

MODERNISING LEGAL EDUCATION

Over the last decade, cost-pressures, technology, automation, globalisation, de-regulation and changing client relationships have transformed the practice of law. In the face of these changes, legal education has seemingly remained unmoved, reluctant to respond to the emerging professional environment or to look beyond doing what has always been done. Deciding what learning objectives a law degree ought to prioritise and how to best strike the balance between vocational and academic training, is a question of growing importance for students, regulators, educators and the legal profession. In response, this collection provides a range of perspectives on the suite of skills required by the modern lawyer and the various approaches to supporting their acquisition. Contributions report on a variety of curriculum initiatives, including role-play, gamification, virtual reality, project based learning, design thinking, data analytics, clinical legal education, apprenticeships, experiential learning and regulatory reform, and in doing so, offer a vision of what modern legal education might look like.

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Foreword

There is a sense, internationally, that legal education and training are approaching a crossroads. The work of law schools has faced, since the early 2000s, a particularly intense period of re-assessment, with major reviews and commissions taking place (with widely varying degrees of impact) in the UK, Canada, the USA, India and Hong Kong, to name but a few.¹ At the same time, concerns that radical reforms in jurisdictions like Japan, China and South Korea have had significant unintended consequences have added to a global sense of fluidity and uncertainty.²

The drivers of change in this process have been many. Commonly they include four significant (perceived) needs. First, to adapt national legal education systems for increasingly globalised and transnational legal education and legal services markets. Second, to respond to actual changes in the local market for law graduates, often framed in terms of an ‘oversupply’ problem. Third, to better align legal education systems with current perceptions of effective practice in higher and professional education (e.g., the widespread moves to outcomes-based education), and, fourth, perhaps most centrally, to better prepare students for the rapidly changing world of legal practice.

On the face of it, this collection responds most directly to the concerns of practice. It thus reflects, and reflects on, the significant challenges and opportunities wrought by market liberalisation and the disruption of existing business and workflow models in the legal sector; but it is also more than that. Whilst offering some excellent examples of what can be done, it does not lose sight of the larger systemic, regulatory and normative questions of what should be done. Unsurprisingly, the role of new technology³ is writ large in this story, in terms both of how legal educators are

¹ For an overview of much of this activity, see Julian Webb, ‘Preparing for Practice in the 21st Century: The Role of Legal Education and Its Regulation’ in Bernhard Bergmans (ed.), *Jahrbuch der Rechtsdidaktik 2017/Yearbook of Legal Education 2017* (Berliner Wissenschafts-Verlag 2018).

² See, e.g., Carl F Minzner, ‘The Rise and Fall of Chinese Legal Education’ (2013) 36(2) *Fordham International Law Journal* 334.

³ I use the term technology widely here to include not just ‘legal tech’ – the digital information and communication technologies that are largely dominating debates – but to also recognise that ‘tools’ like design thinking and legal project management are also new applied technologies in the legal space.

responding to the changing technologies of practice and using new (and less new) educational technologies to prepare students for a world beyond the classroom.

In reflecting on the value of this collection, I want to share a set of questions that kept recurring as I read. They are by no means the only questions, and they probably reflect the recent bias in my own work towards the policy and regulatory problems we face when we talk about modernising legal education and training.

First, what does it actually mean to *modernise* legal education? The *Oxford English Dictionary* defines modernisation as the ‘process of adapting something to modern needs or habits’. As non-technical definitions go, this one offers a useful launch pad. There is in it a sense of the everyday experience we have of both responding to and sometimes resisting the pull of the new. But modernisation properly understood also brings with it a whole other lot of baggage. Modernisation uniquely references our pursuit of the *modern*, that cluster of values, technologies and institutions that constitute the material product of what we think of as the Enlightenment tradition: developed industrial and post-industrial Western society.

Modernisation thus paints a specific picture for us, one of liberalisation, progress and utility; in its most dominant versions it becomes a measure almost of civilisation itself.⁴ To suggest that we are not modern is discomforting (sometimes a useful thing!), but more than that, to be less than modern is itself a mark of failure and a call for revolution. As Bruno Latour has observed:

When the word ‘modern’, ‘modernization’, or ‘modernity’ appears, we are defining, by contrast, an archaic and stable past. Furthermore, the word is always being thrown into the middle of a fight, in a quarrel where there are winners and losers, Ancients and Moderns. ‘Modern’ is thus doubly asymmetrical: it designates a break in the regular passage of time, and it designates a combat in which there are victors and vanquished.⁵

This dualism is worrying. Modernisation requires its critics, but to refuse to be modern is also to risk setting oneself up as an anachronism. Despite its sometime conservatism, higher – including legal – education, is as both institution and experience a thoroughly ‘modern’ phenomenon. Its embeddedness in the wider political economy⁶ means its modernity is also Janus-faced. It offers individuals the seductive opportunity to transform themselves, and perhaps their society; to satisfy their thoroughly modern desire to do, to know and to become,⁷ but it also imbricates

⁴ Michael Adas, *Machines as the Measure of Men: Science, Technology, and Ideologies of Western Dominance* (Cornell University Press 2014).

⁵ Bruno Latour, *We Have Never Been Modern* (Harvard University Press 1993) 10.

⁶ See, e.g., Harry W Arthurs, ‘The Political Economy of Canadian Legal Education’ (1998) 25 *Journal of Law and Society* 14; Margaret Thornton, ‘The Law School, the Market and the New Knowledge Economy’ (2007) 17(1–2) *Legal Education Review* 1.

⁷ Richard Collier, ‘“Be Smart, Be Successful, Be Yourself . . . ”?: Representations of the Training Contract and Trainee Solicitor in Advertising by Large Law Firms’ (2005) 12(1) *International Journal of the Legal Profession* 51.

us as participants in the deepening interdependences between education, technology and the neoliberalisation of society. How do we modernise and yet stay critical? Perhaps the following questions help.

Second, *who are we modernising legal education for?* Legal education policy frequently finds itself at the push and pull of multiple stakeholders, with often competing interests.⁸ This is a large part of what makes reform and innovation a socially, not just technically, complex problem. Who is proposing change and why, who benefits from innovation and at what cost to other stakeholders in the system, are important policy questions that should not be overlooked in evaluating change.

An obvious but no less significant third question flows from this: *who is the lawyer that is a (central) subject – and object – of our education and training activity?* At present legal education and training is being pulled between two forces. On the one hand there is the reality of an increasingly segmented and fractured legal services workforce, a declining proportion of which, in many systems, is regulated as such. On the other, is the institutional pressure from regulators and professional associations to maintain a homogeneous ‘one size fits all’ curriculum or competence framework for ‘the profession’. How long is the latter position sustainable? What might or, more importantly, should take its place? Where would such legal education best be located, both in space and time – will the current front-loaded model of training be fit for these purposes?

Finally, *what, therefore, are the priorities for change?* Modern legal practice as currently conceived requires a broad and growing range of skills and competences. New competences (commercial awareness, resilience, understanding of new practice technologies, legal project management, etc.) tend to be viewed as purely additive, within an already crowded curriculum. What gives way and where? At present regulation has done very little to offer us a road map for the future.

Like any institution the law school requires adjustment, refinement, renewal. This volume is a welcome and often thought-provoking addition to that task; I hope it proves to be a fruitful part of the continuing conversation about what legal education might become.

Julian Webb

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⁸ This is not a new insight: see Fiona Cownie (ed.), *Stakeholders in the Law School* (Hart 2010).

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