

***Enseñando derecho ético:
qué, cómo y porqué.***

***Teaching legal ethics:
what, how and why***

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Resumen

Este artículo sostiene que la ética jurídica debe formar parte de la educación jurídica obligatoria para ambos, como parte de una formación jurídica general y con el fin de preparar adecuadamente los abogados de las exigencias éticas de la práctica. Luego, basándose en la teoría moral, psicología moral y un estudio empírico de los estudiantes de derecho, este artículo analiza qué se debe enseñar y cómo. Más específicamente, se pone de manifiesto las carencias de un sistema convencional "basado en normas" enfoque para la enseñanza de ética, y las insuficiencias de un método cognitivo, en última instancia, llamando para la instrucción ética para desarrollar el carácter moral de los alumnos a través de una combinación de la enseñanza de la ética, la experiencia en el trato con casos reales a través de clínicas jurídicas estudiante y la reflexión sobre esa experiencia.

Palabras clave

Ética; convencionales; los enfoques cognitivos; el carácter; la educación jurídica; clínicas jurídicas.

Abstract

This article argues that legal ethics should form part of compulsory legal education in order both as part of a general legal education and in order to properly prepare lawyers for the ethical demands of practice. Then, drawing on moral theory, moral psychology and an empirical study of law students, this article looks at what should be taught and how. More specifically, it highlights the failings of a conventional, 'rule-based' approach to ethics instruction, and the insufficiencies of a cognitive method, calling ultimately for ethics instruction to develop students' moral character through a combination of ethics teaching, experience in dealing with actual cases through student law clinics and reflection on such experience.

Keywords

Ethics; conventional; cognitive; character approaches; legal education; law clinics.

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1. Introduction

For centuries, universities have educated prospective lawyers without paying much, if indeed any, attention to the ethical issues which they might face in practice still less to seeking to ensure that they produce ethical lawyers. Then in the second half of the twentieth century, starting in the United States following the realisation that the majority of those responsible for the Watergate scandal had been legally educated (Daly et al 2004, 194) professional legal ethics has increasingly been introduced into the law curriculum. Given, however, that much still needs to be done to persuade all universities to introduce effective, and in many case any, legal ethics teaching, drawing on the ever-increasing literature on ethical education in the Anglo-American legal world, and in particular two of my own recent contributions (Nicolson 2008 and 2010), which in turn draw on moral theory, moral psychology and in one paper an empirical study of law students, this article addresses the why, what and how of ethics teaching in law schools. More specifically, it argues for the compulsory teaching of legal ethics in universities, and explores the questions of what should be taught and what methods are likely to be most effective in achieving the goals of ethical education. By contrast, I will largely ignore the question of what moral theories, values and principles students should be taught. Although I have strong views as to how lawyers should behave (e.g. Nicolson & Webb 1999), in addition to recognising their subjective nature and that attempts to inculcate particular moral stances not only conflict with the ethos of a university education but are also likely to be counterproductive (e.g. Johnstone and Treuthart 1991, 75-7; Spaeth et al 1996, 161-2; Webb 1998a, *passim*) I strongly believe that it is far less important to attempt to ensure that prospective lawyers adopt particular moral positions as it is to try to ensure that they see morality as an central aspect of being a professional.

2. Why Teach Ethics?

This is because to a large extent access to justice, and the quality of law and the legal process is in the hands of legal practitioners, who while representing their clients can and do cause much harm to their client's opponents, third parties, the environment, the administration of justice or law itself. If the quality of law and legal justice is a central concern of legal education, as I believe it should be, then it follows that so should the question of how lawyers behave, and hence the ethical values and principles which govern their behaviour. This is so whether legal education is aimed generally at educating students about law and legal thinking or more specifically at producing legal practitioners.

In the latter case, however, there are additional reasons why ethics should be central to legal education. The core role of a lawyer is to assist and represent clients. Not least because clients might entrust important and often emotionally charged issues to the lawyer, the relationship is a highly personal one, which involves – or should involve – trust, commitment, care and consideration. Consequently, every single inter-reaction with and action on behalf of a client (or in the case of corporate clients, their human representatives) involves an ethical dimension (Burnham 1991, 105-8; Moliterno 1991, 107-8).

Legal ethics also matters because many, if not, most societies do not guarantee access to a lawyer, at least in civil cases. Lawyers must therefore make difficult decisions about how to allocate the privilege of their legal training, skill and experience: should it be based on money or justice and moral considerations? Do lawyers have a duty to help the most vulnerable even when they cannot pay? These are undoubtedly decisions of an ethical nature. Personally, I believe that professionalism involves an ethical dimension and this includes some sort of commitment to ensuring that legal services are provided to those most in need rather than just the exercise of legal skills and obedience of minimal standards of honesty and good behaviour. Otherwise, it is difficult to discern a difference between being a professional and being a businessman or a tradesman like a plumber. If professionalism does indeed extend to what I have elsewhere termed ethical professionalism (Nicolson 2008, 146; see also Menkle-Meadow 1994; on professionalism generally, Boon & Levin 2008, ch2; Nicolson & Webb 1999, ch3; and O'Dair 2001, ch3), then it seems obvious that one aim of legal education must be to ensure that students are aware of the ethical dimension to practice and hopefully also care about being an ethical professional. As Karl Llewellyn once put it, 'techniques without ideals is a menace; ideals without techniques are a mess.' (Llewellyn 1952, 23, cited in O'Dair 2001, 7). Just as legal education could be said to have failed if students were not prepared in terms of legal knowledge and skills, so should it be regarded as failing if they were not prepared for the ethical dilemmas, and the pressures and temptations to act unethically that they will face in practice. Forewarned, graduates can seek careers which are more compatible with their moral values or at least cope better with the dilemmas they do go on to face. In other words, prior exposure to ethical issues at university may make students less likely to ignore the ethical dimension to legal practice once they graduate, and help those with a predisposition to acting ethically to better cope with challenges in doing so.

3. Three Approaches to Teaching Legal Ethics

For all these reasons, I think that legal ethics should be a compulsory part of legal education. If so, what should be taught and how should it be taught? I will answer these questions through exploring three broad alternative approaches to ethical education - the conventional, the cognitive and the character-development models - and by examining the model of moral psychology underpinning each. To my mind, the psychological dimension to education is crucial. Unless education has an impact on the minds (if not personalities) of students it will be a wasted effort. I will therefore evaluate the benefits of each approach largely in terms of their ability to satisfy the necessary psychological conditions for moral behaviour and conclude that while there are aspects which can be taken from the conventional and particularly cognitive approaches, ethical education should be aimed at developing moral character.

a) The Conventional Approach

Where ethics is taught in law schools, teaching is usually limited to the formal rules adopted by the professional bodies and takes the form of lectures, though this is often reinforced by small group discussions in which students are required to spot ethical issues in hypothetical problems and apply the rules to them. Moreover, ethical teaching is usually confined to courses preparing graduates for practice after the main undergraduate teaching in law, but even if incorporated into general legal education, ethics is rarely accorded more than one class among many others.

As many have argued there are numerous problems with this approach to teaching ethics (e.g. Boon & Levin 2008, ch6; Boon 2002; Burrige & Webb 2007; Chapman 2002; Nicolson & Webb 1999, 66-70; O'Dair 2001 ch4; Economides 1999; Duncan 2002; Nicolson 2008, 147-54). First, even if ethics teaching takes place alongside other law courses, it is likely to be too limited and, especially if it follows a general legal education where ethics teaching is usually conspicuous by its absence, too late to counter what is described variously as the hidden (Cramton 1978), latent (Pipkin 1979), implicit (Lesnick 1986, 634) or informal (Economides 1998, XVII) curriculum in legal education. These unarticulated value assumptions are communicated to students by example, by teaching methods, by curriculum choice as to what courses are or are not taught, at what level and for what credit points, and whether they are compulsory, and by student culture and contacts with the legal profession. According to critics, by concentrating primarily on the teaching of legal rules and thinking like a lawyer, by separating issues of law from those of justice and ethics and largely disregarding the latter, by failing to challenge images of the lawyer as a legal technician whose function is confined to manipulating law and facts in the interests of paying clients, traditional legal education conveys the implicit message that issues of ethics and justice are of little relevance to the real business of law, that rules are either there to be formalistically followed or manipulated in the interests of clients, and that a legal career is a means to success and financial rewards. And according to research albeit largely in the US, this tends to undermine student idealism about using law to promote justice, and to engender moral and political cynicism, and a propensity towards ethically dubious behaviour (usefully summarised in Chapman 2002, 73-9).

If accurate, any teaching of ethics has a mountain to climb. But what is offered is too limited to even reverse the impact of the hidden curriculum, never mind ensure that prospective lawyers go on to behave as ethical professionals. According to psychologists, for someone to act morally they need to satisfy four psychological components (e.g. Rest 1984; Rest et al 1999; Rest & Narvaez 1994 esp. ch1). First, they need moral sensitivity in order to recognise moral problems in the first place. Secondly, they need the moral judgment to work out the correct response. Thirdly, moral commitment is required to ensure that they regard morality as important enough to take precedence over competing considerations like self-interest. Finally, moral actors need moral courage in order to sustain this commitment in the face of competing pressures such as the demands of senior colleagues in law firms.

At best, teaching the ethical rules contained in profession's codes of conduct will only help with developing the sensitivity and judgment to recognise the possibility of breach of the rules and to understand how to apply the rules. But, leaving aside the fact that merely providing students with knowledge of rules does little to encourage, let alone a develop, a critical approach to their content, the rules promulgated by many professions are too vague and general to provide the solutions to ethical problems and thus teaching them will not go far in equipping students to identify and solve ethical problems. And even when the rules are very detailed, they will always contain gaps, suffer from the inherent ambiguity and vagueness of language, while also struggling to deal with the contextual nuances of actual moral dilemmas (on the competing advantages and disadvantages of general versus detailed professional codes, see Nicolson 2005). Rules thus always need to be complemented by judgment. However, teaching rules does very little to develop such judgment, and nothing to develop moral commitment and courage. This approach to teaching seems to naively hope that teaching students the rules will lead to obedience simply out of fear of threatened sanctions for breaching the rules. But this fear is not a very real one given the difficulty of detecting breaches of professional rules (O'Dair 2001, 5; Granfield & Koenig 2002, 515-57) and the frequently lax approach to those who do so (e.g. Abel 2003, ch9). And, even if the fear of sanctions was real, such an approach to developing morality seems to be based on now discredited psychological approaches, such as behaviourism and social learning theory, which see morality developing from direct teaching, modelling by authority figures, and reinforcement by rewards and punishments (e.g. Lapsley & Power 2005, *passim*, but esp. ch10; Carr 1991, 150-155; Kohn 1997). At best such approaches may inculcate conformity to rules out of habit, but they work best with children, not young adults, and with rewards, rather than sanctions - still less with merely a threat of only irregularly imposed sanctions. Psychologists generally agree that, rather than trying to develop morality through external pressure, ethical education should focus on encouraging individuals to develop a personally felt commitment to doing the right thing.

b) The Cognitive Approach

Here there are two main methods. The first is Kohlberg's cognitive approach (see Kohlberg 1976; Kohlberg 1981; Kohlberg 1984; for a good introduction, see Reiner et

al. 1983).¹ It is based on the idea that moral reasoning develops in stages and that its development can be encouraged by exposing students to reasoning at a higher stage than that currently displayed and by creating cognitive conflict between their extant beliefs and current experiences. This is done through Socratic dialogues and role plays dealing with moral dilemmas, which also encourage students to adopt the perspective of others. Whereas the conventional approach focuses on knowing the rules, this approach focuses on understanding the various tools available to resolve ethical dilemmas. Thus law students can be exposed to various ethical theories such as deontology, utilitarianism, virtue ethics, etc. as well the specialist literature which applies these theories to issues of legal ethics. Students then have resources to draw upon where there are no rules, when the rules are unclear or even when they regard the rules as unethical. If such teaching is backed up extensive exposure to the sort of ethical dilemmas which arise in practice, students should become proficient at recognising ethical problems when they arise and working out how to resolve them through applying existing rules and, when they run out or are unclear or controversial, through the tools of ethical and applied ethical theory.

However, for a number of reasons, many contemporary psychologists as well as moral philosophers do not regard the cognitive approach as going far enough and/or as problematic for other reasons (see e.g. Flanagan 1991, chs8-11; Peters 1974; Rest et al. 1999; Webb 1996; Lapsley and Power 2005 *passim*; Thomas 1991; Gilligan 2003; Tronto 1993; Oser 1991). First, hypothetical problems cannot reproduce the rich complexity of moral issues which arise in everyday life and particularly in interpersonal relations. Secondly, role playing in the safe environment of the classroom does not replicate rich real-life situations where individuals are faced with myriad external and internal pressures to compromise their moral values. Thirdly, according to psychologists, moral behaviour results as much from moral sentiments and emotions, such as empathy, pity and compassion, as from rational judgment. Finally, and most importantly, moral agents might know what morality requires, but lack the motivation or courage to convert such knowledge into behaviour. Empirical research repeatedly confirms that knowing what is morally right by no means guarantees moral behaviour (see Rest 1988, 21-22). In fact, most moral behaviour is a more or less automatic rather than a conscious response to moral issues (Peters 1981, ch3; Lapsley & Power 2005, *passim*). Usually one does not consciously recognise a moral issue, weigh up various options, decide if acting morally matters to one and then desperately try to stick to one's principles in face of pressure to act immorally. One just instinctively does the right thing.

c) The Character Approach

If this is the case, then the question arises as to how law schools can ensure students display such automatic responses to moral problems once in practice. According to Aristotle (Aristotle 1987), other virtue ethicists (e.g. Kupperman 2005, 203; Dreyfus & Dreyfus 1990), the answer lies in fostering students' moral character so that they gradually develop relatively stable character dispositions, or habits of perception, thinking feeling and behaviour through actual engagement with moral issues in a way similar to how expertise is developed in other walks of life (Dreyfus & Dreyfus 1990;

1. Supporters amongst legal educationalists include Richards 1981; Hartwell 1990; Hartwell 1995; Abramson 1993.

Narvaez & Lapsley 2005). By emulating others, by trial and error, by instruction from authoritative others, by experiencing and reflecting on the appropriate pride or regret at the outcome of one's actions, moral habits or dispositions are said to gradually develop to the point that appropriate moral behaviour and feelings become embedded in the individual's character. In other words, character formation results not so much from direct teaching but from the experience of frequent immersion in moral dilemmas, frequent exercise of one's moral muscles, and learning from one's mistakes and successes in moral behaviour. Whereas conventional approaches concentrate on knowing, cognitive approaches on understanding, character approaches concentrate on doing.

If properly developed, moral character can be said to equip individuals, not just with moral sensitivity and judgment, but also moral motivation and courage (Lapsley & Power 2005). Where all four moral components are developed to the extent that virtue becomes a way of life, moral behaviour is far more likely to ensue. Thus, moral 'saints', such as Gandhi, Nelson Mandela and Oskar Schindler, seem to act out of deep-seated and spontaneous feelings of compassion, empathy, etc. – by 'habits of the heart' – rather than conscious deliberation. This is confirmed by studies of moral exemplars who acted more or less automatically (Oliner & Oliner 1988; Colby & Damon 1992). According to contemporary psychologists, this automaticity derives from the fact that frequent activation renders moral considerations and categories easily accessible and readily utilized (Narvaez & Lapsley 2005, 31). Based on empirical studies, it is argued that moral behaviour is more likely for those for whom moral considerations are central to their personal identity and sense of self (see Blasi 1995; Lapsley & Power 2005, *passim*, but esp. chs 1, 2-4, 9 and 13; Power 1997). For such individuals, immoral behaviour will diminish, and moral behaviour will enhance their sense of self and self-esteem. Indeed, where moral motivations are central to the individual's self-identity moral action is argued to flow from a kind of 'spontaneous necessity' without the need for willpower or moral courage to overcome temptations or pressures to act unethically.

d) Conclusion

Consequently, it would seem that if law schools are to take professional legal ethics seriously, they should aim at developing moral character in ways which make students more likely to display ethical professionalism. While research has yet to be done on whether and to what extent universities can positively influence character development, there are reasons for optimism (see Davidson 2005, 223). Certainly, as we have seen, they can have a negative impact, whereas research does show that, particularly if accompanied by ethical instruction and involvement in community projects, universities can have a lasting effect on moral judgment (e.g. Abramson 1993; Rest and Narvaez 1994 *passim*) and on moral sensitivity and the related capacity for moral imagination (see Brandenberger 2005; Bebeau 1994). Admittedly, as already noted, moral reasoning does not necessarily translate into behavior. However, there is some, albeit weak, connection between the two (Rest et al. 1999, 80ff; Thoma 1994; Blasi 1980) and if universities can affect moral reasoning and sensitivity, why not other psychological components? Admittedly, also, students come to university with fairly well formed moral characters. However, given that such character has been developed in response to ethical issues

raised by everyday life rather than legal practice there is an opportunity to help adapt what can be called personal moral character to the moral demands of practice by creating professional moral character (Nicolson 2005, 616), especially as law students might be prepared to learn from those who they see as experts in law. Nevertheless, it has to be recognized that radical changes to a person's essential character are likely to be rare, so there is probably little that universities can do in relation to those who enter university with, or quickly develop, a deep-seated cynical attitude to legal practice and hence are likely to be impervious to attempts to encourage ethical professional.

In this light, it would seem that the aim of law schools should be twofold. First, in relation to those who enter university with the aim of acting morally and using their skills to benefit others, law schools need to ensure that legal education does not make students cynical and provides them with the opportunity to adapt and reinforce their existing moral character to the ethical demands of legal practice. Secondly, and more ambitiously, law schools should seek to influence those without predispositions towards either cynicism or ethical professionalism to choose the latter path. Whether they can achieve these goals depends on how much time is devoted to ethics in the curriculum, what is taught and how. It is to these issues, I now turn.

4. The What and How of Legal Education

Ideally, all law students should have some compulsory exposure to legal ethics. Even if there is no hope of affecting the moral character of some students, they at least need to be made more aware than most currently are of what might constitute unethical conduct so that they can make informed choices about risking formal sanctions and peer condemnation. If the argument for compulsory ethical education is accepted, the first question that needs to be answered is whether ethics should be taught pervasively throughout the curriculum as and when ethical issues arise in other classes or in compulsory dedicated classes. Ideally, as many argue, both approaches should be adopted (Nicolson & Webb 1999, 287-8; O'Dair 2001; Webb 1996, 292-4; Webb 1999, 293-4; Paterson 1995),² but if a choice has to be made, I would favour the latter. No doubt, teaching ethics pervasively redresses its current marginalisation and demonstrates to students that ethical considerations are integral to legal practice and vary according to contextual factors, such as the practice setting, the type of case and the client's status. However, there are well-recognised problems with pervasive teaching. By giving ethics a home everywhere, it effectively deprives its core concepts of a home anywhere (Bundy 2004, 33). There is therefore a need for a dedicated class to provide an in-depth analysis of overarching theoretical and institutional issues, and an introduction to the sort of ethical issues which arise in different contexts such as client confidentiality and conflicts of interest. Moreover, all academics are currently unlikely to give ethics the attention it deserves if required to deal with ethical issues relevant to their classes. Instead, they are likely to cut corners to ensure adequate coverage of their specialist topics and may even make clear their disdain for having to waste precious time, thus actually making the current situation even worse. Consequently I think

2. On the relative merits and drawbacks of pervasive versus dedicated ethics teaching, see e.g. Boon and Levin 2008, ch8; Chapman 2002, 81-2; Moliterno 1991, 119-21; Webb 1998, 290-1; Daly, Green & Pearce 2004, 197-8).

ethics teaching is best left to those who are committed to taking it seriously and this is more likely occur within dedicated, hopefully compulsory, but if not optional, classes.

As I have argued before (Nicolson 2010), such classes should have four aims: *inspiring* an interest in ethics; *illuminating* the general and professional ethical tools available to resolve issues of professional ethics; *illustrating* these tools and issues through exposure to situations involving moral dilemmas; and *inculcating* the habit of identifying, evaluating and caring about ethical issues so that this becomes a more or less spontaneous response in practice.

As regards illuminating professional ethics, while the formal rules obviously have to be taught at some stage, this should occur *after* students have been exposed to legal ethics literature so that they develop the ability to critically evaluate these rules and their underlying morality, apply them in ways which are sensitive to the contexts of legal practice and fill in the gaps where they are silent, vague and conflicting. As many recognise (Boon 2002, 58; Boon and Levin 2008, 176; Goldsmith 1996, 10; Myers 1996; Nicolson and Webb 1999; Webb 1996, 277-8; Link 1989, 487; Nicolson 2004), this also requires introducing students to various ethical theories which both underlie and may challenge dominant approaches in legal ethics (see e.g. Nicolson & Webb 1999, ch2) and to the realities of modern legal practice so that students understand problems of access to justice and the ways in which various factors like increasing specialisation, fragmentation, bureaucratisation, commercialisation and globalisation of legal practice affect lawyers' ability to act ethically (see e.g. Boon and Levin 2008, chs4-8; Granfield and Koenig 2002; Nicolson & Webb 1999, ch3 esp. 60-1; Francis 2005).

While such knowledge can be conveyed in traditional lecture format, interactive teaching methods are more likely to inspire and help students develop their own moral stance and moral reasoning. Here, dialogue in small classes will produce deeper understanding of issues through exposure to different views (Webb 1998a, 148), whereas debates can be brought to life and students ethically inspired by exposure to legal biographies, fictional accounts of legal practice in literature, films and television or even short dramas filmed by academics, and the personal accounts of local lawyers, clients and those affected by lawyer behaviour (Johnstone & Treuhart 1991, 100-1; Menkel-Meadow 1999, 61, 64-6; Menkel-Meadow 2000; Gillers 1995; Spaeth et al 1996, 159-60; Bennett 1995; Mixon & Schuwerk 1995).

When it comes to developing moral sensitivity and judgment, role plays and simulations are more likely to engage their interest and emotions and hence potentially develop moral commitment than the discussion of hypothetical scenarios (Sprinthall 1994; Richards, 1981). This is because, according to adult learning theory, learning is more profound where student experiences are more personal, immediate and realistic, and relate to the fulfilment of their future social roles (Block 1982). This is particularly so if such experience is accompanied by the critical evaluation of their performance by others in class and by the self in reflective journals (Aiken 1997; Webb 1998b, 289-90; Spiegelman 1988; Lesnick 1990, 1184-5). Learning is also more profound when prior assumptions and settled values jar with experienced reality causing 'disorienting moments' involving moral crises and cognitive conflict (Quigley 1995; Webb 1996, 282). By encouraging participants to see issues from the 'other side' role-playing may encourage the development, not only of moral judgment, as emphasised by Kohlberg,

but also empathy and other emotional sentiments (Goldsmith 1996, 13), which virtue ethicists and others see as so important to morality (Rest 1994, 389; Nicolson & Webb 1992, ch2 *passim*). This is particularly likely in ongoing and realistic simulations. When the results seem to 'count' in contexts which accurately reflect practice, students are more likely to emotionally invest in and learn from their experiences (Moliterno 1991, 117-8; Noone & Dickson 2001).

However, it is generally accepted that ethical learning is best achieved in student law clinics, (see Aiken 1997, 47; Boon 2002, 60; Webb 1998b, 296; Rhode 1995, 141, and more generally, Condlin 1983, 80, 320-24; Duncan 2002; Luban & Millemann 1995; Jewell 1984, 507-10; Glennon 1992). By engaging with actual clients, students are far more likely to develop the empathy and emotional maturity which is so important to ethical behaviour. Lessons learnt are likely to go deeper when students bear responsibility for decisions which have consequences in the 'real' world and where the presence of flesh and blood clients with actual problems make learning seem more useful than traditional legal education. Moreover, because of their perceived practical knowledge and skills, clinic supervisors may function as influential moral exemplars, modelling good client relations, concern for how their actions affect others, and an altruistic commitment to the community. And, crucially for character development, any feelings of satisfaction or regret at their actions in representing actual clients and resolving real dilemmas may affect character development, whereas clinics reveal the extent of unmet legal need, and social and legal injustice, that legal practice can involve helping others, and that this can be rewarding as well as intellectually challenging. Thus, according to the anecdotal evidence of many clinicians, and my one experience, clinical work may inspire, or at least reinforce, altruistic aspirations in students (Johnstone, 537; Rees 1975, 136; Guggenheim 1995, 683; Kotkin 1997; Maresh 1997; Styles & Zariska 2001; Tranter 2002, 13).

5. The Extra-Curricular Law Clinic Route to Ethical Education and Character Development

a) The University of Strathclyde Law Clinic

However, an important barrier in the way of clinics as the main forum for ethical education and character development is the perception that they are expensive to run. In addition to premises and related expenses, staff are required to train and supervise students and to administer the clinics more generally. Consequently, most law clinics have relatively small numbers of students working on cases at any one time and students are usually involved for between three months to a year. While I have already stated that the opportunity for positively influencing students' moral development is limited to those whose characters are amenable to being influenced towards ethical professionalism, by describing the clinic I established at the University of Strathclyde (itself an expansion on the model I developed at the University of Bristol), I will offer a clinical model which greatly expands the potential for law clinics to have a positive impact on ethical education and character development.³

3. For a more detailed argument in favour of the ethical, as well as other benefits of extra-curricular law clinics, see Nicolson 2006.

The University of Strathclyde Law Clinic (henceforth the USLC) has around 200 students, many of whom remain members for almost five years. By contrast to the high staff-student ratio of most law clinics,⁴ these students are supervised by the equivalent of only one full-time supervisor. The only other staff involvement takes the form of an administrator and the two to three hours I devote to the Clinic every day as its Director. Nevertheless, the Clinic takes on around 160 cases a year in a wide variety of areas of law and provides not just advice but also representation up to and including court and employment tribunals. It is able to provide such an extensive service because so much clinic administration is undertaken by the students. They are responsible for recruitment, training, development, external relations, IT support and case allocation, as well as ensuring that cases are run properly and that inexperienced students are supported in handling cases. Supervisors check all documents and discuss strategy in the handling of cases, but students work mainly on their own in pairs and with the assistance of more experienced mentors.

The USLC operates this way because, unlike most other clinics which are primarily aimed at teaching students about law and legal skills, its primary objectives are to maximise the provision of legal services to those most in need in society and to inspire a new generation of lawyers with a sense of ethical professionalism. Thus, student involvement is almost entirely voluntary and only those have already displayed a commitment to their clients and social justice can gain some credit for their clinic work. Arguably, by putting social needs before education, the USLC avoids the implicit message conveyed by clinics aimed primarily at legal training that it is the students' interests – now educational but later financial – that take precedence over those of clients and community. Moreover, the length of membership means that students will take on many more cases than most clinics (one student had conducted over 30), whereas the fact that six students each year mentor around 30 or so other students, and around 20 also serve on the Clinic's committee which decides ethical dilemmas, means that exposure to issues of ethics and justice is also likely to be much greater than in clinics which are devoted to educational aims.

Admittedly, the potential for fostering ethical professionalism in clinics will be seriously under-utilised unless students are exposed to a theoretical basis to help them make sense of their experiences. Thus, without being alerted to the sort of ethical dilemmas which arise in practice, students might overlook those staring them in the face, whereas without exposure to a wide variety of ethical theories or positions on issues of legal ethics, they will not have the opportunity to explore alternative approaches to resolving dilemmas and to develop their own sense of professional values in order to supplement or even supplant existing professional roles and rules.

Moreover, according to clinical educational theorists 'learning occurs not in the doing but in the reflection and conceptualisation that takes place during and after the event' (Brayne, Duncan & Grimes 1998, 47; see also Webb 1996, 289-90; Spiegelman 1988, 243-70; Lesnick 1990, 1184-5). Such reflection, aided by the critical evaluation of others, may help students develop the life-long learning skills of the reflective practitioner (see e.g. Schon 1983). Thus according to Kolb's well-known learning circle, (Kolb,

4. In the US, 54% of law clinics surveyed had a staff-student ratio of between 1:8 and 1:10, with 16% even having a ratio of less than 1: 6: (McDiarmid, 1990, 254-5).

1984), reflection may lead to the adoption of new, or the adaptation of existing, theories about how to handle issues which can then be put into practice when similar situations arise. This new experience provides the material for further reflection, theory adaption and theory testing, and so on.

Currently, the opportunity for such ethical teaching and reflection is limited to one class, Clinical Legal Practice (henceforth CLP), which is the only one in the LLB which discusses lawyers' ethics and which is only open to USLC members who have undertaken at least two clinic cases. CLP involves seminars on ethics and access to justice, surgeries to discuss cases and is assessed through an essay examining the issues of justice and/or ethics raised by an actual case, case files and a diary, in which students reflect on their experience in class and the USLC.

b) The impact of ethics teaching and clinical experience on student moral development

In a recent paper (Nicolson 2010), I analysed 23 of these reflective diaries, using a form of grounded theory (Bryman 2008, 56ff.). This analysis revealed both that ethics teaching can influence students attitudes and more importantly that clinics provide an excellent means of teaching ethics and, while it is too early to be certain, may also start a process which leads to a sense of ethical professionalism becoming embedded in the student's character dispositions.

Thus the diaries revealed that the students were frequently stimulated by the CLP class to reflect on their personal values and ethical orientation, and how they might play out in practice, with many admitting to not having previously considered their motivating moral values, various issues of legal ethics and professionalism, and even the justice of the legal system. Thus, a seminar made one student realise that: 'my ideals to altruism will be tested when I start practicing as a lawyer.... I suppose I have been naïve to think that I could uphold my ideals and still become a successful lawyer. The seminar set me thinking seriously about the kind of lawyer I wanted to be and what my values really are.'

Many reflected on, and were influenced in their attitudes to, career choice, leading some to question and even change decision to join commercial law firms, and others to confirm their pre-existing desire to help those in need when in practice. This impact on student attitudes is particularly important, given that career choice is likely to be a lawyer's most significant ethical decision, determining both the type of moral dilemmas they are likely to face and the likely constraints on their ability to display moral integrity and altruism.

Many students also altered their initial ethical views about, for example, the acceptability of lawyers putting aside moral issues in practice or about prevailing models of client relations. As one student stated:

'In Week 3 [of the CLP class] I was adamant that it was above and beyond the call of duty to show concern or compassion for the my clients however in week 8 I found that my new case partner shared the same view which I used to possess. ... in other words, 'if the client doesn't tell us all the information then that's their fault'. When I explained to him that it wouldn't be fair to judge the client by our personal standards I

realised that I no longer agreed with my old perception of clients ... [A]fter working with different clinic members and the Clinical Legal Practice class I can appreciate that there are circumstances beyond the client's control and I should not judge them by my own standards.'

Clinic cases - both past and current, both students' own and those of others discussed in class - were a rich source of material for reflection and learning on issues of ethics. A wide variety of ethical issues arising in cases were discussed. In addition to the obvious dilemmas of being required to adopt unethical tactics and pursue immoral client ends, every student faced issues involving how to deal with clients in caring and non-paternalistic ways.

How these issues were resolved demonstrates the value of teaching ethics before, alongside or after student immersion in real life cases. Most directly, teachers and supervisors intervened to challenge student attitudes. Less directly, students used their reading and class insights to question their actions in past cases and to handle current dilemmas. For example, the value of an ethics class was dramatically experienced by one student, whose assertion of the value of tolerance in class a mere hour before interviewing a client inspired him to do all he could to help, notwithstanding that he considered the client to be untruthful and manipulative. Two months later, after standing up to an aggressive opponent trying to pressurise him into acting without instructions, he specifically acknowledged that, compared to his partner who had not taken CLP, he had found it 'easier to make decisions on how to act in this situation mainly due to the knowledge I have gained through the CLP course.' Similarly, faced with the option of what she described as the 'dirty trick' of using a former colleague who had to resign due to racial bullying in support of her client's claim of racial discrimination, another student cited chapter and verse of seminar reading to justify using her morality to 'filter what I find to be immoral instructions' and finding out through 'moral dialogue' that her client also wanted to 'do the right thing'. Five weeks later, however, after discovering that the defenders had lied to her, she methodically applied the contextual approach to ethics encountered in her reading (see Nicolson & Webb 1999, chs8-10) and reversed her earlier view. She also noted that her partner who had been taught ethics in the professional training course 'did not view the matter as involving morality', commenting that this was 'a blatant example of the benefits of Clinical Legal Practice and Law Clinic Education'.

The diaries also reveal that clinical experience gives rise to various factors which enhance character development, such as student feelings of satisfaction or regret at their conduct of cases. Feelings of satisfaction were particularly important in encouraging student to think about pursuing careers in which they could help others. According to one student, law clinics may enthuse 'the many students [who] enter the profession with a genuine desire to tackle society's access to justice problems'. Another stated that by exposing her 'to the wide variety of options other than commercial law' the USLC helped her to discover a 'social conscience':

'I didn't start my law degree to 'make a difference'. My goal was simply to earn enough money so I can afford some of life's luxuries and have no financial troubles. However, having seen the positive effect my time and effort has had on clients of the clinic has

changed my perspective and now, my ultimate goal is to find a job that provides both financial security and a chance to help communities or less fortunate individuals.'

Similarly a third student admitted that before his experience in the USLC he imagined a career in a large law firm and 'hadn't really considered the larger ideal of social justice.... Now I find it impossible not to.'

The diaries also confirm some of the suggested advantages of extra-curricular clinics which are oriented towards providing social justice rather than educating students. In the USLC, all experienced students mentor and sometime supervise inexperienced members, thus increasing the number of cases to which students are exposed. Indeed, a few students referred to learning from cases in which they acted as mentors and using their experience and learning to engage less experienced students in what they themselves described (no doubt influenced by their seminar reading) as moral apprenticeships.

Also important to a moral apprenticeship is the impact of role models. Here a number of students cited the examples given by their teachers who combine voluntary legal work with work as lawyers or academics as inspiring them both in career choice and to work hard for their clients. Students also referred to the USLC's social justice orientation. Thus, for a student faced with jeopardising his career by suing a law firm:

'The [USLC's] altruistic ethos helped to reinforce my beliefs and allowed me to feel comfortable making a selfless decision in a profession surrounded by greed and self-importance. Without the Clinic to strengthen and normalise my beliefs I do not know if I would have had the courage and conviction to act outside the norm. In the future, I will try to use the Clinic as an example to justify acting altruistically rather than succumbing to peer pressure.'

6. Conclusion

As this example of the exercise of moral courage shows, the USLC might have started a process of professional moral character development. At the least, however, the diaries show that teaching can raise ethical awareness, equip students to deal with ethical issues and even affect (at least professed) ethical views and (at least in the context of the university environment) behaviour. They also show that live-client clinics expose students to a wide range of ethical issues, particularly in relation to the appropriate relationship with clients, which may provide new, or deepen existing, insights into legal ethics, particularly if accompanied or followed by teaching and reflection. Clearly, their clinical experience reinforced the ethical orientation and career plans of some students, but it also seemed to alter that of others, and in some cases, even affected their behaviour. In other words, the diaries provide some empirical support for many of the alleged advantages of law clinics in terms of ethical education and character development.

Nevertheless, for a number of reasons one cannot ignore other forms of ethical education. First, as I have already recognised, more general ethical teaching reinforces and helps make sense of clinic experience. Secondly, even with the USLC's model of running an extra-curricular law clinic using student volunteers, it would take a tripling of resources to expose all University of Strathclyde law students to clinical experience. In

the current economic climate, such investment seems highly unlikely and hence some exposure to legal ethics even if not accompanied by clinical experience must certainly be better than none. Thirdly, legal education is currently so far from taking ethics seriously that any means of illuminating and illustrating professional legal ethics and inspiring student interest is worth pursuing even if it does not necessarily inculcate the sort of habits of moral conscience I have argued for in this article.

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