be 'available for consultation'". This is not satisfactory. For a truly constructivist approach to teaching we must go beyond dipping in and out of the consultancy role and look closely at how we can instil student centred learning activities into all aspect of our practice.

Other justifications can be found in the 2006 National Teaching Fellow report (The Creativity Centre Ltd, 2006). It concluded that most NTFs believed two things. First, that creative capacity helps students to achieve success. Secondly, that it was important that educators assisted in the development of that creativity. These principles closely align with the views of Norman Jackson, who argues that expression of creativity leads to greater student satisfaction and "students' experiences of higher education and their future lives will be enriched if teachers help them recognise, experience and develop more of their [creative] potential" (Jackson in Jackson et al (eds), 2006:1).

Market justifications

Whilst academics may be interested in the theoretical justifications for introducing creativity in the curriculum, students are of course much more concerned with the practical benefits their education brings. Today participation rates at university are higher than ever (Biggs and Tang, 2011) and market factors in the UK such as increased tuition fees have arguably led students to demand more than just a good degree at the end of their course. As Woodall et al (2014: 48) recently put it 'in the United Kingdom …students are increasingly demonstrating customer-like behaviour and are now demanding even more 'value' from institutions'. One way we can add 'value' is to ensure that law graduates are equipped with the skills and attributes they need to obtain good quality jobs on graduation. This is particularly important

for law graduates given the significant gap between the number of professional training opportunities and the number of law graduates.

Recent data published by the Law Society indicates that the number of students graduating from a first degree law course in England and Wales rose to a new high of 16,120 in summer 2014 (Law Society, 2015). Conversely the number of training contracts registered for the period 1 August 2013 to 31 July 2014 was only 5,001, 6% lower than the previous 12 months (Law Society, 2015). Whilst it is acknowledged that not all law graduates want to enter the legal profession many do and the problem is further exacerbated by the fact they face competition from students who have undertaken their first degree in another subject but do a law conversion course. Clearly, in light of this highly competitive job market we need to ensure that law graduates have the skills and qualities that legal employers want but also that they have transferable skills they can 'sell' to a wide range of employers. A 21st century law graduate needs much more than a working knowledge of the law.

Employers will still be looking for traditional skills like good written and verbal communication and it would be hoped that any traditional law degree would help develop these. However, today's law graduate may need a wider skill set than ever before. As one magic circle firm puts it 'as law becomes more international and commercial in its focus and nature, our lawyers need to have a diverse set of skills and abilities' (Clifford Chance, 2015). It is not just the legal profession that appears to be demanding a wide skill set from graduates either. Reports suggest employers generally, not just legal employers, are seeking a wide range of skills and attributes including: team work, ICT competency, commercial awareness (Hughes et al, 2013) and even creativity itself (Kaplan, 2014). For example, all of the 'magic circle'[9] firms in the UK (Allen & Overy, Clifford Chance, Freshfields Bruckhaus Deringer, Linklaters, and Slaughter and May[10]) state on their websites that they want commercially aware applicants. Some of them also mention other qualities like 'a challenging thinking style' and that they want to attract students who have 'an interesting take on things' perhaps alluding to aspects of creativity.

Whilst 'commercial awareness' and 'team work' are by no means new recruitment buzzwords, it is questionable if traditional lecture and seminar teaching really give students an opportunity to develop them. In terms of ICT, employers may expect more of graduates than just a familiarity with word and online legal resources. As a recent newspaper article suggests, employers may expect graduates to have their own digital footprint which may mean 'setting up a LinkedIn profile, starting [their] own blog or website, joining Twitter' (Page, 2014). These types of ICT skills are not usually honed in law degrees and creativity is certainly not something one would usually associate with a traditional law programme. We would argue that the skills and qualities employers are seeking may be hard to develop using 20th century teaching methods alone and accordingly to meet the needs of 21st century law graduates we should look to develop a more creative law curriculum.

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[9] The magic circle is an informal term for what are generally considered the five leading law firms headquartered in the UK.
[10] These are the firms normally viewed as constituting the magic circle as confirmed by Hickman (2004).

Part III: How we seek to develop creativity within our experiential business law clinic

As supervisors we are tasked with assessing our students' performance throughout the year, providing formative feedback on an almost daily basis. At the end of the year, the student receives a summative mark for the contribution they have made to the Student Law Office. Naturally, this includes an assessment of the quality of the legal work that that they have carried out for their clients – their research skills, written and oral communications, and their adherence to professional conduct rules. Yet, they are also assessed on their performance from a holistic point of view. For example, supervisors will provide a grade for the level of independence or autonomy the student has developed through the course of the year. Similarly, they are assessed on the way that they worked with their peers and their supervisor. A first class grade for teamwork is given where the student has exhibited a 'very good relationship with supervisor/partner/peers… provides ideas and support to others and effective leadership but does not dominate others' (Student Law Office 2014 -15 Practical File Assessment Matrix, 2014). Students do not just receive marks linked to their academic skills, they are also graded on their personal contributions to the Student Law Office.

As the only supervisors in the Business Law Clinic, we work closely together in order to devise teaching activities and projects which benefit our students. We have always felt that, from a teaching perspective, providing students with client cases is not enough. We are compelled to look for other ways in which we can enhance our students' knowledge, understanding and experience beyond traditional case work. Much of this is informed by our backgrounds as solicitors in leading national commercial law firms. In those firms, we saw that employers were looking for graduates with more than academic skills. They were also searching for well-rounded individuals who could, for example, explain what commercial awareness was and give an example of how they had been commercially aware. They wanted graduates who understood how to develop business, not just wait for that business to come to them. From our point of view, the Student Law Office environment is the perfect place to provide students with the chance to build more than purely academic knowledge. In addition, we want to ensure that our students are given the opportunity to excel when it comes to assessment. From our perspective, both of these aims were fulfilled by allowing our students to be creative. To that end, we devised two projects designed to be student-centred or student-led and which had creativity at their core. The first was an internet blog called We Take Care of Business. The second was student-led firm meetings. In this next section we describe the origins of the projects in more detail. We also set out our experiences –positive and negative – of encouraging our students to be creative.

We Take Care of Business Blog

We had spoken about developing a blog for our Business Law Clinic for some time. However, we were concerned that we would not have the time to draft posts of sufficient quality on a regular basis. In truth, we were looking at the blog from an authoritarian teaching perspective – we would start the blog and we would draft the majority of the posts. The turning point was when we started to view the blog as a way of allowing our students to be creative. It

moved away from a blog that we would develop into a blog that the students would be responsible for.

In summer 2014, we registered with free blog publisher Wordpress and created https://wetakecareofbusiness.wordpress.com. We wrote a page about ourselves, called Meet the Supervisors, so that we could start developing a relationship with students joining the Business Law Clinic in the September term. We also drafted a 'welcome' post which set out the aims of the blog:

"*This blog is brought to you by the students and supervisors of the Business and Commercial firms at Northumbria University's award winning Student Law Office.*

Over the coming months, we'll be telling you more about the work of the Student Law Office and what it is like to be a student involved in a clinical legal education programme. We'll be providing you with some hints and practical tips about key areas of company, commercial and intellectual property law and posting any other information we think might be of interest.

We hope you enjoy reading and interacting with our blog. Please keep an eye out for future posts. We hope to start posting regularly from August 2014 onwards." (wetakecareofbusiness, 22 July 2014)

When we met our Business Law Clinic students at the start of the academic year, we explained in a firm meeting and in an email the purpose of the blog. We stressed that whilst we had prepared the template, we would not be responsible for drafting posts. We explained that this was their blog and that they would be responsible for populating it with content. Whilst we made some suggestions about what that content could be to give them some ideas, we told our students that they should try and think of their own ideas for posts and that our role would be as facilitators, offering advice and guidance where necessary. We encouraged them to participate but explained that the blog was voluntary. We also warned our students that they could not mention any client names or include any information which could lead to a client being recognised unless that client had consented to the publicity.

Table 1: A list of each post published on the We Take Care of Business Blog between October 2014 and July 2015.

Month/Year	Title	Author: Student or Supervisor
October 2014	ABS: Will it create law firm ABS?	Student
	Visit by Jude Kirton-Darling MEP	Student
November 2014	What's so good about in-house?	Student
	Whose website is it anyway?	*Supervisor*

January 2015	Tax doesn't have be taxing	Student
	Does your website need a healthcheck?	*Supervisor*
February 2015	The new Consumer Rights Bill: What's the Impact on Businesses?	Student
	Don't be caught out by fake business registers	Two students
	Law in Action! What's it like working in the Student Law Office?	Two students (one from a civil litigation firm)
March 2015	How important is a law firm's reputation?	Student
	Editor's note: a series of three reflective pieces	*Supervisor*
	The Legal Hunger Games	Student
April 2015	Stay ahead of the game and think digital	Student
	10 TED talks to make you more commercially aware	Student
	Keeping yourself informed in the digital age: a quick guide to copyright	Student
	Victoria and Elaine speak at the CLEA conference	*Supervisor*
	A legal tune worth hearing!	Student
	Business & Commercial supervisors nominated for Student Led Teaching Awards	*Supervisors*
	Clinic Collaboration with qLegal	*Supervisor*
	FIRST class legal advice	Student
May 2015	The end of one road, but the beginning of another	Student
July 2015	*Business & Commercial firm students graduate in style!*	*Supervisor*

As Table 1 shows, it took some time for students to feel comfortable creating blog posts for publication. We spoke to our students about the blog on a regular basis. However, we both felt that our students were hesitant to get involved. One student was very enthusiastic about the blog and he drafted the first and second posts in October 2014. Nevertheless, the next student didn't write a post until November 2014. By that time, the blog had been live for nearly four months and we started to become concerned that it would, as we put it, 'fizzle out'. Therefore we decided to supplement student posts with content of our own. The idea was the students could then see the way that we wrote short pieces and might then feel more confident modelling that style. Elaine wrote two short pieces designed to tell potential clients about our clinic – one in November 2014 and another in February 2015. By February 2015, 4 students had written 3 blog posts. In February, however, there was a sudden increase in student authored posts. Without any prompting from us, students decided to write together. One co-authored piece was written by a student in the Business Law Clinic and another student who was working in a firm specialising in civil litigation. They interviewed each other about their experiences in the Student Law Office and created in a question and answer style blog post.

From February to April 2015, 12 students wrote 10 blog posts. The content of those posts differed significantly. Some students reflected on their experiences in the Student Law Office (for example, the competitive nature of law school, working with different supervisors and managing client cases alongside other university work). Others wrote about events they had been to or resources they had accessed on the internet. Some provided information about legal issues they had come across whilst advising clients in the Student Law Office. Whilst we continued to add our own short posts, the purpose of those pieces changed. Instead of creating posts to try and keep the blog current, we wrote to thank our students for nominating us for Student Led Teaching Awards or to note that we had spoken about the blog at the Commonwealth Legal Education Association Conference.

Student led firm meetings
In the Student Law Office, students have compulsory weekly firm meetings. The content of firm meetings is dictated by the supervisor. They are invariably used to feedback on client case work, develop skills, talk about office procedure and engage students in discussion about clinical legal education, social justice, careers and pro bono practice (Campbell, 2015a: 8).

In 2013, Elaine attended another business supervisor's firm meeting, as part of our institution's peer review programme. In that meeting, one of the students took the lead. She led discussions and engaged us with exercises. Earlier in the year, the supervisor mentioned that if a student wanted to control a firm meeting they could. Every student in her firm led a firm meeting that year. Elaine later replicated student led firm meetings in her own firms (Campbell, 2015a; Campbell, 2015b).

When Victoria became a supervisor in the Student Law Office, we decided that we would make student led firm meetings a key part of the Business Law Clinic. We told our students at the start of the year that for one week, each of the students would be expected to take control of the firm meeting. We made it clear that we would fully participate in that meeting.

For example, if there was preparation to be done then we would complete it like any other student. We also encouraged students to use their firm meeting as an opportunity for them to do something that was totally their own work, and of their own creation. When students asked us what they should do in their firm meeting, we held fast to the notion that we should not be part of that creative process. We gave moral support, but made sure that we both said to our students that it was *their* firm meeting and that we had entirely handed control of content and delivery of that session to them.

Photograph 1: A photograph of a bespoke board game based on Cluedo, with rooms being spaces in the Student Law Office, characters being members of the firm, and weapons being elements of pro bono practice.

Photograph 1 provides a good example of the creative projects that our students embarked on before and during student led firm meetings. In the photograph you can see that the student leading the firm meeting has obtained a Cluedo board and customised it to reflect the firm members and the Student Law Office itself. During the game, students were given the opportunity to reflect on the spaces in the Student Law Office, their relationships with each other and their supervisor, and the 'weapons' (such as Reflection, Practical Legal Research and Letter Writing). It was also an excellent team bonding exercise. Some of our students did not produce tangible evidence of creativity like a board game, but that does not mean that their work was not creative. For example, in one firm meeting a student led a

discussion on stress reduction. She had researched mindfulness techniques, the use of drawing or colouring to decrease anxiety, and reflexology. She taught us reflexology massage and produced handmade cards with positive quotations for each person. We would argue that this is just as creative as the production of a game.

Part IV: Theory meets practice

Rather than look at our own ideas of creativity and judge our projects against them, it is important to return to students' conception of creativity. If we revisit the results of Oliver et al's (2006) study, we can see clear parallels between the outcomes of our projects and students' ideas of what creativity should involve. Yet, we can also see how the theoretical and market justifications are realised.

- *Freedom from routine:* Both the blog and the firm meetings allowed students to deviate from the 'norm'. The blog in particular gave students an opportunity to be creative at will; they could choose when (and if) they created a blog post and what that blog post was about.

- *Expression of imagination:* We provided very little guidance on the content of students' blog posts and firm meetings. We left it completely open to the students to use their imagination. The fact that students chose to sing a song, create board games and develop multiple (multimedia) materials is evidence of their freedom to express themselves in whatever way they felt comfortable.

- *Something personal:* This links with the two points above. We repeatedly told our students that their blog post/firm meeting was 'their' innovation – something that was personal to them. This meant that they could speak to potential employers about something that went beyond doing a presentation. The public nature of the blog allowed students to show employers a tangible piece of work that evidenced their ability to work with social media and help develop business for their 'firm'.

- *Independence*: One of our students commented that they hadn't had the opportunity to create something that they had complete control over whilst at university. We suspect that many students anticipate that higher education will be a sanctum of independent thought. The reality is that lecturers tightly control the work that students do. We decide on the lecture slides, the workshop materials, and the content of meetings. Autonomous learning, embedded in our projects, is something which the students told us was rare. Here, we see how this approach to learning and teaching leads to the positive circle shown in Figure 1.

- *Risk:* This was inherent in the fact that students were engaged in something that was 'different'. For example, there was a risk that the other students in the firm meeting would be bored/ambivalent/disruptive. With the blog, there was a risk that we, as supervisors,

would dislike what the student had written or that a member of the public might react negatively to it.

- *Freedom from justifying decisions:* This is similar to independence. Many students wanted to check with us that what they were doing was 'right'. Again, we allowed students the freedom to do what they wanted to do.

- *Commonplace:* The idea here is that everyone is creative every day. It was interesting to watch our students struggle with the concept of being creative. The notion of leading a meeting made some students very nervous. However, once they had watched other students' firm meetings, they told us they hadn't realised that it was as 'simple' as that. One student told us that she would have little concern leading a meeting in her new job as she realised it wasn't really that different from other activities she engaged during her normal day.

- *Infectious:* The development of the blog is a good example of creativity being infectious. After a few months, a sense of competition arose (especially as one student was publishing a number of posts) and the number of posts increased dramatically. We would argue that students wanted their voice to be heard. Hesitant at first, once a few students got the ball rolling, others would say 'I want to do a blog post'. The use of technology also seemed to have a profound effect on some students. One student blogged about an event that she had attended. The events organiser read the blog and contacted her. The blog post was shared on their website. That student later went on to use twitter and LinkedIn accounts (her digital footprint) in order to assist her search for employment.

When we reflected on the two projects and our efforts to cultivate creativity in the curriculum, we reached a significant conclusion. This was that students need to be given permission to be creative, and to be actively encouraged to do so. When the blog was first set up, we were concerned that we would have too many students wanting to write for it. We were therefore surprised when we had to supplement it with posts of our own. However, once a small number of students started to write for it others followed suit. The diversity and creative range of posts also increased. With student-led firm meetings, we both experienced the phenomenon of fourth year law students looking uncomfortable when faced with being allowed to do anything they liked. We had to repeatedly give reassurance that their ideas had value. This has important implications for the notion of the 21st Century graduate. This generation are often assumed to be the most creative, innovative, and at one with technology yet our experience is that students need to be encouraged to unleash their creative skills. By doing that, we are also cultivating modern, work-ready graduates.

Conclusion

We have explored the concept of creativity and found that it is difficult to define, even for academics. We would argue that this should be seen as an opportunity for academics to construct their own conceptions of creativity without worrying too much about semantics.

Inculcating creativity in the law curriculum aligns with student-centred, constructivist approaches to learning but also appears to be justifiable from a market perspective. With the recent rise in tuition fees and an increasingly competitive job market, students are now acting more like consumers and demanding added value from their courses. As Jackson puts it, "individually and collectively we need to be creative to continually adapt…in an ever-changing and increasingly complex world" ((Jackson in Jackson et al (eds), 2006:1).

One way we may adapt to this challenge is by being creative with our curriculum design and actively seeking to embed opportunities for student creativity within our law degrees, thereby helping to nurture the creative and other non-academic attributes employers are demanding. In a nutshell, we believe creative teaching can facilitate creative learning. Whilst we have explored our experience of developing creativity in a module which utilises clinical legal education as a pedagogic method, we believe that non-clinical teaching is equally susceptible to this kind of innovation. For example, within specific modules students could be encouraged, or required, to set up blogs or websites and contribute articles on legal developments or proposals for reform. Alternatively, rather than dictating the content of every seminar for a module, one seminar could be left open for students to choose a topic to research and present giving them an opportunity to work more independently and to express themselves.

Some people will of course argue that they do not have the time or resources to engage in this kind of teaching. Whilst undoubtedly, as when you make any change to the way teaching is delivered, there will be an initial input of time, the activities should by their nature be student-led. We found that, particularly with the blog, once a few students got the ball rolling, the other students became eager to participate and the necessity for our input was reduced accordingly. We also found ways of implementing projects which did not involve any costs. It is possible to set up a website/blog for free which is the approach we decided to take rather than paying for a website with lots of functionality we did not need or to go through the internal red tape of having a website designed by the University's IT department. Clearly creativity does not have to be expensive but it does need some commitment by the academics involved.

Whilst the current generation of students are often assumed to be more creative, innovative and technology savvy than their predecessors, we have not always found this to be the case. Our projects suggest that students need to be encouraged to unleash their creative skills. As academics we therefore have an important role to play in facilitating creativity and ensuring we are meeting the challenge of cultivating work ready 21st century law graduates. As discussed above, we have observed that creativity does indeed appear to be infectious. We hope by reading this article you have been infected with the creativity bug.

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MORE QUESTIONS THAN ANSWERS? A REVIEW OF THE EFFECTIVENESS OF INQUIRY BASED LEARNING IN HIGHER EDUCATION

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The move towards a constructivist approach to learning in Higher Education has led to an increase in the use of inquiry -based learning in law and other disciplines. This article considers the theory behind the method and the key elements of inquiry-based learning. It reviews research in medical education into its effectiveness and considers the implications of this for its development in law. It argues that the development of inquiry-based learning in law will require a greater focus on the learning environment and its context within the curriculum and identifies issues likely to impact on the effectiveness of the method.

Inquiry-based learning (IBL) has been a part of higher education for many years but was widely adopted in medical education in the 1980s. Initially heralded as a panacea for professional education, with its ability to convey both discipline knowledge and professional skills, it was subjected to closer scrutiny in the early 1990s and challenges were made to its effectiveness and its educational theory. Nevertheless inquiry -based learning in a range of forms has persisted across a wide range of disciplines, often generating a committed following amongst staff and students.

As the concept of discipline knowledge becomes harder to tie down and the explosion in accessible information regularly overwhelms and confounds students, IBL has emerged as a method for teaching students how to apply and evaluate information, to solve new problems and develop the intellectual agility required for modern professional life. Increasingly these skills are being recognised by universities as essential outcomes for undergraduate education by incorporating them in specified graduate attributes. For example, since 2015 Northumbria University's graduate attributes include a statement that Northumbria graduates will be able to 'utilise their knowledge through critical analysis to create new knowledge and/or innovative practise'. In law this approach is particularly relevant because the practice of law necessitates the ability to find information and then to apply it to problems or new circumstances, it is inherently 'problem based'. However, the existence of a problem does not define the IBL method. As Bowe states 'it is important to have a clear distinction between learning via problem solving and problem based learning' (Bowe, 2004: 172).

The term IBL is an umbrella term for a number of different IBL learning environments all of which adopt a constructivist approach to learning. Constructivism explains how students learn and achieve deep learning and is a prevailing theory in all aspects of education. As Konings observes, 'in the current view on learning, constructivism has a central position' (Konings, 2005: 646). Constructivism originates in the theories of Dewey (1933) and Piaget (1950). It is a method which requires students 'to process information actively and construct the knowledge through experience' (Konings, 2005: 646) this is achieved by drawing on pre-existing knowledge and cognitive structures or schema. The key aspect of the methodology

is that students are active in creating and 'building their knowledge in terms of what they already understand' (Biggs,2011: 22) rather than as passive recipients of knowledge. Biggs refers to this as a conceptual change 'The acquisition of information in itself does not bring about such a change, but the way we structure the information and think with it does. Thus education is about conceptual change not just the acquisition of information' (Biggs, 2011:23).

How does this translate into what happens in the IBL classroom? In simple terms the problem comes first. There is no preparatory lecture programme or reading list which students can review to find the answer. Knowledge and gaps in knowledge are identified by the students drawing on their existing understanding to identify areas for research. Research findings are then consolidated and applied to the problem. Throughout this process the tutor's role is to facilitate the process and not to provide an 'answer' before students have actively sought it for themselves. Spronken –Smith identifies the common elements agreed on as essential to IBL as follows;

- 'Learning is stimulated by enquiry and driven by questions or problems

- Learning is based on a process of constructing knowledge and new understanding

- It is an active approach to learning involving learning by doing

- It is a student-centred approach to teaching in which the role of the teacher is to act as facilitator and

- It is a move to self-directed learning with students taking increasing responsibility for their learning.' (Spronken-Smith R and Walker R, 2010: 726)

Initially IBL was predominantly adopted in medical education. The method brought together the development of medical discipline knowledge and the practical reality that patients rarely present with text book problems. In addition the problems generated in medical practice and the setting of the medical school in teaching hospitals lent itself to this approach. Through the work of Tamblyn and Barrows (1986) at McMasters University (Canada), medical schools adopted a highly structured form of IBL referred to as problem based learning (PBL). McMasters eight step approach guided students through the process of analysing the problem and setting learning goals to applying their findings. This was later refined by Maastricht University (Netherlands) which adopted an innovative problem based approach for all its programmes (including its newly formed law programme in 1981). The Maastricht 'seven jump' approach is as follows:

1. Clarifying terms and concepts
2. Formulation of the problem statement
3. Brainstorm
4. Categorise and structuring brainstorm outcomes
5. Formulation of common learning objectives
6. Self study
7. Post discussion, reporting back and reaching common conclusions
(Maurer et al, 2012)

Some variation of these steps remain central to PBL. Whilst the existence of the undefined and unstructured question is at the heart of both medical and legal practice, PBL was slower to be adopted in law schools. This may have been because most legal education and training schemes separate the academic study of law from the development of practical skills required by lawyers and PBL was, at this stage, aligned with practical skills.

PBL is a highly structured form of IBL and in medical education was frequently used to deliver the entire curriculum with problems carefully constructed to ensure coverage. However, many IBL courses are delivered as free standing modules within the curriculum or even within a module for example through project based learning, case based learning or the use of so-called wicked questions (questions that have no pre-determined answer- similar to a research question). IBL may be used to generate new knowledge with clear links to research or as a method of building discipline knowledge. Levy and Petrulis have adopted a classification for IBL which distinguishes between 'inquiry for learning' (an information frame) and enquiry for knowledge building' (a discovery frame) (Levy and Petrulis, 2012).

Despite its parallels with medical education, IBL in law has had limited impact. Most commonly it takes place in law clinics where students advise and represent clients in real legal cases under the supervision of qualified supervisors. At Northumbria University, year 4 students are required to take a compulsory clinic module in the University's Student Law Office in which they experience legal problems presented by real clients. Students work in small groups of six. At weekly meetings they discuss their cases in their Student Law Office 'firm' and identify key issues and the impact of their research findings on the progress of the case. The process is inherently inquiry- based because students cannot know the precise nature of their client's problem prior to taking instructions. In addition the problems are unlikely to be on subject areas or involve procedures covered in prior studies and students must construct their understanding drawing on their prior studies and research capabilities. Broadly described as 'clinical legal education', there is no defining clinical method beyond a requirement that students learn by doing. The focus in the clinical setting is on the client and the requirements of the case and the approach to IBL has to adapt to the professional demands of the case. For this reason the PBL methodology was not widely adopted in clinic.

Outside of the law clinic, IBL has not been widely adopted in the law curriculum and is typically used in modules where staff have an interest in this form of teaching or as inherent part of an open ended research project. Delivery of the full law curriculum through IBL is rare, although York University in the UK have adopted PBL as a method for delivering its core law curriculum. At Northumbria we turned to PBL when devising a preparatory programme for the capstone Student Law Office programme and staff engaged in this module have adopted the method in some of their own modules. However this does not reflect the prominence of constructivism in current educational theory and is a long way from Biggs vision of teaching in higher education as 'a construction site on which students build on what they already know" (Biggs and Tang, 2011: 67).

In a review of the educational objectives of IBL, Adimoto et al (2013) considered the claims made for IBL in higher education across a number of different disciplines. These included skills

associated with deep learning around the use and construction of knowledge such as the development of meta-cognitive knowledge, improved skills of problem solving and critical thinking, improved research skills and exposure to the creation of new knowledge. Adimoto identified claims arising from the active nature of the process including the development of a spirit of enquiry, fostering a love of learning and self-regulated and lifelong learning skills which impact on student satisfaction and the student experience. Finally IBL with its typically small group delivery, has been credited with developing transferable skills such as communication, collaboration and leadership skills.

These attributes were mirrored in Dr Sabine Little's 2010 report for the Centre for Inquiry-based Learning in the Arts and Social Sciences at the University of Sheffield. The report considered nine inquiry based projects in a range of disciplines including law. The reasons given for adopting an IBL approach included a view that IBL reflected the way those disciplines worked (in architecture and sociology), in other subjects IBL was introduced to 'expand existing excellence', create 'more challenging learning environments', 'to teach by example and to excite or stimulate the students' and to 'embed smaller scale group work'. In addition it was believed to 'encourage an interdisciplinary approach and provide a unifying pedagogic approach' (Little, 2010: 7). Interestingly these comments appear to view the method as adding an extra dimension to learning, there is no reference to it as way of establishing core discipline knowledge or the basic building blocks of the discipline.

The limited development of IBL in law may be a result of a number of different factors, but there is no doubt that the process has resource implications for providers both in terms of increasing contact time to facilitate this type of learning but also in terms of requiring staff to learn a different role as facilitator in the classroom. This is particularly evident in law where the traditional lecture/seminar approach has proved cost effective. Accommodating IBL within the law curriculum has substantial redesign and costs implications and as Albanese and Mitchell (1993: 62) observed 'Stated bluntly, if problem based learning is simply another route to achieving the same product, why bother with the expense and effort of undertaking a painful curriculum revision?' Quite apart from the resource problem, other concerns remain. As in medicine, there is a belief that law requires students to build a comprehensive body of discipline knowledge before they can apply it effectively in less structured learning environments. Colliver expressed this as the concern that students will acquire a 'fragmented conceptualisation (learning isolated case –specific facts)' (Colliver, 2003) knowledge of the discipline. There is of course a degree of comfort for both staff and students in the lecture format. However, Biggs observes 'the problem is that both teacher and student see the lecture as a matter of teacher performance, not of learner performance' (Biggs, 2011: 138). These concerns with the structure and coverage of discipline knowledge are persistent. In legal education, where the problem question is central to legal education and the essence of legal method involves applying and evaluating knowledge to construct arguments, many would say that active learning, albeit heavily scaffolded and guided, already takes place.

These issues were explored in research on PBL in medical education. In 2000 Colliver reviewed three reports on PBL in medical education produced in 1993 and a further eight studies. From further analysis of the data in the studies he found that the size of effects on

learning when a PBL curriculum had been introduced were relatively low. Colliver concluded that there 'is very little evidence for the practical effectiveness of PBL in fostering the acquisition of basic knowledge and clinical skills'(Colliver,2000: 264) and that PBL 'may provide a more challenging, motivating and enjoyable approach to medical education but its educational effectiveness compared with conventional methods remains to be seen.' (Colliver, 2000: 266). There were also concerns regarding the underlying educational theory behind PBL by psychologists who argued that the minimal instruction approach 'ignored the structures that constitute human cognitive architecture' and evidence from empirical studies about working memory and long term memory (Kirschner et al, 2006).

It is worth noting that much of the research on PBL in medical education measured the effect of the PBL curriculum by comparing marks of students engaged in a PBL curriculum and those engaged in a non-PBL curriculum. In doing so, as Norman pointed out, the PBL intervention became so 'distant from the learning setting any predicted effects would be disturbed by myriad of unexplained variables'. Whilst he disputed Colliver's conclusions on effect size, Norman conceded that early claims for PBL as a method of developing knowledge had 'been overstated' (Norman, 2000:721). This was also the conclusion of Albenese and Mitchell's meta-analysis in 1993 which concluded that students on PBL curriculums found them to be nurturing and enjoyable. They also performed well and sometimes better on clinical evaluations than students from conventional teaching however they scored lower on basic science examinations and felt themselves to be less well prepared. In the same year Vernon and Blake (1993) found PBL to be slightly superior with respect to students' attitudes and opinions to their programmes. However they found scores relating to clinical and factual performance no different to conventional teaching.

In more a recent meta-analysis of PBL (Dochy et al, 2003) which considered 43 studies the findings were more encouraging.   They found PBL students were better at applying knowledge, and that the slightly negative effect on knowledge acquisition disappeared when focussing exclusively on randomised research, although the negative effect was bigger the more PBL was used. They concluded that 'on all levels there is a strong positive effect of PBL on the skills of students" and "the positive effect of PBL on the skills (knowledge application of students seems to be immediate and lasting" (Dochy et al, 2003: 548). Students' remembered what they had learnt through PBL for longer.

This was echoed to some extent by Schmidt's study in 2011 which adopted a micro-analytical measurement approach to PBL. Schmidt used multiple testing at different stages of the PBL process and found that student's situational interest was more constant in the PBL process than in conventional process and that it was the situational interest that drove the learning. (Schmidt et al, 2011).

Nevertheless despite the research findings the growth and interest in IBL has persisted. This may well be a result of the shift in focus away from the results in examinations acquired by students in PBL programmes to a focus on the use and ability to apply knowledge to address

new problems. This impact of PBL on application of knowledge was confirmed by Dochy et al (2003). What emerges from the studies and is confirmed by the persistence of IBL in higher education is that IBL does have particular strengths which are important to an undergraduate education on a number of different levels even though it may not be the most effective way of preparing students for assessments testing declarative knowledge.

In the light of these findings, the place and function of IBL in the curriculum is more nuanced. As with any course, an IBL module will require learning outcomes which are determined by the level the students have reached in their programme, any specific issues the module seeks to address as well as the specialist knowledge which makes up the course. As an active learning technique it is important that we consider carefully what might affect the learning environment and accept that IBL methods are not fixed and the fact of their existence in the curriculum does not ensure the impact promised by IBL is achieved. A number of further developments may help to ensure that IBL is used in the curriculum effectively. These include further classification of different types of IBL, a greater awareness of the learning theory behind IBL (and the factors which might affect that process) and a more careful consideration of the learning environment.

Classification of IBL

As previously mentioned Levy and Petrulis distinguished 'inquiry for learning' (an information frame) from enquiry for knowledge building' (a discovery frame). This is part of a conceptual framework which charts IBL against a continuum of tutor/client framed enquiry to student framed enquiry (Levy and Petrulis, 2012). Spronken–Smith adopts this framework but also differentiates IBL projects with reference to the level of scaffolding provided to students. She adopts the terms structured, guided and open inquiry (Spronken – Smith, 2012). It is helpful to categorise IBL both in terms of developing a taxonomy for this mode of learning and also for clarifying what outcomes should be attached to IBL modules.

The learning Theory

IBL is a constructivist epistemology which focusses on students activating and building on existing knowledge. It is therefore essential to ensure that IBL tutors consider how this can be facilitated effectively within their IBL course. Students may be unfamiliar with an IBL approach and will need to be instructed in its methodology. A shift of emphasis from 'what am I going to learn' to 'how am I going to learn' may be required. Schmidt et al considered the underlying theory of PBL and identified factors which impact on its effectiveness.

Schmidt proposes two possible hypotheses for PBL modules; the activation–elaboration hypotheses and the situational interest hypotheses. Activation–elaboration requires some part of the PBL process to activate students' prior knowledge. This approach relies on the problem to activate the prior knowledge through collaborative group discussion. As the group

builds its own theories and research them, a process of modification or elaboration takes place. This is a reflective and collaborative process which the IBL classroom must facilitate. The situational interest hypotheses places emphasis on an assumption that human beings like to make sense of the world and when they are unable to do so they experience situational interest because they want to fill the gap. This approach relies on importance of engaging questions which will activate information seeking behaviour (Schmidt et al, 2011). There are, of course, a number of hypotheses as to why IBL generates active learning and no doubt research into this will continue but despite the lack of clarity some themes emerge on what has an impact in IBL.

Schmidt drew on a range of studies and identified the following factors as influencing the process:

•   The nature of the problem and whether it is authentic, of relevance to the everyday experiences of the students, adapted to students' level of knowledge, engaging and interesting.

•   Establishing effective small groups to assist elaboration (an effective group will also build friendships and develop constructive peer pressure amongst the group members).

•   Tutor as facilitator. An effective facilitator models the sorts of questions and enquiry the students are being encouraged to adopt and can model 'a sort of cognitive apprenticeship'. The evidence surrounding whether facilitators need expert discipline knowledge of the issues raised by the problem is not clear but this is helpful where the problem is poorly drafted.

•   The importance of social congruence between students and the tutor. The tutor should have an ability to interact with students on a personal level as well as to utilise language that students easily understand.

•   Scaffolding. The studies drew no firm conclusions as to the importance of hard or soft scaffolding for PBL.

The learning environment

In addition to the factors which might affect the delivery of IBL, it is also important to take into account the wider learning environment and the place of IBL in the curriculum. Konings et al in their work on powerful learning environments identifies the importance of both tutor and students' conceptions of learning. Students must believe that learning through IBL is both relevant and within their learning capabilities. They identify the importance of demonstrating the skills needed for IBL through modelling and incorporating them into the real world activities of the student (Konings et al, 2005).

Conclusion

The value of IBL appears to be predominantly in its impact on student learning and understanding rather than on acquisition of knowledge. This resonates with the current move towards acknowledging the transferable skills of undergraduate study through graduate attributes and an increasingly competency based approach in legal education. For this reason, amongst others, the ongoing development of IBL within the law curriculum is likely to increase.

There is still much to learn about IBL but for the law curriculum it offers a chance to develop lifelong learning skills which are essential to professional life as a lawyer and in many other professions. Whilst the research suggest that IBL is not the most effective medium for transferring a broad base of discipline knowledge it is accepted that it has a considerable amount to offer in terms of motivating students, encouraging deep learning and the development of analytical skills. A law degree that does not equip students with discipline knowledge is not fit for purpose but nor is a law degree which does not equip students with the intellectual skills and motivation needed for the demands of practice and the evolving nature of the body of legal knowledge. In the light of this, IBL has an important role to play in the law curriculum but its extent and its relationship to the non-IBL curriculum is still being explored. In addition inquiry-based learning is resource intensive and we need to ensure that where it is delivered the environment is such that it has most impact. If we can accept that the measure of IBL is not to be found in the end of year exam results we can start to look at the detail of the method and tailor it to the outcomes we know it can deliver.

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IMPLEMENTATION OF A REVISED CURRICULUM AT UGANDA CHRISTIAN UNIVERSITY

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*The Uganda Christian University hosts a four-year LLB Programme with
approximately 900 students. Class sizes typically range from 100 to 130 students
and are largely lecture-based. This environment is not ideal for facilitating
improvements in the writing and oral presentation skills of students. In September of
2014 the Faculty of Law at Uganda Christian University launched a revised
curriculum. The revised curriculum addressed perceived problem areas in
educational delivery through cost-effective strategies. The utilisation and leverage of
teaching assistants is at the centre of its change strategies. This paper provides an
overview of the change strategies and presents findings from an assessment of these
strategies. The paper will be of particular interest and value to law schools in
emerging states facing the challenge of large class sizes and limited resources.*

Introduction

The Uganda Christian University (hereinafter 'UCU') hosts a four-year LLB Programme with
approximately 900 undergraduate students at its Mukono campus. Most class sizes range
from 100 to 130 students. This large classroom environment is economically favourable,
however, law faculty members, students and other stakeholders have observed that this
environment is not ideal in terms of legal pedagogy. Large class sizes present challenges to
the conventional means of improving student writing through small groups teaching and
lecturer feedback (Coffin *et al* 2005).

In light of these concerns, the Faculty of Law developed a revised curriculum to address the
weaknesses of conventional legal instruction in Uganda. The Faculty of Law sought to
engage enthusiastic and cost effective tutorial assistants to address the perceived gaps in its
educational offerings. Many of the tutorial assistants were recent graduates with a deeply
felt and genuine commitment to the UCU Faculty of Law.

In order to facilitate this change there were two categories of skills focused learning; a
'writing intensive' class and a 'rhetoric intensive' class and the tutorial assistants were
assigned to these classes. In these classes the cohort of students were divided into smaller
tutorial sections in order to facilitate more interactive classroom environments and lower
marking loads. The hope was that the smaller sections would enable students to participate
in a greater number of practical course work assignments and increase the opportunities for
meaningful teacher feedback.

The Law Faculty implemented the curriculum revision in the September semester of 2014. At the conclusion of the semester, the Faculty conducted surveys of the tutorial assistants and the students in the new small tutorial class settings to obtain feedback on the project.

The Faculty learned several key lessons from these surveys. . On the positive side, the students clearly appreciated the practical aspects of the changes and were not opposed to the additional work required. . There were challenges encountered with securing lecturer buy-in and there was a lack of the communication between lecturers and tutorial assistants in several classes. There were also problems noted in the provision of timely and regular feedback.

This paper will present data from the initial self-assessment of the curriculum revision and offer insights into the learning that has been gained by this project.   The paper should be particularly useful to law schools and faculties facing similar challenges as they explore ways to improve the quality of legal education in high-volume, low-resource settings.

A Brief History of Uganda Christian University and its Faculty of Law

UCU has an extended heritage in Uganda. It traces its roots to the Bishop Tucker Theological College (Griffiths *et al,* 2013). The college was founded by British missionaries in 1913. The theological college has primarily served the Church of Uganda (Anglican) and the wider Anglican Communion by producing theological graduates and diploma holders who minister to Anglican parishes in Uganda and East Africa.

In the 1990s the Church of Uganda hatched a plan to found a university on the site of the theological college in Mukono. In 1997 the University began offering non-theological courses of study and later become the first private university in Uganda to receive a charter from the government of Uganda.

The Faculty of Law at UCU began operations in 1998. The Faculty of Law was the first private law faculty in Uganda and the second law faculty overall (Makerere University, a public institution, being the first) to offer an undergraduate degree in law in the nation. The availability of undergraduate level legal education in Uganda has expanded drastically since 1998 (Tibihikirra-Kalyegira, 2010). By 2014, there were eight more accredited law schools in Uganda: Kampala International University Faculty of Law; Uganda Pentecostal University Grotius School of Law; Nkumba University School of Law; Islamic University in Uganda Faculty of Law; St. Augustine International University Faculty of Law; Bishop Stuart University Faculty of Law; Busoga University Faculty of Law; and Kampala University Faculty of Law.

Since its inception, the Faculty of Law at UCU has enjoyed considerable success. It has grown in size to approximately 900 undergraduate law students on its Mukono campus. It recently opened an undergraduate law programme at its Kampala Campus as well as a LLM programme in international business law. Presently the Faculty of Law produces the second highest number of students enrolled at Uganda's Law Development Centre[1] and its graduates make up the second largest group of authorised legal practitioners in Uganda.

The Faculty of Law at UCU has taken on the role of national innovator in legal education. In 2009, the Faculty of Law became the first law programme in Uganda to introduce both oral interviews and supplemental written assessments to the LLB admissions process. In 2009, the Faculty of Law was the first undergraduate legal programme in Uganda to engage its students in extensive community outreach through clinical legal education.   UCU's Faculty of Law is also the first LLB programme in Uganda to offer undergraduate classes on legal ethics, alternative dispute resolution and information and communication technology law.

UCU is institutionally committed to holistic education grounded in its Christian identity. The UCU theme is 'A Complete Education for A Complete Person'. Employers in Uganda perceive this commitment as fostering character formation. UCU graduates, including law graduates, have a reputation for ethical conduct and moral rectitude.

Prominent Challenges to Providing Effective Legal Education at UCU

The UCU Law Faculty is encouraged by its relative success in Uganda's educational marketplace. However, with success comes challenges. Demand for the LLB at UCU is high and UCU's Law Faculty currently teaches to large class sizes of up to 130 students. Large classes place a strain on teaching staff and inevitably impact teaching methodology.

The primary responsibility for teaching law classes belongs to the lecturer who teaches four hours each week. Lecturers must hold a Masters degree in law or an equivalent.. All law courses also include a two hour weekly tutorial session that is led by a teaching assistant. Teaching assistants typically hold an LLB degree and a diploma in legal practice. The pay scale for lecturers (both full-time and part-time) is substantially higher than the pay scale for tutorial assistants.

Unfortunately, lecturers working in large class settings often do little more than transfer designated information to students. (Sumerlee, 2013). In educational parlance the mere

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[1] Uganda's Law Development Centre offers a diploma in legal practice that is a required qualification for Ugandan law graduates seeking to practice law in Uganda, although it is possible to gain access to legal practice through other less direct means such as obtaining a diploma in legal practice from the Kenya Law School and practising law for a required period of time in Kenya prior to seeking admission to the Roll of Advocates in Uganda.

transfer of information from instructor to students is known as the "banking model" of education where the lecturers deposit knowledge in the minds of students for future withdrawals at the time of examination. The phrase "banking model" was introduced in Paul Paulo Freire's critical treatment of this approach to teaching method (Freire, 1970).

The banking model is inadequate. Today, education experts call for new pedagogical approaches that increase the level of feedback, offer students stimulating tasks, provide students with some opportunity to exercise choice and control, and engage students in relevant learning tasks (Pintritch, 2003). Problem-based or enquiry based learning can offer rich and meaningful learning experiences that the banking model is unable to deliver (Murray, 2007).

The banking model is dominant in the Ugandan context where the educational system tends to reward rote learning and the regurgitation of selected knowledge (Kagoda, 2011) Large class sizes, a lack of materials and resources, and a colonial educational heritage all tend to foster banking models of education at all levels in Uganda.

 Challenges arise because Ugandan institutions model their reading lists on those provided by Oxford and Cambridge. Many Ugandan reading lists include an extensive collection of texts that are not present in the libraries of the universities that offer the courses. The result is that reading lists become meaningless and the emphasis of assessment is placed on the teaching notes read to the students in class. In many cases teaching notes can take on a life of their own and become the only knowledge transmitted. It is common for lecturers to use second hand teaching notes from the lecturers that taught them. The end result is a stagnant and outdated body of banked information.

The UCU Law Faculty conducted a wide-ranging self-assessment during the 2013-14 academic year. The predominant criticism reported by the surveyed stakeholders was a tendency towards legal pedagogy by 'spoon-feeding'. Although UCU law instructors were commended for coming to class and consistently delivering their lectures, there was a sense among many that Faculty members do little more than tell their students what they need to know. Remarkably, there was a belief among some stakeholders that other institutions offering undergraduate legal education in Uganda actually do their students a service by being less diligent about teaching delivery. They posited that inconsistent and intermittent lecturing forces students to become more self-sufficient and self-directed learners. While UCU's Law Faculty balks at the contention that inconsistent and deficient teaching is a positive trait for legal instruction, it is challenged by its reputation for "spoon-fed" content delivery.

UCU's Law Faculty is also challenged by having some graduates that are not practice ready. In its self-assessment, both alumni and employers noted that some UCU law graduates did

not have polished research and writing skills. Others noted that some UCU law graduates were not confident speakers.

In the large class setting that is predominant at UCU, students can evade direct and careful scrutiny in terms of their legal writing and rhetorical skills. Assessment though final examinations and team-based coursework can enable free-riding students without rudimentary legal research skills to pass (Dolmans, 2001). Examination assessment often rewards the ability to repeat what has been taught in class as opposed to discovering answers through independent legal research. Thus there is a need to broaden the skill set of undergraduate students and to work to ensure students are more practice-ready (Harrison, 2002).

A trend in legal pedagogy outside Uganda is an emphasis on the practical. (Stucky, 2007). The movement has been particularly strong within American legal education. (Campbell, 2014) Maxeiner argues that;

> Practical training is an issue in legal education because legal education does more than convey legal knowledge: it prepares students for professional practice. Knowledge of law is essential to becoming a jurist. Yet knowledge of law alone is not enough; becoming a lawyer, judge or other legal professional also requires professional skills.

> (Maxeiner, 2008: 38)

The American Bar Association (ABA) lists ten key skill areas for legal education: (1) problem solving, (2) legal analysis, (3) legal research, (4) factual investigation, (5) communications, (6) counselling, (7) negotiation, (8) familiarity with options, (9) administrative skills necessary to organise and manage legal work effectively and (10) skills involved in recognising and resolving ethical dilemmas. The ABA also lists four important values: (1) competent representation, (2) striving to promote justice, fairness, and morality, (3) striving to improve the profession, and (4) professional self-development (ABA, 1992).

There is a tendency among all law faculties to resist adopting pedagogical models that involve more intensive and demanding educational delivery (Harrison, 2002). In Uganda improvement strategies that are built on increasing the work load expectations for lecturers can be challenging to implement. Ugandan law lecturers, even those who are officially 'full-time', often wear many hats. Many have busy legal practices, or work for Non-Governmental Organisations and consultancies, or have teaching commitments at other institutions.   Since law lecturers are known to be spread quite thin, it is understood that all that most law faculties can reasonably expect is that their law lecturers' show up for a majority of their classes and read from prepared notes. Low institutional expectations and potentially threadbare teaching delivery form an unfortunate feedback loop. This is

especially true in law faculties that are located well outside of the capital city of Kampala––the dominant hub of legal practice.

For its part, UCU's Faculty of Law strives to maintain high quality standards in terms of teaching delivery. However, getting busy law lecturers to buy-in to changes in pedagogy can be a challenge. In addition, the fact that the Mukono campus is located 20 kilometres of traffic-clogged tarmac from Kampala puts a greater premium on the value of merely coming to teach.

The Faculty of Law also faces structural limitations that limit meaningful feedback opportunities for students. The regulatory bodies that oversee undergraduate legal education in Uganda require courses to follow a rubric where 70 per cent of the overall grade comes from the final examination and 30 per cent is attributed to coursework. This template tends to leave students largely uninformed and unguided regarding the reasons for the marks they receive. Final exams are rarely reviewed in any meaningful way unless the student chooses to challenge their mark. This can be perceived as a potentially confrontational experience that many students avoid. Moreover, the coursework typically consists of a single assignment with some marks for class participation. Thus there is little incentive for the student or the lecturer to reflect on the actual assessment.
UCU's Faculty of Law also faces financial constraints. UCU is a private university that is funded by the tuition fees paid by students. The economic viability of the University depends on having a large number of tuition paying students. Popular programmes like law can take on the role of 'cash cows' that support the wider operation and expansion of the University. If class sizes are reduced, the University will be prevented from embarking on necessary capital projects or developing other academic programmes.   Even if the Law Faculty would be economically viable in isolation with smaller class sizes, the resulting impact on the wider University makes such adjustments impracticable. Therefore the Faculty of Law faces the challenge of improving quality without reducing the net income generated by operations.

The Revised LLB Curriculum at Uganda Christian University
In light of the above challenges, the UCU Faculty of Law set out to revise its curriculum and pedagogical approach. It sought to find cost effective ways to address perceived deficiencies.

In terms of substantive content, the Faculty of Law worked to enhance the practical skills of its students; this included making a course in clinical legal education mandatory for all students. The clinical class had already been established as an optional two-class sequence for fourth year students. The clinical classes place an emphasis on otherwise unaddressed competencies such as negotiation, client interviewing, presentation skills, client letter

writing, and memo writing. In addition, the second semester of the clinical course includes a fieldwork component where students do actual discrete tasks in contexts outside the classroom.[2]

Changing clinical legal education from an optional class to a required class was a significant step. However, it did not alter the practical content that was already available to the students. The major structural change needed for skill development required a policy that cuts across the entire curriculum.

The new UCU LLB curriculum stresses two key skills over the entire arc of the law student's academic career. These key skills are legal writing and rhetoric. The revised curriculum designates one course for each semester of the eight semesters of LLB study as a 'writing intensive' course and one course as a 'rhetoric intensive' course.

All writing intensive and rhetoric intensive classes feature multiple coursework assignments with mandatory feedback sessions. Offering these more intensive courses requires additional time and effort from the teaching assistants. However, instead of simply upping the workload of the teaching assistants the classes are divided into three sections so that the teaching loads for the intensive course teaching assistants are reasonably restrained.

The new curriculum design utilizes the ability and efforts of the teaching assistants. The Law Faculty saw its growing number of young and enthusiastic law alumni as a strategic opportunity. The Faculty believed that it could harness the enthusiasm and commitment of young alumni to deliver quality instruction in the crucial areas of legal writing and rhetoric. The Faculty also surmised that the inexperienced teaching assistants offered relatively blank slates that would be more willing to commit to more progressive, learner-focused teaching techniques. The proximity of these teaching assistants to their own undergraduate legal experiences, including the deficiencies thereof, was also seen as a possible boon to a willing and enthusiastic acceptance of the new and more demanding teaching paradigms.

The writing intensive class assignments feature grounded writing assignments. This means that the UCU Law Faculty creates assignments that imitate real world experiences and work. Examples of grounded writing assignments include drafting charge sheets, motions to set bond and motions to sever in a criminal procedure class. These grounded writing experiences give students the opportunity to experience a meaningful synthesis of theory and practice (Keene, 2014). Keene argues that:

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[2] This paper does not directly concern Clinical Legal Education as that course and initiative is a paper in itself. Instead its primary concern is how other courses were modified in a programmatic way to improve the educational delivery and enhance the formation of graduates.

> By writing in a practice context, the writer's depth of understanding of relevant substantive law and legal concepts can be greatly enhanced. The process of writing helps writers to better understand and connect with the material they are writing about and to gain a deeper level of understanding of abstract legal concepts.
>
> (Keene (2014: 481)

Similarly the rhetoric intensive class exercises mirror real world experiences. For example in the evidence class students performed a mock criminal trial that required them to enter evidence into the record. In addition, the rhetoric based classes included Socratic components where students were assessed based on their ability to speak in an informed manner about assigned readings.

The transformation of existing courses into writing intensive and rhetoric intensive courses impacted the clinical legal education classes. Before the modification to the syllabus the clinical classes were the only opportunity for students to develop practical legal skills.   This meant that the two semesters of clinical legal education were packed full of practical assignments.   The result was that many clinical students were overwhelmed and the clinical lecturer and tutorial assistant were overburdened. The inclusion of practical legal writing and rhetoric exercises throughout the curriculum lessens the pedagogical load for the clinical courses and allows them to serve more as practical skill capstone courses instead of intensive skill-building sessions.

Feedback on Implementation

The Faculty of Law conducted an assessment of the writing intensive and rhetoric intensive classes at the conclusion of the first semester. .The assessment consisted of Likert scale survey instruments filled out by all students enrolled in the LLB programme as well as open-ended question surveys provided to all students and all tutorial assistants teaching in the writing intensive and rhetoric intensive courses. This section presents the results from the assessment.

Likert Scale Based Survey Responses

The Faculty of Law distributed Likert scale based survey instruments to all of its students concerning the changes made in teaching delivery in the writing intensive and rhetoric intensive classes. Likert scale questions require respondents to evaluate statements by assigning them a value based on an objective or subjective dimension along a continuum of possible responses. The most common Likert scale questions are based on a respondent's agreement or disagreement with a statement.

The Likert scale questions included the following prompts:
1) My Tutorial Assistant provided me with individualised feedback and guidance;

2) My Tutorial Assistant took an enthusiastic and engaged approach to teaching my pod of students;

3) My tutorial assistant was supportive and encouraging to all the students in my pod;

4) I felt as if the main lecturer was supportive of the writing intensive tutorial;

5) The Oral advocacy intensive tutorial was helpful to me in developing my oral presentation and speaking skills; and

6) The writing intensive tutorial helped me obtain a practical understanding of the subject matter. The students were asked to respond to the prompts with strongly agree, agree, somewhat agree, neither agree or disagree, somewhat disagree, disagree or strongly agree.

The responses were encouraging across the board. Approximately two-thirds of the students agreed or strongly agreed with each of the positively stated prompts.   Of the positive responses there were typically about 10% to 20% more "agree" responses than "strongly agree". Negative responses ranged from 5% to 8%.

Unfortunately, the responses to the Likert scale questions failed to generate statistically significant differences between the six questions. As a control, the student question sets included two identical Likert scale prompts. Remarkably the two identical prompts resulted in the two most disparate set of responses. This unfortunate truth undercuts the legitimacy of students' responses to specific Likert prompts. However, the generally positive response to the adjustments in educational delivery for reading intensive and rhetoric intensive classes is significant.

Specific Student Feedback on the Course Delivery Modifications

The students were also given the opportunity to offer qualitative feedback in the form of open-ended prompts. These responses yielded valuable feedback.

There were a number of favourable responses about the increased emphasis on legal writing. Many of the students saw drafting documents as an important learning exercise. One student said that the best aspect of the exercise was 'drafting documents' and 'the biggest thing that could be done to improve the writing intensive tutorial experience would be to draft more documents'. Another student wrote: 'More drafting please! - I enjoy this practical part of drafting very much and now I am very good at drafting documents.' Other students asked for 'more assignments'. Certainly the eagerness of these law students to work hard and learn more is encouraging, humbling and convicting.

Students credited the new writing and oral intensive initiatives as helping them to retain knowledge. Others noted that they were more apt to master information if they had the chance to engage with it practically. Some students asked for practical engagement opportunities through the type of fieldwork that is presently reserved for students enrolled in the second semester of clinical legal education.

Many students appreciated the opportunities for feedback facilitated by continuous assessment and smaller class sizes. However, based on many of the responses it appears that continuous assessment was not implemented consistently. Other students appreciated the presentation skills they developed in the oral intensive tutorials. These students noted increased confidence and increased ability to speak in public settings.

The responses to the use of Socratic teaching method were mixed. Some students appreciated the tendency of the Socratic method to keep their minds alert and encourage them to come to class prepared.   One student wrote: 'The "Socratic method" is where we were called upon in front of the class one by one to present a number of issues as allocated to us. It helped me improve my oratory skills, confidence and demeanor as student of law and as a person.' This response, although positive, indicates that the Socratic teaching methodology was a work in process. The experience described by this student is more along the lines of a spot presentation as opposed to a guided and interactive time of questioning directed by the teacher. The use of this methodology should not be a surprise in light of the teaching staff's lack of experience with the Socratic method as either students or teachers.

Other students vented their frustrations with the Socratic method. One suggested changing 'this entire thing of Scurutive (sic) methods as it was not beneficial.' This student believed that 'group discussions should be advocated for as through (sic) such our tutors will be of use.'[3]

Students voiced other concerns about the changes. Many of these concerns related to workload. One student wrote: 'The tutorial was educative but also overwhelming since the information is too much.' There were some complaints that arose out of confusion about expectations and what they were supposed to do and when assignments were to be completed. Other students asked for more time for tutorials.

In two particular classes (Criminal Law and Labour) there were a number of complaints about the coordination between lecturers and tutorial assistants. Here is a representative quotation from a student who was enrolled in one of these classes: 'The tutorials should be synched with the lecture, especially in drafting the reading list . . .'. In one of these classes the lecturer did not appear to participate in the training for the new teaching methods or communicate with his tutorial assistants. Lack of engagement on the part of a lecturer can lead to the transmission of confused and mixed messages.

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[3] It should be noted that English is a second or third language for many law students at Uganda Christian University so the responses of some students are lacking in terms of grammar.

Tutorial Assistant Feedback on the Course Delivery Modifications

The feedback from tutorial assistants was favourable in general terms, but more critical in terms of specific feedback. Several tutorial assistants welcomed the smaller class sizes and the new emphasis on interactive teaching techniques. Many of the problems expressed by the tutorial assistants concerned logistics and teaching staff coordination.

The tutorial assistants struggled with a packed and inflexible timetable. UCU faced a challenge with classroom space in late 2014. The September semester tends to be the busiest time for the University in terms of student numbers and UCU was still in the process of building classroom capacity to satisfy the demand. The creation of an increased number of law tutorial classes brought on by the new writing and rhetoric intensive tutorials added to an already strained situation.

The timetabling process tended to exaggerate the problems as the central administration were unable to grasp the scheduling vision proposed by the Law Faculty to efficiently utilise class space in light of the pedagogical changes. When tutorials for the same class were set at different times there were less open spaces for making up and rescheduling classes. Given that the tutorial assistants typically practice law in Kampala this lack of flexibility resulted in failures to deliver tutorial teaching blocks to some students. The following response from a tutorial assistant is typical: 'The stringent timetable makes it difficult for him to have enough time for effective interaction with the students. The time is too limited for tutorials.'

Although the new smaller tutorials presented challenges, many of the tutorial assistants refused to be discouraged and stymied by logistical hurdles. One tutorial assistant shared how he worked through such challenges when he faced timetable conflicts with his allocated class sections. He met with other tutorial assistants and together they agreed on a workable strategy. Such proactive and cooperative problem solving approaches were important to the effective delivery of the writing and rhetoric intensive tutorials.

The tutorial assistants noted the negative impact of poor collaboration with lecturers. One tutorial assistant stated: 'The students participate well enough in the Socratic method. The initiative needs better coordination with the lecturer, especially where the students have not yet covered particular topics.' In one class the marks for the class had to be adjusted when the lecturer refused to credit the Socratic method and oral advocacy assessments with the number of marks that were allocated based on the new marking framework for rhetoric emphasis courses. This specific experience left the tutorial assistants feeling undercut, embarrassed and disempowered.

Lessons, Recommendations and Conclusion

Overall there are a great number of lessons that can be gleaned from the initial assessment of the pedagogical changes implemented at the UCU Faculty of Law in 2014.

From a big picture standpoint the changes were needed. The utility of practical and problem-based education is widely appreciated. Current best practices in higher education call for the utilisation of student-focused learning and diverse educational delivery methods. It is no longer acceptable to offer an educational product that is built entirely on the lecture model. The content and tenor of the responses of both the students and tutorial assistants to the curriculum change assessment instruments further support the meaningful incorporation of other learning modalities.

In terms of capacity and resources, the modifications made in UCU's Law Faculty demonstrate how a university in a low-resource, developing world setting can utilise young alumni through the vehicle of tutorial assistants to deliver new and more time intensive learning models. While this strategy is not ideal, low-resource, developing world contexts often entail less than ideal situations. In many instances, smaller class sizes are not economically tenable for self-sustaining universities with students that do not have the ability to pay increased tuition.

Another key learning area concerns change management. Managing change is a serious challenge. This is particularly true when you are managing a teaching staff that may have a limited conception of their role and duty as a lecturer. Lecturers who have been praised for simply teaching a high percentage of their class blocks and transmitting the information in their course outlines are unlikely to spend a great deal of energy changing the way they deliver content. It is arguable that many lecturers believe that changing their pedagogical delivery will cause them to lose the benefit of having learnt how to teach the course. The fact that lecturers are busy with other work responsibilities makes lecturer buy-in even more difficult to achieve.

The considerable challenge of effecting work-intensive change through potentially over-stretched and reluctant lecturers is a reason to push the change initiatives through the tutorial assistants. However, given the lower status of tutorial assistants, relying on them to lead and effect change is problematic. In addition, law schools in developing world settings must not accept a 'business as usual' approach with their lecturers. If law schools do not expect and demand more from their law lecturers any effort to implement new learning methods will be superficial and disorderly. The permissive status quo for law lecturer performance in Uganda should not be tolerated. Thus a change strategy that leverages tutorial assistants must be designed to change the hearts, minds and conduct of the lecturers as well.

While change in such contexts is difficult to implement, some form of continuous and ongoing change management is crucial. Unfortunately, in this instance, most of the administrative efforts to effect change were based on pre-semester trainings. It was further complicated by the fact that the trainings was not attended by many of the implementing lecturers and some of the implementing tutorial assistants.

The primary responsibility for managing the implementation of the writing and rhetoric intensive pedagogy changes was left to teams of tutorial assistants. At the initial training teams were formed with tutorial assistant team leaders who were charged with keeping team members on task. This worked very well where there were confident and energetic team leaders and willing team members. However, where this mix was not in place the teams failed to self-manage and monitor. Thus greater and more intensive change management oversight was needed for many of the new writing intensive and rhetoric intensive courses.

Another lesson from this experience is that when managerial oversight is limited the success of any educational initiative will come down almost entirely to people. It is only the willing and committed educational employee who will implement change when managerial oversight is limited. At UCU there were major discrepancies in student responses that seemed to be largely tied to the identity of the tutorial assistant. While the changes rated consistently high for classes with certain tutorial assistants other tutorial assistants had students that ranked the changes much less favourably. The student feedback indicated that not all tutorial assistants were able to implement the pedagogical changes equally well.

The assessment also indicates that teaching staff needed training to better understand the use and implementation of the Socratic method. Arguably this also applies to the proper assessment and instruction of legal writing although this was not brought out in the assessment.

The data collection revealed that the provision of timely feedback remains a problem even in the reduced-size tutorials. Many of the tutorial assistants failed to grasp the importance of promptly providing feedback on assignments so that students could improve over the course of the semester. Instead, many tutorial assistants followed the old pattern of completing their course work marking by the university deadline for posting coursework. Consistent administrative encouragement and team accountability are necessary to get the turnaround for student feedback up to the desired speed in the writing intensive classes.

We would recommend that other law schools in the developing world should look for achievable ways to improve pedagogy. However, by achievable we do not mean easy. Achievable ways should be ways that seriously stretch and challenge the faculty and students.

Law schools should conduct an inventory of their strengths and opportunities and bring about changes that can improve the educational experience of their law students.   Often they will find low cost solutions to utilise the assets that they have for improved legal pedagogy.

However, efforts must not stop at the design stage. Law school administrators seeking to effect change must endeavour to make continuous and active change management part of their change strategies. This means a commitment to consistent assessment, ongoing training and enthusiastic encouragement. If the administration only champions the changes at the front-end the desired changes will be lost in the inertia of the status quo. It also means having the right individuals on board who will support change instead of undermining it. .

Uganda Christian University hopes to facilitate change to ensure it achieves an active, practical and student-centred learning experience in the Ugandan educational marketplace. It is persisting with the implementation of its revised curriculum. Going forward the Faculty of Law hopes to reach a stage where all of its students will take the two semesters of clinical legal education to serve as a practical capstone sequence for the practical and problem-based skills that they have acquired during their four years of writing intensive and rhetoric intensive classes.

One of the most encouraging results of the data collection is the students' declared willingness to work and learn. Students who were given a higher workload through the new intensive courses asked for more writing assignments in order to improve their legal skill and acumen. This student enthusiasm should serve to encourage the continued pursuit of improved legal pedagogy despite the ongoing and considerable challenges in a majority world law school.   Far too much is at stake not to strive to provide a legal education that will empower students to face the stern challenges presented in the emerging economies and fragile justice systems

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EMERGING TECHNOLOGIES AND THEIR IMPLICATIONS FOR THE CONCEPT AND ROLE OF THE LAW ACADEMIC

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These views represent the views and observations of the author only.

Introduction[1]

Implicit within the roles and responsibilities of the professional academic within law schools is the expectation that issues related to pedagogy, learning and teaching methodology, course instruction and content (which I will call 'pedagogy and practice' for the purposes of this article) are the preserve of the expert academic. However a number of profound changes have been identified in the organisation structure and traditional practices within universities in the UK (and also in the USA and Australia) in particular. These changes have flowed partly from the increased emphasis on commercialisation and accountability of universities who are also now competing in a globalising economy, and partly from developments in information and communication technology - now an intrinsic part of university infrastructure.

One significant result has been the growth of the non-academic, 'managerial professionals'[2] within universities (see for example Whitchurch, (2010)), leading to a 'disaggregation' or 'unbundling' of academic practice (Macfarlane (2011); Kinser (2002)) and what Whitchurch and Henkel have described as a 'blurring the boundaries' between the managerial and academic domains (Whitchurch (2008) Henkel (2009)), including over matters of pedagogy and practice.

Then in 2012 'massive open online courses' ('MOOCs') entered into the lexicon of higher education and captured the imagination of both the educational and mainstream press[3] and threatening further and significant change for universities. Early coverage of MOOCs included predictions about their ability to fundamentally 'disrupt' the structures that support higher education, including the academic profession, through their ability to provide mass, reusable courses online in a standardised format, with limited or no requirement for ongoing academic input. The expression 'disruptive technology' became firmly associated with the MOOC.

In this article I will explore the potential for MOOCs to provide the catalyst for a significant shift of professional authority over pedagogy and practice, away from the academic towards the domain of the managerial professionals. The purpose of this article is not to critique MOOCs in terms of their educational benefit but rather to use the rise of the MOOC to illustrate how professional boundaries are being redrawn, particularly with the growth in the use of information and communication technologies. First I will outline the reasons for the

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[1] This article is based on a piece of work submitted as part of my Doctorate in Education with the UCL Institute of Education, and was initially presented at the CLEA conference, March 2015, Glasgow.

[2] I am using the term in the sense used by Whitchurch to refer to those individuals who have managerial roles but are not on academic contracts. They include general managers (e.g. student services), specialist professionals (e.g. Finance) and 'niche specialists' (e.g. 'quality assurance'), (Whitchurch (2008 : 4))

[3] A New York Times headline declared 2012 'The Year of the MOOC' (http://www.nytimes.com/2012/11/04/education/edlife/massive-open-online-courses-are-multiplying-at-a-rapid-pace.html)

general growth of the managerial professions within universities primarily in the UK and how this is impacting on the authority of the general academic profession over pedagogy and practice, before considering the impact on academic authority within the 'traditional' (pre 1992 research focussed) law school[4]. I will then illustrate how MOOCs can provide a further opportunity for this shift in authority, before considering the implications of this shift for the concept of the academic profession but specifically the law academic profession.

The growth of the managerial professions

The massification, marketisation and globalisation of higher education that has taken place since the 1980s has led to significant changes in the organisation, structures and traditional functions within universities (see for example Gordon & Whitchurch (2010); Barnett & Di Napoli (2008); Altbach et al (2010)). One particular change has been the growth of the managerial professions and the consequent 'blurring' of the boundaries between the academic and professional domains.

Whitchurch describes how the previous binary and hierarchical model of the 'academe' and 'administration' in which administrators had clearly defined and largely subordinate roles began to change in the 1980s. This saw the conversion of many administrative titles to 'manager' (see Whitchurch (2008a)), and to these managers taking on a range of activities more closely related to academic functions, such as information literacy, or study skills training. At the same time writers (such as Handal (2008); Whitchurch (2010)) have charted the emergence of entirely new sets of managerial professional posts, particularly in the area of 'academic development' and 'quality assurance'. They have explored the impact of these new and expanded managerial professional posts with functional responsibilities for matters such as 'academic development', 'quality assurance' and 'student support' from a number of perspectives, including their impact on the boundaries of the domain of the academic profession. They suggest the result has been the transformation of the HE sector from one in which academics 'enjoyed optimal conditions for the formation and maintenance of distinct, stable, and legitimizing identities' (Henkel, 2010: 4) to one in which academics have been obliged to rethink their roles and to rethink the boundaries between themselves and the many other groups now working in universities (Di Napoli & Barnett, 2008).

While this growth has primarily been driven by wider economic and ideological changes (Gordon (2010)), it has been intensified by developments in information and communications technology ('ICT'). This is expanding further the range of professionals employed in universities to include specialized IT skills as well as expanding the range of professionals involved in organising and supporting courses (particularly as relatively few academics have the technical skills to fully exploit the potential of learning management systems such as virtual learning environments ('VLEs')). These new teaching teams typically 'embrace not simply academic staff but also many others – inevitably, experts in information and communication technologies but also web-designers, student counsellors, learning resource managers and the rest.' (Scott, 2009: 71).

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[4] I have limited this discussion to the research focussed law school as this is where most of my experience lies. I acknowledge that the general observations I make may not apply to other law schools or even to all 'traditional' law schools.

Whitchurch suggests the changes can result in the creation of what she terms *'third space'* between the managerial and the academic domains. In this *third space* managerial staff and academics come together and work in partnership, sharing expertise to build new capacity and develop for the future.   As a result of these partnership activities the domain boundaries between the academics and the managerial professionals become more permeable, potentially benefitting both academics and managerial professions by providing them with the opportunity to acquire new skills (Whitchurch (2008)).

Rhoades on the other hand paints a less collegial picture and suggests the managerial professions are using the opportunities presented by ICT not so much to share expertise and build capacity, but to establish themselves as central to 'some of the most basic production processes of the academy' (Rhoades, 2010: 42).   Writing primarily in the US context where the penetration of ICT has been strong (at least at the college level) Rhoades observes that at first various categories of managerial professions will establish claims to expertise in using ICT.   This they then expand to include claims of expertise over teaching and learning methodologies in general.   As a result Rhoades claims these 'teaching and learning specialists' have used developments in ICT to fundamentally challenge the claims of academics 'to know best how to teach their students and, even more importantly, to know about how students learn' (Rhoades, 2010: 42).   Consequently he warns it is not such a big leap from claiming expertise over *how* to teach to claiming expertise over *what* to teach, including over what teaching materials are appropriate to use (ibid). In other words ICT is not so much leading to a partnership within a *third space* domain as suggested by Whitchurch, but is providing an opportunity for deliberate encroachment into the academic domain of pedagogy and practice itself.

However, as Scott has noted, the impact of these changes taking place in universities are not necessarily uniform but are complex, ambiguous and can vary across the different disciplines and different types of higher education institutions (Scott, 2009).

The 'blurring of the boundaries' over pedagogy and practice in traditional law schools?
Implicit in the concept of the unbundling of academic roles and 'blurring' of the boundaries between academic and the managerial professions is the loss of control or authority over aspects of academic practice.   Yet while it may be true that managerial professionals are increasingly occupying roles that involve 'student support' or the 'student learning experience', and that law academics are engaging more with these professionals this does not, of itself, suggest a loss of authority. Some of these roles are roles that are of fairly recent origin, imposed as a result of the massification of higher education in the UK, and are not roles law academics see as necessarily central to the law academic profession. Sharing or divesting responsibility for these roles in fact enables academics to concentrate on teaching and research in the face of an increasing array of administrative demands flowing from widened access, increased accountability/auditability (including the demand for a range of statistics and 'measures') and university funding pressures (including the pressure to win research grants).   Similarly while it is more common now for law academics (at least

within traditional law schools) to make greater use of casual or postgraduate teaching staff in order to free up time to produce demanded research output, this of itself does not of itself necessarily indicate a loss of authority over pedagogy and practice, simply a delegation.[5]

What about ICT? Has this led to a blurring of the boundaries over pedagogy and practice in the traditional law school? The adoption of ICT, and particularly learning management systems (such as VLEs), not only offer universities the potential to offer large scale programmes but also to produce significant teaching efficiencies. As Coates explains:

Despite the large upfront capital investments required, universities are attracted by opportunities to reduce course management overheads, reduce physical space demands… [and] set auditable standards for course design and delivery and improve quality assurance procedures…. (Coates et al, 2005: 23)

In other words ICT offers not only the potential to reduce overhead costs but also the potential to standardise course structures so as to better manage and audit academic practice.

ICT appears therefore to have significant potential to impact on the academic domain, particularly with the widespread use of Learning Management Systems ('LMS') such as WebCT and Blackboard (Coates et al (2005). However a 2007 UK Centre for Legal Education and British and Irish Law Education and Technology Association report into the use of ICT in UK law schools concluded that overwhelmingly the main use has been to build virtual learning environments simply to provide access to additional learning resources (journals, statutes etc) rather than to provide a new learning experience (UKCLE/BILETA, 2007). Although there are undoubted pockets of innovation (and more recently law schools have begun using ICT to record lectures and to provide for different types of online student activities), ICT does not appear to have had a significant impact on course design and delivery within at least traditional law schools. While this remains the case, the opportunity for penetration of the managerial professions into the heartland of pedagogy and practice within traditional laws schools seems limited.

However, one event that serves to illustrate the potential not just for change but for rapid change in professional boundaries is the arrival of the MOOC.

A brief history of MOOCs

Although it is generally agreed that the first 'MOOC' was offered in 2008 it was only in 2012 that MOOCs began to attract wider attention when 160,000 people in 190 countries signed up for a Stamford University MOOC on artificial intelligence. The popularity of this course led to the establishment of the commercial start-up company 'Udacity', with Silicon Valley

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[5] It may also be that the status of the law academic and / or the highly regulated nature of the law degree have assisted law academics to retain autonomy over pedagogy and practice whereas academics in other disciplines have not been able to do so.

financial backing.   This was followed shortly after by the establishment of 'Coursera' and by Harvard and MIT joining forces to establish their own platform 'EdX' (the only not-for-profit company amongst the three). Each provided a standard platform on which to host MOOCs and, unlike earlier LMS (such as WebCT or Blackboard) access to this platform is free both for course providers and for students.

While more recently some of the hype around the disruptive impact of MOOCs has tempered, the growth in both the number of courses and the number of course providers show no signs of slowing [6] .   In 2013 The Open University began building its own MOOC platform (Futurelearn) to host MOOCs from The OU and other UK universities (over 51 higher and specialist education institutions have now joined [7]), and other MOOC initiatives include Open2Study (Australia), iversity (Germany), and XuetangX (China).

The role of MOOCs

The rapid growth in the supply of MOOCs by universities around the world and the increase in MOOC platform providers is to a significant degree the result of universities (and venture capitalists? [8]) recognising the potential to use MOOCs for branding, as a marketing and recruitment device for existing programmes, and as a potential new income generator in its own right.   Although enrolling for a MOOC is currently free, obtaining certification or accreditation is not and new models or variants of the MOOC (such as the Georgia Tech on-line degree offered in collaboration with Udacity and telecommunications giant AT & T [9]) suggest further income streams will be identified.

In 2012 John Daniels (former Vice Chancellor of The Open University) suggested that despite the focus on the ability of MOOCs to facilitate universal access to high quality education, the real reason for interest in the MOOCs at university senior management level is their potential for restructuring universities and reducing costs while at the same time expanding student numbers (Daniels, 2012).

In addition to being free to universities, MOOC platforms standardise the structure for the delivery of courses (including assessment) plus there is no requirement (or currently at least, facility – at least in the case of Coursera) for academics to directly interact with the students. It is not surprising therefore that MOOCs have turned the heads of UK university

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[6] In May 2013 Coursera claimed to offer 374 courses, with 3.7m students; EdX 53 courses with 0.9m students; Udacity 25 courses with .4m students (DBIS, 2013, p14).

[7] See https://about.futurelearn.com/press-releases/9-more-leading-universities-embrace-social-learning-on-futurelearn/. Accessed 16 August 2015.

[8] Coursera began with $16m. backing and Udacity $15m (The Observatory 2012) , and see http://go.bloomberg.com/tech-deals/2012-10-25-udacity-raises-15-million-as-money-pours-into-online-education/ (accessed 7/12/2013).   EdX on the other hand began with a commitment of $30m. each from the two founders Harvard and MIT (http://chronicle.com/article/How-EdX-Plans-to-Earn-and/137433/ accessed 16/8/2015).   Coursera has subsequently received further venture capital backing – see http://www.forbes.com/sites/georgeanders/2013/07/10/coursera-hits-4-million-students-and-triples-its-funding/ (accessed 16.8/2015)

[9] See http://www.cc.gatech.edu/news/georgia-tech-announces-massive-online-masters-degree-computer-science

senior management concerned with the challenges of massification, globalisation, competition, and changed funding structures.

But with the potential of scale for MOOCs and the global visibility of their content, comes concern over the potential reputational risks to the individual university. With this awareness of the potential risk of reputational ('brand') damage is likely to come insistence on central managerial oversight leading to greater control over structure, curriculum and content of the materials – as my personal experience demonstrated.

The Development of a Law MOOC

In 2012 I was asked by the (then) senior manager of a central administrative body at the university where I previously worked and where I was the academic director of a distance and flexible learning undergraduate laws programme ('ULP'), if the programme would be interested in developing a 5-6 week non-credit bearing MOOC, to be hosted on one of the major independent MOOC platforms.

Background to the undergraduate laws programmes

The academic direction of the programme is led by law academics while the administrative support for the programme is provided by the separate administrative body. This body provides admission, registry, publications and examination organisation and administration services, as well as (more recently) 'academic development' and 'quality assurance' services to this programme and to other distance and flexible learning programmes offered by the university. Although the Chief Executive Officer of this central body is a senior academic, the vast majority of the staff have no academic experience (although a number have qualifications to Masters level)[10].

Developing the MOOC

We (the ULP) agreed we would provide a MOOC, primarily because we believed it would enable us to experiment with different pedagogies outside of the confines of the heavy regulated 'qualifying law degree'[11].

The design and development of the MOOC was led by a law academic together with the programme's own learning systems developer, and was delivered by two other senior law academics. The central administrative body acted as the communications and liaison link between the laws MOOC team, the two other programmes developing MOOCs, and the platform provider. Although there were new challenges in developing and delivering the MOOC, and even though we (the laws programme) were well aware of the potential reputational risks in publishing a MOOC (for the parties involved, including the university) we did not see this as a radical new development in our learning and teaching methodology or delivery mechanisms, but rather an extension of the sorts of online learning experience we already provided on our programme.

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[10] Based on my own informal research.
[11] Although not its initial rationale the University's rationale became refined over time to also include enabling experimentation with pedagogy.

However not long after we had started development the MOOC began to be described within the central administrative body as a 'project'. The emergence of the concept of the MOOC as a 'project' is consistent with Whitchurch's research into the changing identities of professional administrators and managers in UK higher education. She suggests a sense of belonging to a particular project or team is important for the credibility, and future careers, of managerial professionals (Whitchurch, 2008), particularly those who occupy generalist roles (such as 'academic development' or 'quality assurance'). But equally describing something as a 'project' also implies a new sphere of activity, one that is not situated within existing professional domains and therefore not subject to existing professional boundaries and their particular spheres of authority. Attaching the 'project' label can therefore be a useful devise for explaining and justifying traversing professional boundaries. The fact that the MOOC development became defined by the central administrative body (but not by the Laws Programme team) as a 'project' is also consistent with Whitchurch's observation that projects can arise 'under the radar' and become areas of 'contestation and uncertainty' (Whitchurch, 2013). This was evidenced in this case by the imposition of a new quality assurance process established and managed by the central administrative body.

The liaison role exercised by the central administrative body between those academic teams delivering the MOOCs and the platform (e.g. over start dates, common technical issues with the platform etc) became designated 'project management', and staff within this body began to be described (by the body itself and themselves) as the 'MOOC project management team'. In addition, new documentation issued by the central administrative body indicated that all future MOOCs would be assigned a project manager from within this body to provide 'guidance' on how to structure new MOOCs, appropriate learning methods and resources, assessment methods and ways of supporting the students[12]. The result is that both pedagogy and practice as well as course approval processes are now firmly within the overall control of the central administrative body and its 'managerial professionals'.

A further observation is the way various managerial professionals have developed public profiles around the MOOCs. A number have presented papers on the MOOCs, given press articles/interviews and produced publications including writing a published report which garnered significant press coverage and covering such topics as 'project management' but also 'measures of success' and 'lessons learned' (and which described the role of the academics as simply 'to provide the academic content for the online course to the agreed template' and to 'and to 'designate an academic leader …who will take overall responsibility for the integrity of the course and all content within agreed timescales'. In fact, the role of the laws programme team was central not just to content but to the overall pedagogy and design of the MOOC).

This profile building is consistent with Whitchurch's observation that managerial staff use projects both to establish credibility within the university but also to build a profile for the

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[12] University Internal document: Quality Assurance for the Approval of Massive Open Online Courses, August 2013.

future career paths (which may or may not be within the university sector) (Whitchurch, 2008).   But equally it supports Rhoades' observation that the managerial professions are using developments in technology to position themselves at the centre on matters traditionally the domain of the academic - namely pedagogy and practice. By promoting the MOOC as something new and innovative, and by designating the MOOC as a 'project', the managerial professionals within the central academic body have sought to establish both internal authority and an external reputation over matters of pedagogy and practice.

Whether this is appropriate or not is not the focus of this discussion. Rather the focus is on the questions this development raises about the very concept of the 'academic profession' itself and the basis for the authority assumed by academics over matters of pedagogy and practice in the first place.

Implications for the concept of the 'law academic profession'?

As Williams notes, although much is written about the vulnerability of the academic profession and its doctrines of academic freedom and autonomy in the light of the various changes taking place within higher education, it tends to start from an assumption that such a profession exists, and from there to 'defend or re-envisage it' (Williams, 2008).

In grappling with both what my response has been, and what my response should be, to the 'encroachment' into activities related to pedagogy and practice by managerial professionals (especially by those with no university teaching experience), I have been confronted with the questions of whether an academic profession exists at all, and if so, what practices it encompasses, and who qualifies for membership?[13] Being members of a profession implies not just that the members have special characteristics but that by virtue of those characteristics only members of that profession should undertake certain activities. So only members of the legal profession should 'practice law', only members of the medical profession should perform surgery.   But what are the characteristics of an academic profession that would entitle its 'members' to claim authority over pedagogy and practice? Freidson, charting trends in the analysis of the characteristics of a 'profession', identifies how the initial analysis focussed on formal knowledge and skills together with an ethical approach to work, while later writers focussed on professions' monopolistic positions in society and their powers. Others focussed instead on identifying the process by which occupations become professionalised (Freidson. 1986). But each of these analyses is problematic for the concept of an *academic* profession. Any monopolistic position is undermined by the lack of any formal membership association (such as, for example, the Law Society provides for the legal profession) as well as by the expansion and diversification of academic faculty 'through the incorporation into higher education of new defining communities, some with strong cultures of their own, and some forms of knowledge rooted in fields or practices where knowledge was less codified and its validity more contested.' (Henkel, 2010:4)

If on the other hand credentialisation underpins the professionalization of occupations, what is that formal education credential?   If it is discipline specific qualifications, it is questionable

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[13] The same questions arise in relation to 'managerial professionals' but they are not the focus of this essay.

whether this provides a basis for claiming expertise and authority over matters of pedagogy and practice. Although strongly encouraged, academics (unlike school teachers) are not required to undergo formal teacher training or credentialisation before taking up posts as lecturers. While the doctorate is increasingly becoming the entry level qualification requirement for academic posts (though not in the discipline of law), if this trains an academic for anything it is research, not teaching.

It is also clear the roles and responsibilities associated with academia have changed over time. Historically the role in the older English universities was described primarily as 'a personal and moral tutor' (Macfarlane, 2011: 65). More recently research and scholarship has also become central to that role (at least in the traditional university) in response to the various formal research assessment exercises first introduced in the 1990s, while that of teaching has become less certain. The importance of research for funding, for reputation and for promotion has meant research has increasingly taken priority, at least within the traditional law school. Although most law academics would, I think, still regard teaching as a core academic responsibility, actually doing it is sometimes another matter. In my experience law academics will actively look for ways of reducing their teaching commitments in order to focus on producing research output, using post graduate students or part-time teaching only staff to cover at least some of their classes.

The result is that as the central activities of the law academic shifts further from teaching to research, the teaching space previously occupied by academics becomes open territory. It is suggested this has also been aided by the shift in public discourse from 'teaching' to 'learning' which has acted to remove faculty from the centre stage and to create space for others to occupy (Rhoades, 2011: 107). Others suggest it has also been aided by the focus on the development of 'generic' or 'transferrable' skills, and through the development of criterion referenced assessment as 'manifestations of an instructional discourse that is embedded in a particular regulative discourse of constructivism which has eclipsed disciplinary knowledge'. (Shay (2008:4). Researchers (see for example Woolf (2004), and the discussion in Shay (2007)) have observed how assessment criteria are often expressed very similarly across different disciplines and focus on what Shay describes as practical or procedural kinds of knowledge such as the need for argument, clear presentation etc. Knowledge itself is treated as largely unproblematic and simply a matter of acquisition and application. What assessment criteria lack however is 'a language of description to talk about the valued forms of disciplinary knowledge' (Shay, 2008: 4) which recognises that how knowledge is generated, organised, represented and contested is itself contingent on disciplinary traditions of knowledge. One result has been to reinforce a perception that the skills required to demonstrate learning are largely supported by universal rules independent of the particular discipline, and a perception that the role of academics is simply to define content.

Into this space are moving the managerial professions, whose growth appears largely to have been fuelled by a desire to market knowledge and to develop universities as autonomous market actors (Whitchurch, 2010). Technology is also important in this context because learning management systems such as MOOC platforms enable academic content to be uploaded freely, from where it can be distributed repeatedly, at scale, to a standard template,

while other aspects (such as online learning design, the marketing of online courses and the implementation of evaluation and feedback) can be redistributed to the managerial professions who claim specialism in these areas.

As academic practice becomes increasingly unbundled, and as managerial professions undertake more of the roles previously associated with that practice, then what to teach and how to teach risks becoming increasingly dominated by these market rather than public service considerations, with academics 'reduced to 'content experts' (Bess, 1998) who are but one part of a virtual assembly line of instructional production' (Rhoades, 2007: 6).

How to respond?

So how then should academics respond given that what it means to be an academic and a member of an academic profession is increasingly uncertain? Is there something an academic professional can bring to pedagogy and practice that managerial professions cannot, and is there a way of responding to these changes that doesn't seek to rely simply on 'trait-based or function-based self-understandings of profession' (Williams, 2008: 542)?

As Dall'Alba & Barnacle (2007) note, conventional approaches to higher education tend to prioritise epistemological concerns such as knowledge and skills. This has facilitated an instrumental approach to higher education whereby these knowledges are presented as largely static and divorced from any understanding of the traditions of knowledge and of how knowledge is generated and organised, while skills are seen 'as attributes that can be decontextualised from the practices to which they relate' (Ibid: 680). Acquisition of knowledge and skill has become divorced from true learning, which, as Dal'Alba and Barnacle suggest, 'is not confined to the heads of individuals, but involves integrating ways of knowing, acting and being within a broad range of practices.' (ibid: 683)

Arguably therefore a key role for the law academic should be to articulate the connection between teaching and learning and to ensure that knowledge and skills are engaged with the discipline and practices to which they relate. In other words this role would be to situate the knowledge and skills within particular, and explicit, traditions of 'ways of knowing'.

A rich stream of writings from the 'academic literacies' field of study provide a helpful reference point. This field grew out of concerns to understand student writing and student learning and a desire to find more theorised explanations for the difficulties encountered by students in understanding the writing requirements within and across different disciplines that went beyond the 'student deficit' model. This field of study draws on a number of disciplinary fields and subfields including linguistics, sociocultural theories of learning and discourse study (see Russell et al (2009), Lillis and Scott (2007)). Research for example by Lea and Street (1998) sought to expose the complexity of writing practices within degree level programmes. Emerging from this research was an understanding of how features often regarded as 'generic' such as 'analysis' or 'structure' may in fact contain different conceptual understandings and different assumptions about the nature of knowledge within different disciplines (or sub disciplines) and explain why students can struggle to meet what, on the

surface, may appear to be very similar requirements across different disciplines. These epistemological understandings and assumptions however are rarely made explicit. Instead they are treated as merely 'common sense' (167) or tacit knowledge. Lea and Street refer to experiences where a student has approached a particular type of assessment in the same way in two different disciplines, only to receive very different grades and what appeared to be contradictory feedback. Although the feedback was couched in the familiar technical terms of structure and clarity etc, underlying this feedback were different implicit assumptions about knowledge between the two disciplines (Lea and Street (1998). They argue this academic literacies research has highlighted the need for the different disciplines to explicitly acknowledge and address these issues of epistemology as well as the relationships of authority around the communication of what constitutes knowledge (ibid: 170). As Shay suggests, this is a neglected area, ripe for further study (Shay, 2008).

Drawing on these insights, I believe a law academic profession that regards pedagogy and practice as central to its role would be one in which members are committed to articulating and then communicating understanding, including ways of thinking and constructing knowledge, within the discipline of law. But at the same time it should not be a static understanding but should also be committed to questioning the familiar and addressing the unfamiliar, so that students can reflectively respond to new knowledge claims and new situations, providing them with a scaffold to assist them to confidently and purposively critique these understandings, so as to develop new ways of knowing and new ways of practicing (Barnett, 2000a).

Conclusion

The response of the managerial professions to the 'rise of the MOOC' has led me to reflect on the role of the law academic and the basis for our claim to authority over pedagogy and practice. It has also led me to consider what it is that makes academia a profession. I am not sure there are clear cut answers to these questions in the fast changing world of higher education.

The MOOC has yet to fulfil its promise to disrupt higher education but the growth in numbers of both universities and students participating suggests it is more than just a passing fad. What the MOOC has demonstrated is the ability to deliver mass education at scale, and more cheaply than traditional models of education. Although the courses are currently free, the involvement of venture capital together with potential income streams emerging from certification and accreditation suggest there are expectations it will be income generating.

My own experience shows how MOOCs can present a significant opportunity to transform the established authority of the academics over pedagogy and practice in law (as well no doubt in other disciplines). Whether this is helpful to the educational enterprise is an issue yet to be determined. While the new managerial professions can bring skills and knowledge particularly applicable to the industrial and commercial spheres, nonetheless I believe law academics have a vital role instilling experimentation, reflection and practice into the learning experience and contributing to the development and socialisation of students in the ethics,

values, norms and practices of law and the legal profession.   Schulman (2005) has pointed out, education, at least for the professional disciplines such as law, entail forms of instruction ('signature pedagogies') designed to define what counts as knowledge and how things become known, criticized, analysed, accepted or discarded . These signature pedagogies contain a surface structure (the acts of teaching and learning), a deep structure (assumptions about how to impart the relevant knowledge) and an implicit structure (what Schulman defines as the moral dimension comprising the beliefs about professional attitudes, values and dispositions) (ibid 2005). Up till now these dimensions have remained implicit within the discipline but now they have to be acknowledged and critically engaged with.   A failure to do so will risk law academics becoming mere 'content experts' in relation to pedagogy and practice, and teaching law a trade rather than a profession.

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OVERCOMING THE CHALLENGES OF TEACHING AND LEARNING   ON THE BATCHELOR OF LAWS (L.L.B.) PROGRAMME THROUGH ONLINE DISTANCE LEARNING: THE NOUN EXPERIENCE

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Open and Distance Learning (ODL) even though widely accepted as a viable alternative to conventional mode of teaching and learning is not without challenges and scepticism. These are obvious particularly in professional programmes. The Bachelor of Laws (LL.B) degree programme to some cannot be effectively delivered via ODL. The general argument has been that some of the modules within the LL.B programme are procedural and the skills practical. As such, they are best learnt gradually and constantly in an enclosed everyday physical contact environment such as exist in a residential university. This paper identifies these challenges as they affect teaching and learning of LL.B programmes through ODL in general and at the National Open University of Nigeria (NOUN) in particular and exploits the National Open University of Nigeria's experience in running her LL.B programme in proffering solutions. The paper concludes that currently there are practical alternatives in using ODL that equal the advantages of the physical teaching and learning environment.

Introduction

The teaching and learning within a Bachelor of Laws (LL.B) programme is tasking and unique. The LL.B programme is the conduit for the entry into the legal profession. Hence, a faculty or school offering a degree in law is usually subjected to two regulatory bodies unlike many other courses or programmes. In Nigeria these bodies are the National Universities Commission and the Council of Legal Education. These bodies are needed to maintain and guarantee the standard and the discipline required of the legal profession. The legal profession in return feeds the society with people that will serve as ministers in the temple of justice and that will use law and its principles as tools for promoting the wellbeing of society. These place an onerous task on any tertiary institution offering a degree in law to produce skilful graduates. There has been an argument that appropriate teaching and learning within the LL.B programme in the ODL environment is not attainable because, among other things, both learners and facilitators lack the advantage of physical and immediate contact (Ngandwe, 2012)). This paper discusses the LL.B programme, the regulation of legal education and legal profession in Nigeria, the NOUN LL.B degree programme, the challenges of teaching and learning LL.B through ODL and the steps taken in overcoming these challenges in the National Open University of Nigeria's School of Law.

The Batchelor of Laws

In the broad discipline of Arts and Humanities, law is rated as one of the programmes in very high demand and the profession's association is arguably considered to be the leading professional body in the country (Mamman, 2010: 5). The Bachelor of Laws usually abbreviated as LL.B or LLB is the primary law degree in most common law jurisdictions and it is the qualifying certificate into the postgraduate legal qualifications. In Nigeria, the LL.B programme is offered at the university level where a prospective legal practitioner obtains legal training and a Bachelor of Laws (LL.B) Degree certificate after five years of full time study (Student entry through Joint Matriculation Examination (JME)) or four year full time study in the case of a direct entry student. The direct entry student starts from the second year but must register and pass 100 level core courses. Legal education at the undergraduate level focuses on the substantive law and not the procedural law which is the focus at the postgraduate level. Subjects are taught using the course system and each session consists of 2 semesters of approximately 14 weeks each. In addition to law courses, all law students are required to take some non-law courses. Every semester ends with a theory examination. An LL.B degree holder in Nigeria qualifies as law graduate and cannot practice law in Nigeria except after undergoing the mandatory one year full time training at a Nigerian law school or 2 years full time training ata law school for LL.B graduates from Commonwealth countries recognised by the Council of Legal Education. Thereafter their success at the law school entitles them to be enrolled into the Bar as a Barrister and Solicitor of the Supreme Court of Nigeria as provided under section 7 of the Legal Practitioners Act 1962 (as amended).

The LL.B degree programme is therefore the substratum of entry into the different careers in the legal discipline, for example, academic, legal advisory services, legal practice, and other areas of the discipline that need legal services. It is a prerequisite for admission into postgraduate study in law in Nigeria. The combination of its popular demand, unique status and vital functions in society underscore its stringent regulation.

Regulation of legal education and the legal profession in Nigeria

The need to regulate legal education in Nigeria was identified shortly before independence. The Unsworth Committee was established to consider and make recommendations on the future of legal education in Nigeria with specific concern for legal education, admission to practice, right of audience before the courts, reciprocal arrangements with other countries, conduct, control and discipline of members of the Bar (Okonkwo, 2000:10). The acceptance of the Unsworth Committee's report by the government led to the enactment of the Legal Education Act 1962 and the Legal Practitioners Act 1962, subsequently replaced and consolidated in the Legal Education (Consolidation, etc) Act (Cap 206) Laws of the Federation of Nigeria 1990 and the Legal Practitioners Act Cap L11, Laws of the Federation of Nigeria, 2004. While the former regulates legal education, the latter regulates the practice of law in Nigeria. Legal education in Nigeria is regulated by two major bodies - the National Universities Commission and the Council of Legal Education.

The National Universities Commission (NUC)

The NUC came into existence in 1974 through the National Universities Commission Act No. 1 1974 CAP N81, Laws of the Federation of Nigeria 2004 with the following responsibilities:

i.   advising the President and State Governors, through the Minister, on the creation of new universities and other degree-granting institutions in Nigeria;

ii.   making recommendations for the establishment of new academic units in existing universities or the approval or disapproval of proposals to establish such academic units;

iii.   making such other investigations relating to higher education as it may consider necessary in the national interest;

iv.   making such other recommendations to the Federal and State Governments, relating to universities and other degree-awarding institutions, as it may consider to be in the national interest; and

v.   carrying out such other activities as are conducive to the discharge of its functions under the Act.

By section 10(1) of the Education (National Minimum Standards and Establishment of Institutions) Act Cap E3, Laws of the Federation, 2004, the NUC is empowered to lay down minimum standards for all universities and other institutions of higher learning in Nigeria and to carrying out accreditation of their degrees and other academic awards.

The Council of Legal Education (CLE)

The Council of Legal Education came into existence in 1976 through the Legal Education (Consolidation, etc) Act 1976 as amended Cap L10, LFN 2004. Its primary responsibility is the control of the legal education of persons seeking to be members of the legal profession as provided in section 1(2). In order to meet this responsibility and since university education is the conduit into the law school, the CLE also exercises the power of accreditation under the Act. In addition, the CLE also carries out periodic inspection visits to ensure that law faculties maintain minimum education standards (Onolaja, 2004).

To be accredited by the CLE, a university law faculty must meet the basic minimum academic standards of the NUC and the CLE guidelines as to the minimum library requirements, status of law lecturers, student teacher ratio, core subjects, lecture periods and physical/infrastructural facilities of the law faculty. Where a law faculty is refused accreditation by CLE, law students who graduate from that university, though they may be awarded LL.B Degrees, will be unable to proceed for the vocational training at the law school or practice as legal practitioners in Nigeria.

In Nigeria, as in most other jurisdictions, the legal profession is a conservative and highly regulated profession. To this end, the training of a law student is rigorous and undertaken under stringent conditions from the point of admission in the university until they are ultimately called to the Nigerian Bar. These conditions are applicable to all law students

regardless of their mode of study, in other words, ODL or conventional. Hence, accreditation requirements are the same for all institutions.

The legal profession

To qualify as a legal practitioner, aspirants are required to meet some requirements both academic and non-academic. Section 2 of the Legal Practitioners Act 1962 (as amended) provides that a person is entitled to practice as a legal practitioner if his name is on the Roll. Section 4 of the Legal Practitioners Act provides requirements for enrolment as a legal practitioner in Nigeria to include Nigerian citizenship, production of a qualifying certificate issued by the CLE and satisfaction of the Body of Benchers that the candidate is of 'good character'. The Body of Benchers is a body of legal practitioners of the highest distinction in the Nigerian legal profession. By virtue of Section 3(1) of the Legal Practitioners Act, they are responsible for the formal call to the Bar of candidates seeking to become legal practitioners in Nigeria and thereafter such a person is entitled to be enrolled as provided in section 7 of the Act. To be adjudged of good character, a candidate is screened and found as 'fit and proper' to be called to the Nigerian Bar. This relates to moral character and integrity (Onolaja, 2004:13) and is non-academic. This requirement to be 'fit and proper' is so fundamental that a candidate may possess the requisite academic requirements (university degree and qualifying certificate from the Nigerian law school) and still be refused the call to the Bar if he is not found to be 'fit and proper'.

The task of moulding candidates for call to the Nigerian Bar commences in the university. Prior to admission to the Law school, requisite 'character qualities' are to be imbibed not necessarily taught in the academic curriculum but through interaction and practical training. Thus, the first character screening is done in the University. Every Dean of the Faculty of Law is expected to adjudge the character of every law graduate seeking admission to the Nigerian law school. Students who have been rusticated, involved in examination malpractices or convicted for criminal offences are not expected to be recommended by Dean and if recommended are likely refused admission into the law school.

NOUN LL.B. degree programme

The present school of law of NOUN started as a department of law in the school of art in 2003 when the university was resuscitated. The school of law was transposed from its departmental status in 2007 into a school.

The school's aims and objectives include providing a sound university education in law and producing graduates who will excel in academic, and in every area of, endeavours (NOUN Students' Handbook, 2014). Graduates of law from this university are expected to be able to use law as a tool for the resolution of various social, economic and political conflicts in society. The programme is designed to ensure that graduates of law will have a clear understanding of its place and importance in society. The school, acknowledging the fact that human

activities - social, economic and political, take place within a legal framework, ensures that its law students have a broad general knowledge and exposure to other disciplines in the process of acquiring legal education. Legal education in the school focuses on stirring the student into critical analysis and examination of the prevailing social, economic and political systems of their community and as an intellectual exercise aimed at studying and assessing the operation, efficacy and relevance of various rules of law in the society (NOUN Students' Handbook, 2014). The curriculum of the school has been designed to ensure that law will be taught as it exists at any given moment and that the students will be comparative in their approach to legal studies.

The training in the law programme is specially aimed at producing graduates whose level of education would equip them properly to serve as advisers to governments and their agencies, companies, business firms, associations, individuals and families, and others. Therefore, the output or end result of the system will be fed to such agencies and institutions as international organizations, commercial and mercantile associations and their operations, and various social, family and domestic groups and their activities.

The NOUN law programme has proven to be very popular for many reasons. In line with the motto of NOUN which is 'Work and Learn', most registered law students are employed adults who wish to take advantage of the flexibility of study available to students in the ODL setting. Studying with NOUN dispenses with the confinement of the student to the four walls of the university that is usual in conventional universities.

Another feature of the study of law with NOUN is the ability of students to work at their own pace. One key feature of ODL is that students are allowed the flexibility to register for only those courses that they can afford and/or study for at a time. As a result, law students need not complete their studies in 5 years as required in conventional universities but may complete their programme in a maximum of ten years.

The NOUN LL.B programme is cost effective. The affordability of the programme is another unique feature of it. Students are allowed to register for the number of courses they want to, subject to minimum registerable credit units. Accordingly, a student may only pay for the courses they intend to register for at a time and may defer payment for other courses. The learning and instructional materials are student-centred.

Teaching and learning on the LL.B programme

Despite the enumerated features and advantages of the NOUN programme, the teaching and learning on the LL.B degree programme is not without challenges. The common challenges faced by the students and the school are as follows:

The first of the challenges is the requirement of a high computer literacy level. The hallmark of ODL is the use of e-learning which makes it necessary for learners to be computer literate. Unfortunately, a large number of the Nigerian populace, including prospective NOUN students, are not conversant with the use of the computer. As a result, e-registration, e-examinations, e-research and the use of computers and ICT generally pose problems to such students and incidences of wrong registration and difficulty in studies are recorded. In NOUN, the school (having identified this challenge) ensures that fresh students undertake a mandatory study in the use of a computer in the first semester and the second semester of their initial year of study (NOUN e-learning materials available at www.noun.edu.ng). Also, the ICT unit of the university organises regular face-to-face practical training for students at the study centres.

The second challenge is that of internet access. ODL depends to a large extent on internet access. In most countries internet accessibility is still a major challenge particularly in the rural areas. Where internet is available, it is usually not affordable by the populace. In 2012 internet penetration rate in Nigeria was estimated at 28.9% and is mostly obtainable in urban areas (Miniwatts Markting, 2015). The flexibility ODL offers and the objective of breaking barriers to access to education to all who desire to learn can only be achieved if students have access to the internet at all times and everywhere. In reality many students cannot afford personal internet access and the alternative, which is cybercafés, is also faced with major connection challenges from time to time. Students using cybercafés also have limited access because they can only use cybercafés during working hours.

The cheering news in Nigeria, based on a study conducted on the affordability for internet access, shows that Nigeria ranks the second most affordable country in Africa (Olumuyiwa Coker, 2015). In this regard, the school has taken advantage of the unprecedented growth of ICT in Nigeria. At the early stage, NOUN embarked on ensuring that every study centre had internet access. However, this was not a total panacea to this challenge. The challenge of accessibility was tackled with the introduction of NOUN i-Learn. This giant step by NOUN has revolutionized the landscape of teaching and learning in Nigeria. It offers the NOUN students varieties of options. With the cheapest phone that has an internet facility, students can study online. Students can study with ease on this platform using their computer, laptop, ipad and any smart phone. Lecturers can record and upload video lectures, facilitate online, ask questions, answer questions by students and schedule class discussion online. The main profit from this arrangement is that there is unhindered interaction between the lecturer and the student and among students.

The third challenge is the use of multiple choice e-assessments. This poses another challenge in teaching and learning via ODL particularly for the professional courses. It precludes in-depth assessment of students and reduces students' ability to solve problems under pressure

or proffer solutions on the spot. Granted that e-assessment has the advantage of helping students develop speed, it is ill-suited for teaching the application of theoretical knowledge to real life situations which professional courses like the LL.B programme require. Also, it prevents students from putting their opinions down in the coherent and organised form required for legal writing. Students tend to learn in terms of correct or incorrect answers with multiple choice e-questions. This negates the reality of real life legal situations where there may be no definite course of action but a call to consider all the options and take a position which one must defend. The reality with multiple choice questions is that, even if guesswork is employed, students are bound to get some questions right though they may not have acquired the knowledge the course seeks to pass on.

Another significant challenge confronting the teaching and learning of an ODL LL.B is the transfer of the necessary skills and character required for effective legal practice. Research shows that effective legal practice is influenced by such skills as cognitive skills (analysis, creativity, problem solving), research skills, communication skills (advocacy, writing and speaking), conflict resolution skills and good character consisting of diligence, integrity, passion (Shultz and Zedeck, 2008). The reality is that these skills are more easily transferred through face-to-face interaction which is not available under pure e-learning. For instance, students cannot be taught how to be 'fit and proper' through the pages of course materials or e-examinations. To a large extent, skills like organisation, advocacy and character formation are transferred through communication and interaction which is often not readily available to law students in most ODL settings. Also, multiple choice questions and the lack of written assessments mean that students are unable to learn important legal writing skills or apply theoretical knowledge to real life issues.

In NOUN, to overcome these challenge in teaching the LL.B programme, the school uses dual facilitation and assessment systems. In relation to facilitation, the school provides the online facilitation and the physical facilitation at the study centres. At the study centres, law students have access to facilitators who are usually recruited from the nearest faculty of law. The attendance of the physical facilitation is mandatory for all law students. A facilitator who is a part time staff of NOUN must possess a minimum of a Master Degree in Law (LL.M) and such staff are regularly trained on ODL by NOUN. On assessment, NOUN uses e-assessment for the continuous assessment (Tutor Marked Assessment) which accounts for 30 percent and uses pen on paper (POP) for all law courses which accounts for the remaining 70%. The POP is the hand-written assessment. Students are expected to answer four questions from six questions within three hours under supervision. The questions are mainly problem questions. NOUN also provides for a moot court in every study centre. Law lecturers are usually posted to the study centres to provide some form of staff-student interaction and guidance.

Law students also organise a "Law Week" on an annual basis with several events such as visits to senior members of the profession and courts, law dinners, and mock and moot competitions with law students from other law faculty and symposia taking place.

NOUN lecturers carry out periodic visits to study centres in their assigned zones and meet/interact with study centre staff, facilitators and students. Also, the school of law organises events from time to time for students' participation.

Two reasons underscore the above steps as regards the teaching of law in NOUN. The first is to solve the challenges associated with pure e-assessment and facilitation. The second is to meet the requirements of the regulatory bodies in Nigeria.

Another avenue explored for skills acquisition is the moot competition which is mandatory for all students. To this end, students have been divided into different chambers and problem questions are regularly given for consideration. Legal practitioners have also been engaged to guide the students, and judges/magistrates approached to act as judges during the competition. It is hoped that students will improve their research, communication and advocacy skills through this competition.

Scepticism and misconceptions of the concept of ODL by regulatory bodies are other challenges that confront teaching and learning on LL.B degree programme through ODL in Nigeria. The attitude of the regulatory bodies on one part and the obvious lack of understanding of what ODL is all about on the other hand. In Nigeria, the two regulatory bodies at the inception of the NOUN were sceptical of ODL. Their misconceptions of ODL included an argument that ODL is a part time programme and a view of it as a correspondence course, To the CLE, the LL.B degree programme cannot be learnt via ODL, the LL.B degree programme in NOUN is by correspondence and for this reason it has refused to visit the school for the purposes of accreditation. There is a proverb in Nigeria that it is difficult to tell the content of a covered plate without opening it. Apart from the fact that NOUN LL.B programme is not by correspondence should the concern, emphasis and focus of any regulatory body be on mode only or be on ensuring that the required standards are met? NOUN engaged and is still engaging on advocacy and enlightening of not only the regulatory bodies but also the general public about ODL and its advantages. Thus, NOUN secured the approval and accreditation of LL.B programme by NUC in 2012 and also received re-accreditation from the NUC in 2015.

Conclusion

The challenges of learning and teaching on an LL.B programme are not peculiar to an ODL institution. In this jet age even the conventional universities have embraced some form of e-learning or resources. Law can be taught via ODL if supported with some physical contact as

demonstrated by NOUN. This would mould the character and attitude of law students. The regulatory bodies should focus more on standards rather than the mode of delivery.

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USING AUTHENTIC ASSESSMENT TECHNIQUES IN EXTRA AND CO-CURRICULAR ACTIVITIES (ECCAs) TO IMPROVE TEACHING STANDARDS ON ACADEMIC LAW PROGRAMMES

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Authentic assessments are aligned with workplace activities, as opposed to the more artificial, largely exclusively summative and austere, nature of traditional university assessment methods. In this paper, the authors assert that authentic assessments, although traditionally the preserve of extra and co-curricular (ECCA) course delivery, have the crucial benefit of improving teaching standards on academic law degree programmes, through ensuring that the key 'critical reasoning' skill which ensures academic assessment success, has been identified by the assessor and developed by the student throughout the assessment. In this paper, the essential elements of the critical reasoning skill is subdivided into its composite parts, into a simple checklist, for use in legal assessments. This checklist, when applied by the assessor, has two main purposes: (i) to ensure that the student has achieved the appropriate grade for the assessment; and (ii) to ensure consistency and maintenance of quality in the assessment method.

Introduction

Authentic assessments are aligned with workplace activities, as opposed to the more artificial, largely exclusively summative and austere, nature of traditional university assessment methods. Doing more than simply avoiding the saturnine, authentic assessments improve students' academic performance (Berger & Wild, 2015a) and employability rates, (Berger & Wild, 2015d). However, in this paper, the authors assert that authentic assessments have a further benefit – the improving of teaching standards, through ensuring that the key 'critical reasoning' skill which ensures academic assessment success, has been identified by the assessor and developed by the student throughout the assessment.

The nature of critical reasoning in legal assessments require that the student constructs an argument, using authority to support it. The foundation of the argument will be the attempted balance between the guiding master principles of the common law - justice, fairness and the common good, which will naturally lead to consideration of the balance between the rights of individuals in any given society, against that of the welfare of that society itself. We say it is an 'attempt', because, as we establish, there are no 'right' answers in law, as with other cognate disciplines. In essence, that balance will never be struck, but it is in the attempt, that a 'good' rather than a 'right' answer will be found.

We argue that authentic assessment provides an unparalleled opportunity to delve deeper into the psyche of the student, to explore areas of social, political and economic interest which may not have been apparent from the outset. This two-way communicative strategy, normally delivered as an extra or co-curricular activity (ECCA), such as mooting, allows

students to improve or lower their grade mid-assessment as the lines of enquiry are developed. The by-product of this method, is that it ensures that teaching standards are improved, not just in ECCAs, but in academic degree delivery as well. Legal assessors will no longer be able to rely on 'model answers' or 'marking bulletpoints', as no guidance will exist at the heart of the assessment, beyond that of the attempted balance between the guiding master principles of the common law.

In this paper, the essential elements of the critical reasoning skill is subdivided into its composite parts, into a simple checklist, for use in legal assessments. This checklist, when applied by the assessor, has two main purposes: (i) to ensure that the student has achieved the appropriate grade for the assessment, by providing a clear framework which emphasises the development of the key critical reasoning skill, and ensure that it has been rewarded; and (ii) to ensure consistency and maintenance of quality in the assessment method, by providing a clear framework which ensures that the assessor asks the right questions. It is this participle which improves teaching standards.

Authentic assessment

Authentic assessment is a method that presents a task for students to perform and a way to measure their performance on the task. It tests a student's ability to solve hypothetical problems, which then assesses how effectively a student solves a real world problem, and requires students to apply a broad range of knowledge and skills. Authentic assessment:
…can raise aspirations and increase intrinsic student motivation through explicit demonstration of career alignment and relevance of curriculum activities' (QUT Office of Teaching Quality, 2009), and are: '…closely aligned with activities that take place in real work settings, as distinct from the often artificial constructs of university courses.' (Boud & Falchikov, 2007).

Authentic assessment is supported by the Quality Assurance Agency for Higher Education (QAA)'s aim to ensure that law students graduate with practical skills, as well as the traditional knowledge and understanding of the law. In this regard, the Draft QAA Subject Benchmark Statement for Law (2015) provides that:

…A law graduate is far more than a sum of their knowledge and understanding, and is a well skilled graduate with considerable transferable generic and subject-knowledge, skills and attributes… We encourage Law Schools to help students to articulate to employers what they can do and what their qualities of mind are by using this statement:
•   Ability to produce a synthesis of relevant doctrinal and policy issues, presentations of a reasoned choice between alternative solutions and critical judgment of the merits of particular arguments
•   Ability to apply knowledge and understanding to offer evidenced conclusions, addressing complex actual or hypothetical problems

- Ability to communicate both orally and in writing, in relation to legal matters, including an ability to listen and respond to oral stimuli including questions and instructions.'   (QAA, 2015)

Authentic assessment can be incorporated into almost any type of course delivery, including the academic law degree, but its methods have been largely centred on extra and co-curricular courses (ECCAs), as they have largely oral components, and were originally designed to increase student engagement, rather than directly augmenting the academic learning process. However, indirect benefits of student engagement to improve academic performance has been recognised by Hart et al (2011) who state 'through the process of engagement, students are more likely to experience a positive and fulfilling approach to the accumulation of the 'legal content' in their law degree'.

Conversely, it is our assertion that ECCAs do more than simply increase student engagement, which then has an indirect correlation towards improved academic performance. We argue that authentic assessment in ECCAs has a DIRECT impact on law degree performance, and have found that students, who actively participate in University run and accredited ECCAs, excel on the law degree (Berger & Wild, 2015a).

In this paper, we assert that the continuous mid-assessment formative assessment techniques utilised within authentic assessments in ECCA delivery, are perfectly placed to monitor and improve teaching practices by ensuring that the key transferable component to law degree success - critical reasoning skills – remain the key focus of legal teaching delivery. Critical reasoning is the foundation of argument construction in law, and ensures that students take an 'outwards' approach to legal research and assessment, by placing the assessment BEFORE the content; rather than an 'inwards' approach which places the assessment AFTER the content. The outwards approach is optimum, because it preferably allows students to use law to support argument, rather than use law to construct an argument.

Extra and co-curricular activities (ECCAs)

The School of Law delivers various ECCAs, each designed to echo a different area of legal practice, including among others:

- Mooting – legal research and application on technical points of law
- War of Words (WoW) – high pressure emergency applications
- Mock trials – testing of evidence
- Debating – logical reasoning
- Mediation – alternative dispute resolution

Each course incorporates formative and summative assessment methods and is delivered in at least three separate assessment stages and involves an element of public speaking. Each course (apart from mediation) also incorporates an element of competition, to align with the adversarial nature of the UK legal system. In this paper we examine the format of the Mooting and WoW ECCAs to illustrate the different, but equally important, modes of delivery.

To ensure the authenticity of the assessments, there are two settings for the ECCAs: The authentic Crown courtroom; and the bespoke mediation centre. Most law schools deliver practical courses in featureless classrooms, inauthentic to the environments encountered in practice. However, at the School of Law, the Courtroom is an open forum with spectator areas, an authentic distance between Bar and raised bench, authentic and imposing décor. The Mediation Centre has a glass-fronted central meeting room with separate caucus meeting rooms for client instructions/negotiations in private. Students become comfortable with challenging environments and quickly become accustomed to the formality of the settings.

The mooting ECCA format is as follows: At the start of the academic year there are two hour combined lecture/workshops for three consecutive weeks, which explains the basic content of the course, and teaches basic skills. Students then pair-off into teams of two as specified by the ECCA requirements – this is recommended to be outside of their own year/programme groups to encourage peer-led tuition and support. Students prepare written presentations first, with intensive legal research, as it would be in practice. Oral submissions are made in the courtroom with a tutor judging, again as would be found in practice. Post-assessment formative feedback, from the tutor, is provided on: (i) Content; (ii) Presentation. Summative appraisal provided for written and oral elements. Students are encouraged to watch other students mooting/receiving tutor feedback.

The War of Words (WoW) ECCA format is as follows: WoW allows a single student to make a one minute argument on a controversial (not specifically legal) topic, who then faces high pressure rebuttals from the audience. This tests: research skills, critical analysis, resolve under pressure, and public speaking skills. The format is a 'flipped' version of an emergency legal application, with one applicant and many judges, instead of the traditional opposite position of one judge in open court with many applicants. WoW is confrontational, and places the student under immense pressure to react to questions from multiple directions.

Formative v summative assessment

Formative assessment is vital where there is an ongoing assessment, such as in advocacy competition formats – this can be: (i) peer-led and/or tutor-led; and (ii) active and/or passive (receiving feedback yourself or observing others receiving feedback); whereas summative assessment is vital to determine the winner of a stage of the competition.

> Assessment is formative where it occurs as part of a progressive learning exercise, and where the main purpose is to facilitate student learning…Summative assessment reports on and certifies the "achievement status of a student.
>
> (Sadler, 1989)

Authentic assessment naturally incorporates both methods, as two-way interaction between participants/assessor is encouraged and inevitable - formative and summative assessment methods are not mutually exclusive.

Legal practice incorporates both methods, so it is natural that authentic assessment should too: Formative: The legal community relies largely upon self-regulation, education and improvement, to ensure that practitioners provide clients with exemplary service – without which it cannot be said that the system upholds the Rule of Law. Inns of Court, the Bar Society, the Solicitors' Regulation Authority et al, require practitioners to develop themselves and others throughout their professional careers. The nature of the hierarchical court system and authorship of legal journal articles are a form of peer-led formative assessment of court judgments. Summative: The UK legal system is adversarial in nature and demands a 'winner' and a 'loser' in each case.

Formative assessment techniques in ECCAs

Authentic assessment is normally a two-way communication scenario, which means that students are able to you respond to their assessor mid-assessment and make tweaks and minor adjustments to their performance as familiarise themselves their assessor's demands, personality and character traits. This means that the assessment is within a constant formative framework with a summative assessment at the end, followed by a formative assessment when feedback is provided. A traditional paper-based assessment has only one formative aspect – the feedback at the end – which as Montgomery (2002) notes 'are done after rather than before the writing, so they cannot serve as guidelines, compromising the value of writing comments at all'. Equally, this mode of assessment is primarily used in a summative way 'to differentiate between students and rank them according to their achievement' (Gulikes et al, 2004) – the testing culture - and, as such, does not sit easily with current educational goals which focus to a greater extent on the development of 'competent students and future employees' as opposed to solely on the acquisition of knowledge (Gulikes et al, 2004).

As Garfield (1994) observes though, 'the primary purpose of any student assessment should be to improve student learning' by 'enhancing the problem-solving and critical thinking abilities of students' (Montgomery 2002). It is this formative-rich, authentically assessed environment which improves student performance in not just ECCAs, but on the law degree and beyond. The student is made to, in effect, constantly review their performance and enter a mind-set which tests flexibility, confidence, critical reasoning, psychological evaluation

skills, and response skills. Interestingly, these are all skills which help the student who is studying for a paper-based assessment.

In the traditional 'one-shot', paper-based assessments, a student is able to ask for feedback after the exam has been sat, but how effective will it be? The student will barely remember the assessment questions or what frame of mind they were in on that exam day, and so the feedback will almost feel as if it belongs to someone else. In any case, the next paper-based exams are a whole year away, so the student's implementation of the feedback will not be particularly effective. Consequently, the function of assessment needs to change from being summative to also performing a formative goal of enhancing student learning. Increasing the authenticity of assessment is expected to have a positive influence of student learning and motivation (Herrington & Herrington 1998).

Taking mooting – which has a long standing presence within legal education (Keys & Whincop, 1997) - as an example of continuous mid-assessment formative feedback: There is one thing constructing an argument and giving advice in a paper-based exam scenario, which does not matter which 'side' the student takes as long as they make the soundest argument possible. But when the student is forced to represent a hypothetical client, who will not likely readily accept advice that their case lacks merit, the student starts thinking creatively, and will develop an argument mid- assessment, if the original prepared position does not seem to be effective.

During a moot, the student commences the oral assessment with a prepared skeleton argument, which has been submitted before the moot, to allow the assessor to prepare questions. The timed (usually 10-20 minutes) oral assessment is a 'conversation' between the student and the tutor, designed to test the student's knowledge of not only the relevant law relating to the topic, but also the student's intelligence in understanding why the legal principles exist and how they correlate with other topic areas. Depending on the standard of the student, the tutor is able to tailor the questioning to allow the student to develop the argument well beyond that of the original written skeleton. However, this requires tutors 'to become ever more skilful in their ability to evaluate teaching situations and develop teaching responses that can be effective under different circumstances' (Darling-Hammond & Snyder 2000).

In fact, it could be argued that since there are no 'right' answers in law, the assessment is geared towards discovering more than simply a student's legal knowledge – it is also an effective means of testing emotional intelligence and wider knowledge of social and political issues. As Ku (2009) notes assessments which support open-ended responses 'makes it possible to assess [an] individuals' spontaneous application of thinking skills on top of their ability to recognize a correct response', enabling the tutor to evaluate the critical thinking performance of students.

Further, by developing a student's arguing skills, the tutor is able to demonstrate that the construction of a legal argument is closely aligned with critical reasoning skills – a skill which is not usually expressly taught as a part of the academic degree curriculum, but which is a vital component for optimum law degree performance.

Of course, as noted earlier, it is important that the assessor is trained in asking the right questions, to elicit optimum responses from the student, so ECCAs must be run and accredited by the university, with trained and experienced staff - rather than as a student-led society which cannot guarantee rigour. To ensure assessment standards are maintained, Berger & Wild (2015b) explain how authentic assessment can be used as a teacher-training and monitoring aid.

While the traditional 'paper-based' assessment strategy provides a pragmatic solution to the problem of a general lack of time and resources to grade students en masse, the argument that authentic assessment is too 'resource-hungry' to be used across the assessment framework in academic law degree delivery, is rebutted by the authors (Berger & Wild, 2015c).

Students should be using law to support, rather than construct an argument
Within the sphere of legal education, the student's argument must come from his/her own experiences of the world and the society in which he/she lives. It must also be supported by authority. This is not 'authority' in the strict 1651 Hobbesian vernacular (as law emanating from a sovereign), but more as 'authority without an author', which as van Roermund (2000) argues is 'irreducibly first-person bound' within a legal system as a 'socio-political institution' and therefore, one can attack and deny legal authority in certain procedures. Legal authority makes itself vulnerable by providing in advance for counter-action. In yet other words: exercising legal authority requires, among other things, arguing, convincing, persuading and, in general, confronting the audience that imputes authority to a certain body.

 This first-person argument, using legal authority to support it, provides the perfect balance between qualitative and quantitative studies, and is not only the foundation of legal argument, but that of the common law system itself. For this reason, we can say that the perfect legal essay is one which makes a novel contribution to the legal system and in itself becomes 'authority'.

It is important to appreciate that the student must pick one side of the argument and use the law to support it, not the other way around. It would be poor assessment practice to simply research the available law and to then decide which principle proves to be the best 'fit'. Indeed, if there is no legal authority to support a student's answer, but the student is still able

to demonstrate that they have 'left no stone unturned' looking for it, then the assessment piece should be good enough to publish in a highly regarded legal journal.

Each legal problem will have two sides, even if the assessment simply asks the student to 'discuss' or 'explain' an issue. Within legal education, the term 'explain' does not have the same connotations as it might for other disciplines. Rather, it means 'construct an argument'. It is a polite invitation for the student to defend their position. In other words, once the student has looked at the argument from both sides and has done the required research, he/she must decide which side is more compelling and then explain why this is the case. In the words of Thomas Cowan,

> The burden of all pragmatic philosophy is that to arrive at final truth is fatal. But equally fatal is failure to know whether our striving brings us nearer or farther from the truth. In a word, our task is to define truth in such a way that, although we must never arrive at it, yet we must be able to approach it indefinitely…We accept then the fundamental tenet of pragmatism. No generalisation or law remains final. It becomes fact or datum in the further pursuit of truth. No fact is final. Its meaning becomes absorbed in law or generalisation. There is no fixed starting point for science.
>
> (Pound, 1999 ed.)

In other words, in a legal assessment, as with other disciplines, there can never be a 'right' answer.

Inevitably, this will entail the student providing an opinion, but not in the sense of it being a rhetoric based on a vague gut feeling. Rather, as noted above, it should be an expert opinion based on research, knowledge of legal principles and an appreciation of policy considerations. At the very heart of this opinion is the student's own constructed argument based on knowledge of the guiding master principles of the common law – justice, fairness and the common good – due to the fact that there is not a legal authority in the world that can provide the perfectly correct answer (Dworkin, 1978). Nevertheless, the student's careful consideration of all of the available source material will ensure that their answer should have both resonance and legitimacy.

Constructing an answer in the common law means balancing the rights of individuals against the welfare of wider society, which will naturally entail ensuring that principles of justice, fairness and the common good are adhered to. As Pound himself argued in his seminal work '*The Spirit of the Common Law*'):

> …It follows that, following assertions made in the 1776 Declaration of Independence, the common law was taken to be a system which gives effect to the individual natural rights of man.' However, Pound continues: 'Men are not asking merely to be allowed

to achieve welfare; they are asking to have welfare achieved for them through organised society'… which leads naturally to the conclusion: 'Although we think socially, we must still think of individual interests.

<div align="right">(Pound, 1999)</div>

For the law academic assessor, authentic assessment is the most effective means of eliciting an answer which examines this key balancing act. In a traditional paper-based assessment, the content of the piece is dictated by the student, and there is no opportunity, mid-assessment, to enquire whether the student has considered the wider picture.

In authentic assessment, the student is available for further testing – at whichever standard they have entered the assessment on. Since there are no absolutely correct answers in law, there will always be scope for further testing – and authentic assessment is the only effective forum for this to take place. Of course, this means that the assessor must be experienced and trained to elicit the optimum responses to allow students to properly fulfil their potential, and so authentic assessment methods offer the most effective environment to improve and monitor teaching practices (Darling-Hammond & Snyder, 2000).

Improving and monitoring teaching practices

Let us take a question on the constitutional law topic of 'the UK doctrine of parliamentary supremacy,' to examine the approach needed for an optimal answer:

Question (a):

To what extent, if any, has the United Kingdom's traditional parliamentary supremacy doctrine been affected by its membership of the European Union?

The key case in this area of law, is the House of Lords decision in *Factortame No.2* [1991] 1 AC 603, in which a 1988 UK was seemingly dis-applied in favour of an impending conflicting EU decision, which would seem an infraction of the UK's traditional doctrine of parliamentary supremacy.

So with this issue in mind, the answer might be to examine the judgement in *Factortame*, investigate the key reasons for the decision, and then comment on whether the decision struck the correct balance between the guiding master principles of the common law – justice, fairness and the common good. On investigation through the body of UK and EU case law, it might be noted that the House of Lords decision was based on the following three factors that:

- Lord Denning had set a 1980 precedent that because of the UK's voluntary acceptance of Treaty law, EU law was supreme in certain limited areas, and that only

express repudiation of the Treaty was likely to redress the balance back in favour of UK supremacy;

• The European Court of Justice was likely to find in favour of the individual against the UK, and that the UK had accepted ECJ jurisprudence as binding on UK courts; and

• Since there was no express provision in the 1988 Act denying the application of EU law in this matter, it should not stand.

Therefore, the House of Lords in *Factortame* had given effect to:

• Stare decisis of the previous UK court's decisions;

• The will of the 1972 Parliament, who had voluntarily ceded some powers to the EU and had done nothing to overturn the UK courts' decisions; and

• The will of the 1972 Parliament, over that of the 1988 Parliament.

Was this balance correct? Some students might argue yes, and some no. If the court had not found for the individuals, the EU would likely have pressed for sanctions against the UK, which the UK public would not likely have deemed for the common good at that time. Yes, we are in a political climate today in which a significant proportion of the populace consider the UK's membership of the EU as less beneficial than it did in the 1990's, but that is within a different financial and social climate.

By adhering to stare decisis, the courts justified their decision to protect the individuals; by giving effect to the will of the 1972 Parliament, the court upheld the doctrine of parliamentary supremacy after a fashion (it was simply the wrong Parliament), even if not strictly adhering to the Doctrine of Implied Repeal; by giving effect to the will of the EU Parliament, the court acted in the common good. This is not to say that it would have easily justified a departure from the EU via a 1988 parliamentary express repeal of the 1972 Act, but this did not happen, not even after the 1991 House of Lords decision. To answer the question optimally, the student must argue not only how the balance was struck by the courts in 1991, but what the effect of the decision has had on the modern UK.

Now let us take an authentic assessment question on the same topic, covering similar content:

Question (b):

The town of St Albans has a market in its centre, running six days a week.

Every Wednesday, a special market is set up, with stalls owned by French nationals selling various authentic French foods, clothes and collectibles.

At the end of each market day, the town centre is covered in rubbish from the stallholders. St Albans County Council demand that the French stallholders should pay extra to clear the rubbish on Wednesdays, since they do not pay council tax.

In response to St Albans County Council's lobbying of Parliament, the (fictitious) Special Refuse Tax Act 2015 ('the Act') has come into force, stating that all non-UK residents who trade on UK soil must pay £100 per trading day for refuse collection.

Pierre and Yves, from Calais in France, run a bakery stall on Wednesdays in St Albans market, and have just received a payment demand under the new Act. They argue that the Act contravenes European law, and are refusing to pay.

Advise Pierre and Yves.

We can see that questions (a) and (b) will cover similar content, except that with (b), the student has been asked to represent a specific (albeit hypothetical) client, much as they might encounter in a problem-style paper-based assessment. However, the difference between (b) in a paper-based assessment, and the same question used as an authentic assessment in, say, a moot ECCA, is that the assessor in the ECCA is involved with the assessment process, which allows further and deeper testing to take place mid-assessment.

For this further mid-assessment testing to take place, the assessor must be skilled and experienced in assessing authentically, which means being highly knowledgeable on not only the subject matter of the assessment, but also the guiding master principles of the common law.

Interactive questionnaire

The following simple checklist that an assessor needs, to establish a student's critical reasoning skills, has only four components:

1.   Has the student constructed an argument (van Roermund, 2000)?
2.   Has the student considered the guiding master principles of the common law – justice, fairness and the common good (Pound, 1921)?
3.   In considering (2) above, has the student sought to balance the rights of the individuals against the welfare of society as a whole, in line with Cowan's (1999) views on Pound's (1921) stance?
4.   Has the student supported their answer with legitimate authority (van Roermund, 2000)?

By answering these questions in the affirmative, the student has used the law to support their answer, not to construct it - in line with van Roermund's, Pound's and Cowan's views - and by doing so, has demonstrated critical reasoning skills. Conversely, and importantly for the focus of this paper, by asking these questions and eliciting the student's answers, the assessor must demonstrate that they have been able to confirm the legitimacy of the student's answer.

Conclusion and recommendations

It is our conclusion in this paper, that authentic assessment in ECCA delivery is a vital component in improving and monitoring teaching practice - which then has a direct correlation with improved student academic performance on the law degree. Key critical reasoning skills are accrued by demonstrating an ability to construct an answer qualitatively, and then quantitatively supporting it with authority. Law educators, who set assessments with instructions to students to 'explain' or discuss' areas of law are really, in effect, asking students to construct arguments. This paper ensures that the best law student critical reasoners are rewarded accordingly. An inevitable by-product of this identification and testing of the key critical reasoning skill, is that law teaching practice improves, as long as the simple four-point checklist is satisfied.

As far as augmenting academic law degree delivery is concerned, Berger & Wild (2015a) note that the School of Law awarded 35 students with a Certificate or Diploma in Professional Development, in the academic year 2014-15. These students all participated in ECCAs with an authentic assessment delivery method. Out of the these students, 34 received a 1st Class or Upper Second Class (2;1) grade on their law degree. This figure of 98% receiving the highest awards, compares with 48% across the entire cohort – doubling the academic law degree performance of the ECCA students.

The starting cohort on the law degree entered university on an average UCAS (or equivalent) tariff of 340 points, while the ECCA cohort entered on an average 307 points, which places them at their entry point at a lower-than-average starting band. This large swing from below-average, to top achieving cohort, is attributed to the 35 students accruing crucial transferable critical reasoning skills, developed through continuous mid-assessment formative feedback on ECCAs, which then improved their law degree academic performances.

Berger & Wild (2015c) investigate how perceived resource restrictions may be overcome, to allow authentic assessment techniques to be used in the law degree, and not solely in ECCA delivery.

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CASE COMMENT

HABEAS CORPUS AND THE CAMPAIGN FOR ANIMAL PERSONHOOD

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THE NONHUMAN RIGHTS PROJECT, INC., on behalf of HERCULES and LEO, Petitioners, against SAMUEL L. STANLEY, JR., M.D., as President of State University of New York at Stony STATE UNIVERSITY OF NEW YORK AT STONY BROOK AKA STONY BROOK UNIVERSITY, Respondents. August 5, 2015 (Unreported)

'For four thousand years, a thick and impenetrable legal wall separated all human from all nonhuman animals. On one side, even the most trivial interests of a single species – ours – are jealously guarded. We have assigned ourselves, alone among the million animal species, the status of "legal persons." On the other side of that wall lies the legal refuse of an entire kingdom, not just chimpanzees and bonobos but also gorillas, orangutans, and monkeys, dogs, elephants, and dolphins. They are "legal things." Their most basic and fundamental interests –their pains, their lives and their freedoms – are intentionally ignored, often maliciously trampled, and routinely abused. Ancient philosophers claimed that all nonhuman animals had been designed and placed on this earth just for human beings. Ancient jurists declared that law had been created just for human beings. Although philosophy and science have long since recanted, the law has not.' (Wise, 2000: 4)

The case of the Nonhuman Rights Project and Stony Brook University (hereafter *Stony Brook*) is the most recent unsuccessful attempt by Steven Wise and the Non-Human Rights Project (NhRP) to breach this impenetrable legal wall by battering it with the great writ of habeas corpus. NhRP seeks to challenge the binary legal distinction between human beings enjoying the status and protection of legal personality whilst animals are, legally at least, mere property (NhRP, 2015). It seeks to extend legal protection to 'appropriate non-human animals' including great apes and elephants. (NhRP, 2015).

Habeas corpus ad subjiciendum is a common law writ that has the effect of bringing a detained person before a court for the purpose of reviewing the lawfulness of the detainee's detention. The writ has an ancient pedigree and has developed into something of an emblem within common law jurisdictions as an example of the ability of the common law to protect the liberty of the subject. It is associated with Chapter 24 of Magna Carta (1215) which states:

'No Freeman shall be taken or imprisoned, or be disseised of his Freehold, or Liberties, or free Customs, or be outlawed, or exiled, or any other wise destroyed; nor will. We not pass upon him, nor condemn him but by lawful judgment of his Peers, or by the Law of the Land. We will sell to no man, we will not deny or defer to any man either Justice or Right.'

Lord Hoffman in *A v Secretary of State for the Home Department* [2005] UKHL 71 at para 83 argued that it 'carries a symbolic significance as a touchstone of English liberty which influences the rest of our law.' It has been used to challenge detention by both public and private authority, to free slaves and to protect women from domestic abuse; see *Somerset v Stewart* (1772) 98 ER 499 and *R v. Jackson* [1891] 1 QB 671. For a more detailed discussion that explores some of the myths surrounding the historical development of the habeas corpus see Brown (2000).

NhRP is part of an animal rights movement that can be traced back as least as far as Peter Singer's 1975 work *Animal Liberation* which made the case, arguing from a utilitarian perspective, that the interests of animals should be given an equal moral consideration to those of humans. This argument was developed in the 1993 collection of essays *The Great Ape Project* edited by Singer and Paola Cavalieri. This included a *Declaration on Great Apes* which called for, 'the extension of the community of equals to include all great apes: human beings, chimpanzees, gorillas and orang-utans. "The community of equals" is the moral community within which we accept certain basic moral principles or rights as governing our relations with each other and enforceable at law.' (Cavalieri and Singer, 1993: 4) (see also Kolber (2002)) According to the *Declaration* these rights should include, the right to life, the protection of individual liberty and the prohibition of torture.

Facts and decision

The petition brought in *Stony Brook* aimed to take a step towards establishing the community of equals by making a habeas corpus petition on behalf of two chimpanzees, Hercules and Leo, who are the property of the State University of New York and used for the purpose of experimentation at their Stony Brook campus. The petitioner was relying on Article 70 of the New York Civil Practice Law and Rules, which governs the procedure for the common law writ of habeas corpus. The petitioner had been granted an order for Stony Brook to show cause under CPLR 70 in April 2015 and the court heard oral arguments as to the lawfulness of the chimpanzee's detention in May 2015. The court was careful to make it clear that, in granting the order to show cause, it did not need to make an initial determination as to whether or not Hercules and Leo were persons in law. This did not prevent some rather excitable contemporary international press coverage of the case which wrongly assumed that this decision had the effect of giving the chimpanzees the status of legal persons (see Barnes (2015)).

Although Judge Barbara Jaffe, sitting in the Supreme Court of the State of New York, rejected the petition for a writ of habeas corpus she emphasised that, in reaching her decision, she felt herself bound by an existing superior court precedent of *People ex rel Nonhuman Rights Project, Inc v Lavery*, 124 AD3d 148,150 [3c Dept 2014]. This case was similar to *Stony Brook* in that it concerned the NhRP seeking a writ of habeas corpus for Tommy, a chimpanzee held

in a shed in trailer park sales yard. Here the court were persuaded by two arguments, one definitional and the other based on the social contract. An animal, by definition, is not a human being and therefore is not a natural legal person, and furthermore, legal personhood is dependent on being the bearer of rights duties and the court accepted that a chimpanzee is unable to be a bearer of duties. Thus Judge Jaffe was bound to conclude that, as a chimpanzee is not a legal person, it cannot therefore be the subject of a writ of habeas corpus.

Discussion

Despite ruling against NhRP, Judge Jaffe raises a number of issues which are pertinent to common law jurisdictions and which indicate a degree of sympathy for the petitioner's arguments; two of which will be briefly explored here. Firstly, Judge Jaffe places the claim to extend habeas corpus to the chimpanzees in the context of how the common law in general, and habeas corpus in particular, have served as an engine in extending the ambit of legal protections. Reference is made to the origins of the writ in Magna Carta (1215) and its status as the great writ, quoting from *Figueroa v Walsh* 2008 WL1945350 [ED NY 2008] that 'The great writ of habeas corpus lies at the heart of our liberty.' She emphasised the fact that although there is no precedent for issuing a writ of habeas corpus in favour of an animal this is not in itself determinative; a point acknowledged in *Lavery*. She argues that the law has developed to extend rights, and sometimes the status of legal personhood, to classes of persons previously denied such protections including slaves, women and homosexuals. She quotes from the recent landmark decision of the United States Supreme Court in *Obergefell v Hodges* (2015) US, 135 S Ct 2602, on the constitutional status of same sex marriage where it was acknowledged that 'If rights were defined by those who exercised them in the past, then received practices could serve as their own continued justification and new groups could not invoke rights once denied.' Indeed, Jaffe concedes in her concluding remarks that the tide of the common law may be turning in favour of these animals, '[e]fforts to extend legal rights to chimpanzees are thus understandable; some day they may even succeed' (*Stony Brook* p.32).

Secondly, Judge Jaffe points out that even if she were not bound by *Lavery* the decision regarding the legal personhood of Hercules and Leo would be best made, 'if not by the Legislature, then by the Court of Appeals, given its role in setting state policy' (*Stony Brook* p.26). This shows a difference in emphasis between the decisions in *Lavery* and *Stony Brook* as Judge Jaffe is pointing to the fact that the decision of conferring the status of legal personality should be decided by issues of context and policy rather than definition. She contends that the 'determination of whether an entity or being counts as a legal person is largely context – specific, and not necessarily consistently made.' (*Stony Brook:* 26)

These two themes in Judge Jaffe's reasoning gives some comfort to those who hope that the tide of the common law is turning in favour of the proposition that the status of legal person can and should be extended beyond human beings to animals. Indeed, if the case can be

made that the autonomy and self-determination of chimpanzees is such that they should be afforded the right not to be subject to arbitrary detention, then it is reasonable that they should be considered legal persons for the particular context of habeas corpus. Nor does the argument from social contract appear to be insurmountable as the law in certain contexts already provides rights to persons who it deems to be incapable of bearing duties, including those mentally incapacitated and minors.

The NhRP have applied to the Appellate Division of the Supreme Court of the State of New York (NhRP, 2015) but, regardless of the outcome in this particular case, Judge Jaffe's judgment illustrates that that the legal wall between humans and animals may not be as impenetrable as it first appears.

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THE NONHUMAN RIGHTS PROJECT, INC., on behalf of HERCULES and LEO, Petitioners, against SAMUEL L. STANLEY, JR., M.D., as President of State University of New York at Stony STATE UNIVERSITY OF NEW YORK AT STONY BROOK AKA STONY BROOK UNIVERSITY, Respondents. August 5, 2015 (Unreported) [Online] Available at: http://www.nonhumanrightsproject.org/wp-content/uploads/2015/07/Judge-Jaffes-Decision-7-30-15.pdf (Accessed 16/10/2015).

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CASE NOTE

Anne Wesemann, Lecturer in Law, The Open University

Milton and another v The Queen

[2015] UKPC 42

Judicial Committee of the Privy Council (JCPC)

Lord Neuberger, Lord Mance, Lord Kerr, Lord Carnwath, Lord Toulson
14 July 2015, 12 October 2015

Murder and conspiracy to murder – 35 years imprisonment for murder – 10 years imprisonment for conspiracy to murder – convicted 5 October 2009 – Appeal 20 January 2012 – Court of Appeal of the Eastern Caribbean Supreme Court (ECSC) – Appellants Campbell (appealing sentence and conviction) and Milton (appealing sentence) – Three complaints: Judge failed to direct jury on witness's medical condition; DNA profile; distinguishing between two appellants in eye witness accounts – ECSC dismissed appeal

Due to the appellant's argument that the **ECSC** had not taken sufficient account of the overall effect of the deficiencies in the jury guidance of the judge, the JCPC found it relevant to examine the evidence in some detail.

The appellant Campbell's claim focussed on the accounts given by the witness Shawana Wilson, the appellant Milton's girlfriend, who allegedly suffered mental illness.

The JCPC referred to Section 146 of the Evidence Act 2006 and *R v Toohey* [1965] AC 595, *R v Pinfold* [2004] 2 Cr App R 32 stating that guidance to the jury has to be given in the case of a proven medical foundation. However, the JCPC concluded the defence had failed to establish a relevant medical foundation. Shawana's history of mental illness was not sufficient.

The appellant's claim was that the judge's direction of the jury did not establish clearly enough the limited nature of the evidence of the DNA sample that was found. This was upheld by the JCPC, by simply referring to the Court of Appeal's correct criticism of the lack of clarification.

The JCPC also supported the Court of Appeal's assessment of the appellant's claim in relation to the identification of the appellant Campbell. The judge should have been clear about the case against Campbell not depending on any evidence to identify Campbell as present at the crime.

The JCPC rejected the appellants' submissions, despite these flaws in the judge's guidance of the jury, stating that "the evidence against both [...] was overwhelming". It concluded: "There is no doubt that this was a callous and ruthless crime, involving two victims, considerable pre-planning and an attack by three men who went armed with a gun. The sentence was carefully reviewed by the Court of Appeal, which is in a better position than the Board to assess the

appropriate level of sentence in the British Virgin Islands and the Board does not consider that it would be right for it to interfere with the Court of Appeal's judgment".

Appeal dismissed.

CASE NOTE

Claire Sumner, Lecturer in Law, The Open University

Thwaytes v Sotheby's

[2015] EWHC 26 (Ch): Dame Vivian Rose, J: 16th January 2015

Negligence – Duty to take care – Auctioneer – Valuation of Painting – Claimant sent painting for sale though defendant auction house – Defendant assessed artist as not being Caravaggio – Painting sold for £42,000 – Investigations by buyer concluded painting by Caravaggio – Whether defendant acted negligently in assessment of painting – Whether defendant breached duty of care

Negligence and breach of duty

The defendant did not owe a special duty of care as a result of the claimant's request for a valuation or because of the painting's former ownership by Captain Thwaytes who had also owned an autographed copy of another Caravaggio.

The defendant owed the standard of skill and care of a London auction house who were experts in their field. The test set out in *Luxmoore-May and another v Messenger May Baverstock* [1990] 1 All ER was applied. The claimant could expect the painting to be assessed by highly qualified people who could carry out a proper examination and would not rely upon a painting's poor condition to fail to notice its potential.

The defendant was entitled to rely on its expertise and connoisseurship and to assess a painting for authenticity primarily on its quality. The claimant alleged that a disagreement of experts means that the quality of the painting was a borderline case and that the defendant was negligent for dismissing the painting based on quality alone (*Bolitho v City and Hackney Health Authority* [1998] AC 232, [1997] 4 All ER 771, 39 BMLR 1 cited).   The court held it would be wrong to follow the opinion of experts unless the body of opinion relied upon can demonstrate that such opinion has a logical basis. The defendant was entitled to come to the view that the quality of the painting was not sufficiently high enough to merit further investigation.

The defendant did fail to consider a relevant publication about the original painting and an engraving of the painting. However, there was nothing in that publication or engraving that would have alerted the defendant to assess the painting as an original. The defendant was not obliged to appoint experts to assess the x-ray images of the painting. The defendant's examination of the x-rays was done properly and there was nothing in the x-rays that should

have alerted the defendant to any Caravaggio potential of the painting. The defendant was not obliged to carry out infra-red analysis of the painting and even if it had there was nothing in the images subsequently carried out which would have alerted it to the potential of the painting. The defendant was not obliged to inform the claimant of every meeting which took place to further consider the painting.

On quantum and causation, some scholars have now attributed the painting to Caravaggio but other eminent Caravaggio scholars maintain that it is a copy. Had the positive and negative attributions been catalogued, the painting may have raised slightly more at auction.

The claim was dismissed.

BOOK REVIEW

Francine Ryan, Lecturer in Law, The Open University

Walby, S., Olive, P., Towers, J., Francis, B., Strid, S., Krizsan, A., Lombardo, E., May-Chahal, C., Franzway, S., Sugarman, D., Agarwal, B. and Armstrong, J. (2015) Stopping Rape: Towards a Comprehensive Policy, Policy Press, ISBN 9781447322092

Rape is a heinous crime that can destroy a victim's life. It goes beyond a physical act and violates an individual's sense of security and self- worth. The damage is not limited to the victims of rape but impacts on the wider community and creates a culture of fear.

The success of this book is that it goes beyond a theoretical discussion of rape to provide a consideration and an analysis of the international policies on rape prevention. The important feature of the book is that it does not just consider rape from a single perspective but it examines it from multiple perspectives. This provides the reader with a much more comprehensive understanding of rape. The central theme of this book is that if we are to prevent rape we must consider a multi-faceted approach.

The strength of this book is that it draws upon research from around the world and identifies examples of best practice in Australia, US, UK, Mexico, South Africa and Sweden. The premise of the book is to explore and highlight 'what works' to prevent rape. It identifies six key areas; strategy, planning and co-ordination; victim services and healthcare systems; law and the criminal justice system; conflict zones, culture, media and education; and the economy.

Each chapter explores one of the policy areas starting with a summary of the relevant issues and then providing an analysis of the policies and practices. It focuses on key aspects that are relevant for the reader to gain a greater understanding of the issue. It then provides examples from case studies to demonstrate what policies may be adopted to prevent rape.

The book has wide appeal because it examines the issue of global gendered violence from different perspectives. Chapter 1 is an introduction to the book, chapters 2 to 7 examine the six key areas and then all of the discussion is drawn together in chapter 8 in conclusions. There is a very comprehensive list of references which will be of great value to those researching in this area.

The introduction in chapter 1 sets out the definitions of rape, and the significance and scale of rape. Statistics on the incidence of rape are drawn from the UK, US, European Union ('EU') and globally. The book comprises a consideration of the international literature on policy and practice to stop rape.

Chapter 2 examines strategy, planning and co-ordination at international, European, regional, national and local levels. One of the examples discussed is the rape crisis service in Australia.

Chapter 3 considers victim services and healthcare systems. It draws upon the research from the World Health Organisation to explain the health impact of rape, which is both physical and emotional trauma. It outlines the workings of Sexual Assault Referral Centres (SARC) in the UK, US, Canada and Australia and then details the provision of support provided by the SARC service St Mary's in the UK.

Of particular interest to the readers of the Journal of Commonwealth Law and Legal Education will be the discussion in chapter 4 on law and the criminal justice system. The reader is provided with an explanation of the law in relation to rape but also more broadly how violence against women breaches their human rights. The authors set out how international law seeks to protect women. There is a consideration of the UN Universal Declaration of Human Rights and the European Convention on Human Rights. It does not just summarise the relevant Articles but explains the policies that states should adopt in order to protect women from violence.

Beyond the broader of discussion of human rights the book focuses on the development of the legal definition of rape, considering consent, the use of force and the marital exemption. It details how a number of countries internationally and within the EU do not meet the international standards on the legal definition of rape. There is a very interesting discussion on the ability of the EU to act to create legislation on rape at EU level under the principles of subsidiarity.

Considering how conviction rates can be increased without adding additional trauma to the victims of rape is explored with the creation of specialists units and legal advocates to support the victim through the legal process. The chapter then explores how the criminal justice system treats convicted sexual offenders. It examines the use of castration, psychological interventions and sex offender registration schemes.

The chapter has three case studies; it examines the development of the law in Mexico, the use of specialised courts in South Africa and the prevention of rape in cyberspace in the EU. The use of specialised sexual offences courts in South Africa demonstrates the importance and benefits of a multi-agency response in prosecuting rape cases. The book explains that in 2007, South Africa, passed a new Act: the Criminal Law (Sexual Offences and Related Matters) Amendment Act No 32 of 2007 as part of its rape strategy. It then explores the development of specialist courts, which began in 1993. It discusses the importance of the staffing and training of the court coupled with the streamlining of the process of handling rape cases. There is an interesting discussion of the work of the Thuthuzela Care Centres, which links

backs to the earlier themes in the book on how to improve conviction rates and prevent further trauma to the victims.

One of the key features of this book is the evaluation of how the case studies have impacted on the prevention of rape. The authors provide recommendations of what best practice might look like but also highlight some of the challenges that will be faced in adopting these policies. The outstanding feature of the book is that it addresses what can be done to improve and change the current position on how we deal with rape drawing upon evidence from across the world.

Chapter 5 examines the relationship between sexual violence and conflict zones. It details the work of the International Rescue Committee and how it responds in a humanitarian crisis.

Chapter 6 investigates culture, media and education and explores the rape myths that impact on society's understanding of rape. There is an exploration of a project in Sweden which uses twitter #talkabout it to discuss sexual violence and challenge the myth of what constitutes 'real rape'. The campaign relates to issue of consent and coercion and how popular discourse can narrow the definition of rape from the actual legal definition of rape.

Chapter 7 explores the relationship between gender and economic inequality. There is a consideration of the impact of rape on the wider economy and the relationship between a woman's economic position and the risk of being raped.

Chapter 8 outlines the conclusions by reviewing each of the key areas; strategy, planning and co-ordination; victim services and healthcare systems; law and the criminal justice system; conflict zones, culture, media and education; and the economy. It sets out the progress to date and then details what further action is required. It identifies the top ten policy reforms. The strength of this chapter is that it clearly and concisely draws together all of the discussion in the preceding chapters and sets out the key points that could bring about change.

The success of this book is in integrating clear explanations of policy with examples from case studies it will resonate with an array of different readers. It will be of interest to anyone keen on gaining a greater understanding of gender inequality. The consideration of law and the criminal justice system will be of particular relevance to law and criminology students. The illegality of rape is not just explored, there is also an examination of how policies and procedures can be transformed to improve conviction rates and support victims. Policy makers can draw on the examples of best practice to consider how change could be implemented in their location. The diverse nature of this book will inform those researching in this area.

The writing style is clear and accessible. One of the strengths of this book is that it draws upon research and evidence to share best practice. The global consideration of how to prevent rape will be of interest to readers of the Journal of Commonwealth Law and Legal Education particularly as a number of the examples of best practice are drawn from Commonwealth countries.

The affordability of this book ensures that it is accessible to all readers who wish to gain a greater understanding of global sexual violence.

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BOOK REVIEW

Dr Simon Lavis, Lecturer in Law, The Open University

Salvaging Parliamentary Sovereignty in Manner and Form

Gordon, M. (2015) Parliamentary Sovereignty in the UK Constitution: Process, Politics and Democracy, Oxford, Hart Publishing, ISBN 9781849464659.

The central thesis of Michael Gordon's book is a comprehensive defence of the 'manner and form' theory of parliamentary sovereignty (henceforth 'MFPS'). Gordon argues that MFPS provides the most empirically accurate description of the current status of parliamentary sovereignty in the UK constitution, and is also the most desirable account, primarily because of its democratic justification. That is, in the face of many recent challenges, it is both how things are and how things ought to be. Gordon's response to problems with the orthodox, Diceyan account of parliamentary sovereignty is its usurping by MFPS, "which admits of the possibility of a legally sovereign parliament exploiting its legislative authority to enact certain kinds of 'limits' which would 'bind' itself and its successors" (Gordon, 2015: 15). Parliament, therefore, can bind its successors as to the manner and form used for the passage of future legislation. It cannot bind its successors as to substance and - using the prescribed manner and form where necessary - a future parliament is legally able to repeal earlier binding legislation.

The book is structured in three parts, following the Introduction. Part I contains two chapters explaining the role and virtue of parliamentary sovereignty and setting out Gordon's account of MFPS. The four chapters in Part II are the core of the book. These attempt to deal with various doctrinal and theoretical challenges to parliamentary sovereignty arising in recent years: devolution, the Human Rights Act 1998 (HRA 1998), common law constitutionalism (henceforth 'CLC'), EU membership, the case of *R (on the application of Jackson) v Attorney General* [2005] UKHL 56 and the European Union Act 2011 (EUA 2011). Gordon explains why each fails to undermine MFPS as the most accurate and desirable interpretation of the UK constitution. In the final two chapters, comprising Part III, he sets out the justification and utility of MFPS.

There is much to recommend this book as a contribution to the debate about the UK constitution. It is a clear, cogent and comprehensive, contemporary declaration of the manner and form theory, which takes seriously a range of recent legal developments and competing theoretical accounts, forming a coherent narrative of how each ultimately either supports or does not fatally undermine MFPS. It also makes some important, sometimes overlooked points. One of these is that parliamentary sovereignty is not, historically, a common law doctrine in the UK constitution, an interpretation that would give the courts the theoretical power to evolve it in line with constitutional developments. It is instead a product of customary law. Another is that there are profound problems inherent in attempts to elevate the judiciary to supreme constitutional status, particularly in an uncodified constitution such as that of the UK, not the least of which is the resultant democratic deficit.

A third is that, despite all of the academic attention on the comments of Lords Hope and Steyn and Lady Hale in *Jackson* to the effect that parliamentary sovereignty may be subordinate in the UK constitution to the rule of law, these statements are *obiter* and do not reflect the courts' previous line of reasoning on this point. A fourth is that constitutional debate is only stunted by repeated, blind repetition of the mantra that parliament cannot bind its successors (Gordon, 2015: 90). The need to find an alternative version of parliamentary sovereignty, or an alternative to it, is evident. Finally, by devoting as much consideration to the empirical reality of the operation of the UK constitution as to the relative desirability of different theoretical accounts Gordon re-focuses attention on the continued reliance on parliamentary sovereignty as the focus and central organising principle in the UK.

Part II of the book is the strongest and most interesting, whereas aspects of Parts I and III appear weaker, both less engaging for the reader and at times a little lacking in depth of argument. Gordon's treatment of recent and emerging constitutional challenges to parliamentary sovereignty is detailed and thought provoking, as he works through each of the potential obstacles to MFPS in turn. Some of the individual arguments advanced here are persuasive, and the remainder of this review will consider these chapters.

Chapter 3 deals with what are called "non-critical" challenges to parliamentary sovereignty because, in fact, they do not really challenge the doctrine (Gordon, 2015: 113). These are devolution, the HRA 1998 and CLC. In respect of devolution Gordon relies on the continuing legally unlimited nature of the UK parliament's sovereignty notwithstanding the political limitations imposed by the dispersal of legislative power, to dismiss its potential challenge (Gordon, 2015: 114-116). And while it is argued that the Scotland Act 1998 provisions should be taken to have exhausted the limitations on the Scottish Parliament's ability to legislate, thereby excluding the sort of common law review of devolved legislation endorsed by the judges in *Axa General Insurance Ltd v Lord Advocate* [2011] UKSC 46 (Gordon, 2015: 231-234), it is maintained that judicial review of devolved primary legislation is fundamentally different from the review of sovereign parliamentary statutes. It exists ultimately as a consequence of, rather than a challenge to, the exercise of parliamentary sovereignty (Gordon, 2015: 117).

The HRA 1998 similarly falls beside the wayside, essentially because it is drafted and operates in a way compatible with parliamentary sovereignty. Even in cases where the courts have applied the s.3 interpretive power very broadly to stray "into the realm of legislating" (Gordon, 2015: 121), these can be regarded as "aberrations" (Gordon, 2015: 123), rather than a denial of parliamentary sovereignty. While the HRA 1998 does place substantive limits on parliament, these are non-legal limits, which consequently do not undermine its absolute legislative authority (Gordon, 2015: 125). Gordon is particularly keen to stave off the potential challenge of CLC, the theory that there is a higher plane of legal principle that is adjudicated by the courts and places limits on the legislative sovereignty of parliament. He does so on the basis that it is not an empirically plausible description of the UK constitution and that it is "an unattractive conception of constitutional order" (Gordon, 2015: 131) because it is both undemocratic and imprecise in scope (Gordon, 2015: 137).

The book then moves onto the "critical" challenges to parliamentary sovereignty, with a chapter each devoted to European Union (EU) membership, *Jackson* and the EUA 2011. Here the issues become much more complex, but are more often than not explicated by Gordon in commendably lucid prose. On EU membership, Gordon takes the view that European law is dependent for its domestically supreme status on the European Communities Act 1972 (ECA), and has no authority or validity independent of this (Gordon, 2015: 158-159). This is straightforward, but less so are the attempt to reconcile this with MFPS, to specify exactly how "the ECA has changed the manner and form required to produce valid legislation which substantively contradicts EU law" (Gordon, 2015: 174). A fairly detailed discussion of the *Factortame* cases (*R v Secretary of State for Transport, ex parte Factortame (No 1)* [1990] 2 AC 85; *R v Secretary of State for Transport, ex parte Factortame (No 2)* [1991] 1 AC 603), *Thoburn v Sunderland City Council* [2002] EWHC 195 and a range of alternative academic theorists leaves this reviewer unconvinced by the arguments advanced.

Gordon rejects Laws LJ's "constructionist" positing of a change to the doctrine of implied repeal in *Thoburn* as inconsistent with Lord Bridge's judgment in *Factortame (No 2)*, and on the basis that judicial assertion of the ability to amend the conditions of legislative authority necessarily undermine its supremacy (Gordon, 2015: 167). His alternative endorsement of MFPS is based on the idea that EU law can be defeated either by repeal of the ECA or explicit inconsistency with the ECA in future enactments. This is conceptualised as a change of legislative procedure, which amends what parliament must do in order to legislate in areas of EU competence. This in turn necessitates the adoption of a different form of parliamentary sovereignty (Gordon, 2015: 173-175): accordingly the concept of parliamentary sovereignty has changed from a no longer valid orthodox version to MFPS.

When discussing *Jackson*, Gordon eschews as an "aberration" its obiter judicial statements questioning the extent of parliamentary sovereignty (Gordon, 2015: 217). He emphasises that there is no inconsistency with MFPS in the court adjudicating on the interpretation of the Parliament Act 1911, and that common law review of parliamentary statutes is simply not permitted in the UK constitution (Gordon, 2015: 217, 236). He also interprets the ratio of *Jackson* in support of MFPS. This again means that Gordon is advocating a constitutional shift from orthodoxy to MFPS (Gordon, 2015: 224), but not on the basis of a change in the "rule of recognition", about which he has understandable reservations (Gordon, 2015: 180-181, 218-221). The chief problem with this reasoning is that there is no convincing theoretical justification of the basis on which this shift has taken place. It is conceived as a legal change within the system to how parliamentary sovereignty is understood, which amounts untenably to a claim that nothing has changed but everything has changed.

If broadened and reframed as a question of how changes to the legal norm manifested by parliamentary sovereignty can come about, this goes to the heart of Gordon's thesis. It cannot be within the gift of parliament to legislate for a change in the very norm that conditions its power, especially as, even in MFPS, parliament cannot substantively limit its own legislative authority. Parliamentary sovereignty evolved and crystallised as a customary norm and it must be possible for it to evolve again, even to the point of disappearing. This is achieved through a process of changing custom, which is reflected in the practice of all of the

institutions that have a stake in the UK constitution, the courts and parliament included. If parliamentary sovereignty has changed, something must have empowered this change and must be able to do so in the future. Gordon's account of this is not convincing both because it refuses to acknowledge that something must have changed in that which conditions parliamentary authority, and because it downplays the extent to which the UK's continues to be a pragmatic and customary constitution.

Gordon treats the EUA 2011, with its series of 'referendum locks' and related provisions, as an example of MFPS in action. It is justifiably pointed out that the EUA 2011 was intended to have legal effect, and is treated as such constitutionally (Gordon, 2015: 255). The application of MFPS to the EUA is problematic, however, as the implications of its requirements being binding are not fully investigated. Suppose a future parliament passed an affected statute without complying with the exemption condition, or the referendum condition. Who would state that such an Act was not legally valid? Would the Crown refuse to give Royal Assent? Would the courts strike the Act down? Despite Gordon's advocacy of the latter option as an acceptable possibility (Gordon, 2015: 318), these seem constitutionally problematic. It is most likely to be only very powerful *political* constraints that prevent parliament from such action and, on Gordon's terms, such non-legal factors are not relevant to the question of legal sovereignty. *Legally*, it is far from clear on what basis parliament would be constrained.

This illustrates how Gordon generally defines MFPS in terms that elevate the expanded legislative sovereignty of the current parliament over the legislative sovereignty of a future parliament. For example, the claim that for parliament to disregard its own legislative provisions "could fundamentally call into question the authority of parliamentary legislation, and even trigger a crisis of faith in the efficacy of Acts of parliament" (Gordon, 2015: 320), only views parliamentary sovereignty from the perspective of the current parliament. A future parliament and polity might well see the possibility of implied repeal of an earlier manner and form statute in breach of its terms as a strong endorsement of parliamentary sovereignty as a concept, rather than its undermining.

Overall, Gordon's book is undoubtedly well researched, logically argued, readable and stimulating. It is a valuable addition to growing body of material on the role of parliamentary sovereignty in the UK constitution, and is interesting for its ardent affirmation of MFPS. However, while it is persuasive in places, problems underlying some of the arguments mean it has not ultimately convinced this reader of MFPS as either the most accurate or most desirable account of the UK constitution.

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COMMONWEALTH LEGAL EDUCATION ASSOCIATION (CLEA)
2015 CONFERENCE REPORT

The CLEA 2015 Conference was organised by Michael Bromby (CLEA General Secretary, Glasgow Caledonian University) and was hosted by Glasgow Caledonian University in Glasgow, Scotland. It ran from Wednesday 8th – Friday 10th April 2015, attended by keynote speakers Prof Justice Date-Bah (retired Justice of the Supreme Court of Ghana) and Lord Hope of Craighead (retired Justice of the UK Supreme Court).

Conference delegates also included Lady Justice Arach-Amoko, Justice of the Supreme Court of Uganda, the Vice-Chancellor of the National Open University of Nigeria, Prof Vincent Tenebe and the Deputy Vice-Chancellor of the University of KwaZulu-Natal, Prof John Mubangizi. A total of 48 delegates attended from around the Commonwealth representing the following countries: Bangladesh, Ghana, India, Jamaica, Malaysia, Nigeria, South Africa, Singapore, Sri Lanka, Uganda, and UK.

The conference was preceded by a workshop on interactive teaching methods organised by Prof David McQuoid-Mason (CLEA president, University of KwaZulu-Natal), Patricia McKellar (CLEA General Secretary, University of London) and Helena Whalen-Bridge (National University of Singapore) held within the GCU LEAD (Learning Enhancement and Academic Development) centre, and which was also attended by some LEAD staff. In particular, the workshop focussed on teaching large groups, methods for interactive teaching and explored other methods for engaging law students. This was attended by a range of delegates from a number of jurisdictions who shared their experiences of teaching and using interactive methods. The key message from the workshop was that no group is too large to discount interactive engagement. A number of resources were shared amongst the group before a hand-on interactive session demonstrated some of the tools in action with staff acting as students in mock exercises.

A Welcome Reception hosted by the Glasgow City Chambers took place on Wednesday evening, with the kind generosity of the Glasgow City Council. The Lord Dean of Guild along with one of the city's Baillies who represent the Lord Provost, gave a welcome address to the conference delegates.

The conference opened with plenary papers followed by a keynote from Prof Justice Date-Bah entitled "*Legal education in Ghana. International and local dimensions*". Justice Date-Bah spoke about his own experiences as a judge of the Supreme Court in both Ghana and in The Gambia.

The afternoon had parallel papers divided into the following sessions: pedagogical approaches, intellectual property, comparative education and embedding skills. Some of the papers presented are included in this edition of the journal, abstracts of all the papers presented are available on the CLEA website at www.clea-web.com. An evening drinks reception was held in the Museum of Piping followed by the conference dinner in the National Piping Centre which was followed by a ceilidh dance with traditional, live Scottish music.

The second day started with plenary papers and a keynote from Lord Hope entitled "*The Roles of the Court in the Development of Society*". Lord Hope spoke about the role of the UK Supreme Court going beyond just deciding cases, but having a subsidiary role in educating society. Transparency, not just in the publication of judgments, but the televising of proceedings was mentioned as a method to make justice accessible at this particular level. Lord Hope reflected on the 800th year anniversary of Magna Carta and the provisions, such as security of tenure, which continue to uphold the rule of law in the modern era.

Then followed the association's AGM. Executive Committee members were elected or re-elected and on-going projects such as the various model curricula were discussed. The afternoon saw further parallel sessions on clinical legal education, curriculum design, equality & diversity and human rights.

The Commonwealth Moot took place Monday 13th – Thursday 16th April, also in Glasgow. The finalists were teams from Canada, who won the competition, Australia in second place, followed by runners-up India and South Africa. The competition is held jointly with the Commonwealth Lawyers Association and took place within their conference venue, allowing senior judicial figures to judge the various heats and finals. Both associations are grateful to The Hon. Madam Justice Desiree Barnard, the first female judge of the Caribbean Court of Justice, The Hon. The Chief Justice Mr Ivor Archie of the Supreme Court of Trinidad and Tobago and Hon. Justice Rohini Marasinghe of the Supreme Court of Sri Lanka who judged the moot final, and to others who kindly volunteered their time to judge earlier rounds in the competition.

The next CLEA Conference and Commonwealth Moot will take place in March 2017, the location will be Melbourne Australia. A call for papers and workshop proposals will be made in 2016 for academics who wish to present a paper and we look forward to welcoming you to join our legal education conference in Australia.

Journal of Commonwealth Law and Legal Education

Instructions for authors

The Journal of Commonwealth Law and Legal Education (JCLLE) is an open access, online, peer-reviewed journal.

Articles submitted to the JCLLE that do not conform to the following guidance will be returned to the author(s) for revision.

Submission

- Articles should be between 4,000 and 6,000 words in length and an accurate word count should be included with each article submitted. An abstract of between 100 and 150 words should also be included.

- JCLLE welcomes case notes of up to 800 words and comments on cases, new legislation and proposed law reforms likely to be of interest throughout the Commonwealth of up to 2,000 words.

- Book reviews of recent publications up to 2,000 words are also invited.

- Authors are requested to ensure that articles are written in appropriate language and that they follow the editorial style and format adopted by JCLLE (see below).

- The whole text, including references and abstracts, should be double spaced throughout.

- Articles are published in English and should follow British spelling convention.

Mode of submission

- Only electronic submissions will be accepted, unless the author has previously had agreement from the editorial team for another method of submission. Submissions should be sent via email to JCLLE@open.ac.uk.

- Together with a covering letter providing details of the author(s), contact details and a brief statement of how the authors believe that the article fits within the scope of JCLLE.

- Authors are responsible for ensuring that their submissions are virus free, and are grammatically and typographically accurate.

References

References have to follow the following guidance and authors are asked to pay particular attention to the accuracy and presentation of references.

- References should be incorporated into the text using the Harvard system showing author and date of publication (e.g. Bloggs (2000)) and page numbers where a direct quote has been used (e.g. Bloggs (2000: 26)).

- A list of references cited should appear at the end of the text arranged alphabetically by author and in chronological order for each author.

- Two or more publications by an author appearing in the same year should be distinguished by an alphabetical suffix (e.g. Bloggs (2000a) and Bloggs (2000b)).

- Books should be listed as follows: Bloggs, J (2000) *Law in the Commonwealth*, London: Smith and Jones.

- Articles should be listed as follows: Bloggs, J (2002) 'Law in the Commonwealth', *Commonwealth Law and Legal Education* 1: 1–10.

- Multi-author publications with more than two authors should be cited within the text as Bloggs *et al*, but the names of all the authors should be included in the reference list.

- Cases cited should also be incorporated into the text thus: (*Re Bloggs* [2002] 1 All ER 1). Where quotations from judgments are given the page from the judgment should also be cited (e.g. *Re Bloggs* [2002] 1 All ER 1 at 3).

- Only references cited in the text should be included in the reference list.

Footnotes and appendices

Footnotes and appendices that expand on content are discouraged, but if included references within them should follow the journal style as outlined above.

Decisions

The editorial team will inform the authors of the decision regarding their papers within three months of the receipt of an article.

Rights

Articles are considered on the understanding that they are not being considered concurrently by any other journal, nor have they been published elsewhere. Exceptionally, JCLLE will consider publication of articles previously published elsewhere. In such cases it will be the responsibility of the author to confirm that she or he retains the copyright in that article and has the right to reproduce it elsewhere.

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Authors are encouraged to place their articles in institutional open access repositories. Permission from JCLLE prior to doing this is not necessary, so long as there is a reference to the work being published in JCLLE along with the correct article citation.

The Editorial Board and the Editors do not hold themselves responsible for the views expressed by contributors.

Queries

Any queries regarding the submission of articles should be emailed to JCLLE@open.ac.uk.

The Commonwealth Legal Education Association

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

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

The Association's *Programme of Action* is based on the need to make legal education socially relevant and professionally useful, particularly through:

- the development of law curricula and teaching methodology;
- assisting law schools to prepare themselves for the demands of the profession in the context of the information revolution and other global challenges; and
- supporting continuing legal education and distance learning programmes.

PUBLICATIONS

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

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

CONFERENCES

The Association organises regular international and regional conferences and seminars. Recently, it has organised/co-sponsored conferences on topics such as law and development, human rights and just and honest government, as well as on legal education. Venues have included Canada, Sri Lanka, Hong Kong, Kenya, India, South Africa and UK.

Details about all past and forthcoming CLEA events can be found on the Association's website:

www.clea-web.com

CURRICULUM DEVELOPMENT

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

Two curricula are currently available:

- Model human rights curriculum for the Commonwealth;
- International co-operation in criminal matters

Two further curricula are in preparation

- Tacking corruption and the misuse of public office
- Islamic law

ACTIVITIES FOR LAW STUDENTS

The Association organises a number of activities of law students. These include

- The Commonwealth Law Moot (held biennially)
- The Commonwealth Students' Essay Competition
- Local Workshops and Conferences held regionally

LINKS WITH THE COMMONWEALTH

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

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

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

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

**The Commonwealth Legal Education Association
Membership Form**

The Commonwealth Legal Education Association fosters and promotes high standards of
legal education in the Commonwealth. Membership is open to individuals, schools of law and other institutions concerned with legal education and research. The Association is a Commonwealth-wide body with regional Chapters in South Asia, India, Southern Africa, West Africa, East Africa, Australasia and the Caribbean together with several national chapters and committees. Its affairs are managed by an Executive Committee representing all parts of the Commonwealth whilst the Secretary-General is responsible for the day to day running of the Association.

The Association has an online open access peer reviewed journal and newsletter as well as learning and teaching resources which can be adapted for use in law teaching. We run a very successful Biennial Conference which links with the Commonwealth Lawyers Association (CLA) Conference. We are responsible for the Commonwealth Moot, a prestigious competition for law students, with regional heats and a final which takes place at the CLA conference and is decided by Judges from the Commonwealth. We also provide a focal point for a network work of law teachers throughout the Commonwealth who have a shared interest in the teaching of law.

Please visit our web site at http://www.clea-web.com/ for more information.

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