# Introduction

This paper argues that teaching concerned with values should serve six necessary and independent functions in a system of legal education. In brief these are:

1. To offer students an opportunity to consider their personal values;
2. To inform and invigorate academic teaching practice;
3. To facilitate rational consideration of the role of values in the legal system;
4. To identify the importance of legal ethics to lawyers;
5. To develop both a model and practice of reasonable discourse concerned with value conflicts;
6. To illuminate the potential of law to benefit society.

Unfortunately, it will not be possible to deal with each function at the length it deserves here. However, this article forms part of a developing body of work by the authors and other collaborators on the subject of legal education, and on the possibility of a wider role for legal scholarship than has been traditional.[1]

The form of argument raises four preliminary issues we need to address briefly.

First, the term "values" is defined for the purposes of this article as "matters or things that people care about".[2] We eschew any prescriptive content for values for the purposes of this argument. There is no claim advanced that any particular set of values has been identified that should be incorporated into all legal education. Although it is arguable that some values are integral to law generally this is not our contention.[3] In similar manner we are not claiming that some particular set

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[1] See: Published: Graham Ferris *Aspirations for Law in the University* (2004) 13(2) Nottingham Law Journal 67; Graham Ferris *The Legal Educational Continuum That is Visible Through A Glass Dewey* (2009) 43 The Law Teacher 102; Graham Ferris *We Should Look to Legal Theory to Inform the Teaching of Substantive Law* (2009) 3 Web Journal of Current Legal Issues. Projected: Graham Ferris and Rebecca Huxley-Binns *Are we all going to the same place: pluralism and value driven legal education* (2010) Learning In Law Annual Conference, University of Warwick, 29-30 January (LILAC10); Graham Ferris *Unlocking the potential of property law for development: What does path dependence mean for the relationship between traditional doctrinal and institutional scholarship in property law and development theory?*(2010) Annual Meeting Association of Property Law and Society, Georgetown Law School, 5-6 March; Graham Ferris, Julie Higginbottom and Rebecca Huxley-Binns *What Should We Care About When Teaching Law* (2010) in Caroline Maughan and Paul Maharg (eds) *Affect: The Impact of Emotion on Learning and Teaching the Law*

[2] A working definition and approach derived from the work of Frankfurt, see: Harry G Frankfurt: *The Importance of What We Care About* (1998) Cambridge University Press, Cambridge.

[3] See: John Finnis *Natural Law and Natural Rights* (1983) Georgetown University Press, Washington DC; Lon Luvois Fuller *The Morality of Law* (1969) Yale University Press, New Haven.

of values should inform legal education *per se*.[4] This is not to deny the importance of debates over the best values to adopt in legal education or generally. It is to claim that the most important question is whether values, things staff and students might care about, are considered appropriate topics of concern in the context of legal education. Our argument is that the inclusion of values must be considered vital to healthy legal education – even if there is no consensus over the values concerned.

Second, it is not argued that all values are equal. To explain this it is necessary briefly to distinguish between different sorts of value. There are some values that are pragmatically given in the context of legal education, as to teach otherwise would undermine the claim to be involved in education at all. Thus, in the words of Richard Aldrich: "the term education would not be used with respect to preparing a person to be a liar or a thief".[5]

There are those values that are integral to legal education and these must be respected because of the nature of the legal and educational cultures involved. Some values are so bound up with the idea of "education" that they need to be the subject of consensus if possible, and a working compromise if not. For example a regard for the personal development of the student is a core value of Higher Education in the UK. Some values are so bound up with the idea of "law" that they cannot be subject to serious doubt in the context of legal education. Thus, a legal system should not make arbitrary decisions between litigants – although tossing a coin is a very cheap and efficient manner of disposing of a dispute between two litigants it is not legally justifiable as a *modus operandi* because of the very nature of contemporary *legal* systems. Such values are termed here "integral" values of legal education.

Finally, there is a category that may well be the broadest, and that is of those values that are orthogonal to legal education – i.e. values that are not in contradiction to legal education but which are independent of legal education *per se*. An alternative description for such values could be "contingent", as any particular example would be under-determined rather than necessary to legal education, and could be substituted for another example without any irrationality. The category is easier to grasp through examples than attempts at formal definition. Traditionally the ideal of equality has been contentious in the UK and the USA.[6] Similarly, some academics feel values informed by such issues as class, gender, race, sexuality, disability, or religious affiliation should be given a prominent role in legal education, to avoid perpetuating unexamined prejudicial attitudes in students. Other academics feel such issues are at best peripheral, and do not warrant a place on a crowded curriculum that struggles to include such issues as logical reasoning, linguistic

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[4] The very undemanding account of "value" is one feature that distinguishes our arguments from debates over what Law School should be about: see e.g. (2008) The Law Teacher pp. 263-354: Roy Stuckey et al *Best Practices for Legal Education* (2007) Clinical Legal Education Association. We have touched upon such issues elsewhere in the past, but they are not our concern here, see: Graham Ferris *Aspirations for Law in the University* (2004) 13(2) Nottingham Law Journal 67.

[5] Richard Aldrich *The End of History and the Beginning of Education*, in *Lessons From the History of Education* (2006) Routledge, Abingdon at p. 29.

[6] See: Ronald Dworkin *Sovereign Virtue: The Theory and Practice of Equality* (2000) Harvard University Press, Cambridge Massachusetts; Amartya Sen *Inequality Reexamined* (1992) Oxford University Press, Oxford; *The Idea of Justice* (2009) Allen Lane, London.

interpretation, and the need to strive for logical coherence in our understanding of law. A basic appreciation of the rules of inductive reasoning or statistical inference might seem more valuable to students and society at large than any necessarily partial and contentious exploration of the relationship of the legal system to underlying systems of social power. Such values, on either side of the debate, are termed here "orthogonal" values to legal education.

This tripartite distinction describes a continuum rather than three discrete and exclusive sets. Therefore, there will always be room for debate over where on this continuum a value falls. However, for practical purposes we can assume that such disagreements will revolve around matters of detail rather than around fundamental disagreements. This is due to the place of legal education in general culture. Legal education operates as a regulatory mechanism for legal practice and is directed at least in part at preparation for legal practice. This brute fact enables us to identify crucial values for legal education. Those values that cannot be distributed in this manner can be allowed to fall into the residual set of orthogonal values. It is the neglected potential of this orthogonal set that is our focus of concern.

Third, in respect of the inevitable value conflicts that this discourse will generate[7], our approach is informed by Isaiah Berlin's work on pluralism.[8] There is no rationally compelling escape from value conflict. To seek consensus on the values that should inform all practice in legal education is a futile enterprise, which tends to produce a focus on the classification of those values that are integral to legal education, and a polarisation of the issues under discussion. Thus, it obscures the very existence of those orthogonal values that we wish to make the focus of our concern.

Fourth, we are not convinced by what might be termed extreme subjectivism or relativism. Despite the absence of a consensus on ultimate values, many useful and productive debates can take place. We assume that all participants in Higher Education are open to rational debate and reasoning. Indeed, this assumption is probably integral to the idea of Higher Education. Worthwhile discourse can take place even if all participants accept that it is likely that certain core values will be not be open to reassessment in the course of the discourse. Our approach here is informed by the classic liberal approach to toleration,[9] and the ideas of voice, social choice, reasoning, and justice that inform *The Idea of Justice* by Amartya Sen.[10]

In short we accept that the enlightenment project is fatally flawed, and that rationality alone cannot harmonise all value conflicts on any universally applicable model. However, we reject the

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[7] We intend to explore the problem of value diversity in modern society in more detail in: *Are we all going to the same place: pluralism and value driven legal education* LILAC 10.

[8] Isaiah Berlin *The Pursuit of the Ideal* and *Two Concepts of Liberty* in *The Proper Study of Mankind* ed. Henry Hardy and Roger Hansheer (1998) Pimlico, London at pp 1-16 and 191-242. See also: John Gray *From Post-liberalism to Pluralism* in *Enlightenment's Wake* (2007) Routledge Classics, Abingdon at pp. 196-214; and Amartya Sen *The Idea of Justice* (2009) Allen Lane, London at pp. 1-27.

[9] See: John Milton *Areopagitic* in *Selected Prose* CA Patrides (ed) (1979) Penguin Books, London; and John Locke *Two Treatises of Government and A Letter Concerning Toleration*, Ian Shapiro (ed) (2003) Yale University Press, New Haven at pp. 211-254..

[10] (2009) Allen Lane, London. We hope to develop this theme in: Graham Ferris and Rebecca Huxley-Binns *Are we all going to the same place: pluralism and value driven legal education* LILAC 10.

assumption that this renders all values and all arguments equivalent. We can still strive for, and achieve, workable methodologies for resolving value conflicts,[11] which give a central and justifiable role to reason and rational discourse.

## Functions of Values in Legal Education

### *To Offer Students an Opportunity to Consider, and Reject or Adopt, Personal Values*

This function follows from a conception of education that views the welfare and development of the student to be vital concerns. There are three discernable risks that the discussion of values can mitigate.

First is the risk of accepting odious values because one has never reflected upon the values one holds. Here "odious" indicates odious to the holder of the values upon reflection. It is reported by Stephen Jay Gould that the famous nineteenth century zoologist Louis Agassiz found personal contact with people of African descent repulsive, and that he reported a physical sense of disgust on such occasions.[12] Given the social mores of his times his caring so profoundly about human difference was not subjected to any rigorous examination. Agassiz clearly valued highly some attributes of his "racial" heritage, and seemed to have feared some sort of "pollution" from contact with Negroes. It is submitted that the difference between Agassiz and those who would be his modern equivalents is not that he was an inherently odious personality and that we are inherently better, but that racism as a belief system has been subject to numerous and damning critiques since the lifetime of Agassiz. Unexamined prejudice is persistent. Reflection and debate can dislodge some such prejudices to the benefit of the holder of them, as well as potentially to our wider society.

Second, is the risk of feelings of ennui and a sense of purposelessness. Many young people view law, as a course of study and profession, as an opportunity to "make a difference" by which they seem to mean make a social contribution. A value free curriculum risks encouraging a sense of disassociation between study and personal values. Scott Turow captured this risk of alienation that can follow from legal study in his powerful first person fictionalised account of his own Law School experience at Harvard Law School:[13]

> " 'I don't care if Betram Mann doesn't want to know how I *feel* about prostitution,' she said one day at lunch. 'I *feel* a lot of things about prostitution and they have everything to do with the way I *think* about prostitution. I don't want to become the kind of person who tries to pretend that my feelings have nothing to do with my opinions. It's not *bad* to feel things.' "

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[11] In the sense of a method indicated by Richard Rorty in *Philosophy As Cultural Politics* (2007) Cambridge University Press, Cambridge; *A pragmatist view of contemporary analytic philosophy* pp. 133-146 at 143: "The term 'method' should be restricted to agreed-upon procedures for settling disputes between competing claims." See: Thomas Scanlon *What We Owe To Each Other* (1998) Harvard University Press, Cambridge MA; and Amartya Sen *The Idea of Justice* (2009) Allen Lane, London.

[12] Stephen Jay Gould *The Mismeasure of Man* (1996) Penguin Books, London pp. 74-82; *Flaws in a Victorian Veil* in *The Panda's Thumb* (1980) Penguin Books, London pp. 140-145.

[13] *One L* (1997) Warner Books Edition, New York at pp. 74-75.

At a more empirically reliable level the investigations of self determination theorists suggest that if students feel that they are pursuing their own values, as opposed to accepting the imposed value choices of the faculty, then this self-concordance has positive effects on their subjective well being. This is not only a consistent finding but one that appears to hold good across cultures.[14]

Deciding what one believes in, what one cares about, clearly involves a cognitive process. If this process is successfully performed it can produce what Frankfurt describes as a feeling of being satisfied with one's values, and a resulting sense of being "wholehearted" rather than ambivalent.[15]

The psychotherapist Frankl describes the problem in these terms:[16]

> "The existential vacuum manifests itself mainly in a state of boredom... In actual fact, boredom is now causing, and certainly bringing to psychiatrists, more problems to solve than distress."

He identifies the remedy for such boredom in the individual identification of purpose (something to care about):[17]

> "What matters, therefore, is not the meaning of life in general but rather the specific meaning of a person's life at a given moment."

Thus, we find that independently of each other a creative writer, a school of psychologists, a philosopher, and a school of psychotherapists have identified a process of identification with values that makes people feel satisfied, and the lack of which makes people feel bored or distressed. It is the fact that the orthogonal values identified above are neither prescribed nor necessary that makes them available for adoption or rejection by students in their course of study. However, current practice does not take full advantage of this opportunity to place values in the centre of the curriculum, deferring *de facto* to an exclusively positivist model of legal education.

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[14] See: Kennon M Sheldon, Andrew J Elliot, Richard M Ryan, Valery Chirkov, Youngmee Kim, Cindy Wu, Meliksah Demir, and Zhigang Sun *Self-Concordance and Subjective Well-Being in Four Cultures* (2004) 35 Journal of Cross-Cultural Psychology and Edward L Deci and Richard M Ryan (eds) *Handbook of Self-Determination Research* (2002) University of Rochester Press, Rochester NY. Of course we cannot assume that academics have reached any terminus in their own reflections and sense of self. Indeed, only the most hopeless dogmatist can be said to have definitively resolved such issues. Also, there may be areas of teaching where the academic feels relatively unengaged, feeling the material is necessary for understanding, but not of any inherent interest.

[15] See: Harry G Frankfurt *The Faintest Passion* in *Necessity, Volition, and Love* (1999) Cambridge University Press, Cambridge. See also *Identification and Wholeheartedness* in *The Importance of What We Care About* (1998) Cambridge University Press, Cambridge.

[16] Viktore E Frankl *Man's Search for Meaning* (2004) Rider, London at p. 111.

[17] Ibid. at p. 113.

The third risk is linked to the second. It is that students might not develop any self-awareness, or self-knowledge. Engaging with value conflicts is a way of finding out about oneself and one's starting beliefs. Such a project is not a voyage into a solipsistic self absorption and self "discovery". As Frankfurt notes in his critique of the fashion for an anti-rationalist over-valuation of sincerity:[18]

> "As conscious beings, we exist only in response to other things, and we cannot know ourselves at all without knowing them. Moreover, there is nothing in theory, and certainly nothing in experience, to support the extraordinary judgment that it is the truth about himself that is the easiest for a person to know. Facts about ourselves are not particularly solid and resistant to sceptical dissolution. Our natures are, indeed, elusively insubstantial – notoriously less stable and less inherent than the natures of other things. And insofar as this is the case, sincerity itself is bullshit."

The force of these arguments is supported by the well-known deleterious effects of legal education in the USA,[19] and there is limited empirical support for the hypothesis that they explain these effects.[20] They are also supported by anecdotal professional experience in the UK. Unfortunately, it is possible that a very powerful tradition in jurisprudence has encouraged the de-valued teaching of law. A dominant theoretical approach in law in the common law world has long been legal positivism in one form or other. It is in part because of the persuasiveness of arguments that insist upon the need to distinguish the "law as is" from "the law as it should be" that there is a need to argue strongly and at length for the importance of values in legal education. Otherwise, and to the lay man, it would seem too obvious a point to need making at all.[21]

## *To Recognise the Importance of Values to Legal Academics and thus allow them to Develop a "Congruent" Practice*

Legal academics also need to engage with value issues, and to feel that their role is purposeful. However, there is a further instrumental role to be played by a value driven curriculum in this

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[18] Harry G Frankfurt *On Bullshit* in *The Importance of What We Care About* (1998) Cambridge University Press, Cambridge at p. 133.

[19] See: Stephen B Shanfield and G Andrew H Benjamin *Psychiatric Distress in Law Students* (1985) 35 Journal of Legal Education 65 and G Andrew H Benjamin, Alfred Kaszniak, Bruce Sales, and Stephen B Shanfield *The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers* (1986) American Bar Foundation Research Journal 225. There are reviews of research in the area by Susan Swaim Daicoff in *Lawyer Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism* (1997) 46 Am U L Rev 1337 and *Lawyer Know Thyself: A Psychological Analysis of Personality strengths and Weaknesses* (2002) American Psychological Association, Washington DC. Scott Turow *One L* (1997) Warner Books Edition, New York.

[20] See: Kennon M Sheldon and Lawrence S Krieger *Does Legal Education have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being* (2004) 22 Behavioural Sciences and the Law 261 and *Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory* (2007) 33 Personality and Social Psychology Bulletin 883.

[21] We have tried to identify the role of jurisprudence in this process in Graham Ferris *We Should Look to Legal Theory to Inform the Teaching of Substantive Law* (2009) 3 Web Journal of Current Legal Issues.

respect. A self-concordant, or wholehearted, academic can hope to be congruent in her practice, and there is reason to suppose that such congruence can support teaching excellence.[22]

Congruence is a descriptive term coined by Carl Rogers. Rogers emphasised the importance of certain characteristics of the relationship between the therapist and the client. He described these attributes as being "congruent":[23]

> "Can I be in some way which will be perceived by the other person as trustworthy, as dependable or consistent in some deep sense? ... experience drove home the fact that to act consistently acceptant, for example, if in fact I was feeling annoyed or sceptical or some other non-acceptant feeling, was certain in the long run to be perceived as inconsistent or untrustworthy. I have come to recognise that being trustworthy does not demand that I be rigidly consistent but that I be dependably real. The term 'congruent' is one I have used to describe the way I would like to be. By this I mean that whatever feeling or attitude I am experiencing would be matched by my awareness of that attitude. When this is true, then I am a unified or integrated person in that moment, and hence I can be whatever I deeply am. This is a reality which I find others experience as dependable."

We have quoted at length in order to bring out two aspects of this concept of congruence. First, it shares clear common qualities with ideas of self-concordance and wholeheartedness. Second, it is concerned with the perceptions and reactions of others; in Rogers' paradigm case with clients, but in the Law School the relevant others are the students. Our argument is that a congruent teacher will be perceived in a way that will enable him or her to engage students. If we are felt to be trustworthy then students are more likely to allow us to impact upon their selves. The hypothesis is that a congruent academic is one students will let in, and therefore one who is able to affect the student and engage the student at a deeper level. Of course, such trust should not be abused.[24]

Thus, by allowing academics to teach that which is important to them, that which touches the values of the academics, we can facilitate academic congruence. This in turn can lead to academic teaching efficacy.

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[22] See: Tracey Varnava *In search of the x factor: reflections on accounts of excellent teaching in law* Society of Legal Scholars Annual Conference 2008. Essentially, the support comes from the common perception that it is *who* the teacher is that creates teaching excellence rather than what the teacher does. The qualities identified as relevant to excellence are in turn capable of describing a congruent teacher.

[23] *Characteristics of a Helping Relationship* in *On Becoming A Person* (2004) Constable, London at pp. 50-51.

[24] The power relationship between academic and student makes this issue particularly acute. The moral imperative is for reticence in prescription and acceptance of difference, it is here that an active tolerance and a commitment to respectful discourse is essential.

## *To Bring into Awareness and Focus the Underlying, if Conflicting, Values that Inform the Legal System*

We have argued elsewhere that one source for inspiration and purpose when designing a legal curriculum is legal theory.[25] One role legal theory can play is the making apparent of unperceived, unvoiced or implied value choices embedded in the law and legal education. This is not a novel point; in the words of Scott Turow:[26]

> "he [a fictionalised academic] said 'law school begins to become more than just learning a language. You also have to start learning rules and you'll find pretty quickly that there's a premium placed on mastering the rules and knowing how to apply them. But in learning rules, don't feel as if you've got to forsake a sense of moral scrutiny. The law in almost all its phases is a reflection of competing value systems. Don't get your heads turned around to the point that you feel because you're learning a rule, you've necessarily taken on the values that produced the rule in the first place.' "

If we accept that this fictional advice reflects recognisable practice in contemporary law schools, it is clear that a premium is placed upon the rules and their application and not upon the articulation and critique of the underlying values. Further, refusing to address the issues of values expressly does not remove them from the law school, it merely makes them harder to respond to, and it can fuel in students a sense of being manipulated. If we continue the fictionalised account:[27]

> " 'They're turning me into someone else,' she [a fictionalised student] said, referring to our professors. ' They're making me different.' ... 'It's someone I don't want to be,' she said. 'Don't you get the feeling that you're being indoctrinated?'"

Certainly, if we ostensibly introduce values into the curriculum then there is a danger of academics seeking to propagate their own value systems, rather than teaching from, and within, their expert competences. However, as the account by Turow illustrates, refusal to legitimate value discourse can itself be felt as indoctrination.

W Wesley Pue asserts:[28] "the values of liberal education derive from the value commitments of the liberal state". If he is correct then it would be more honest if such value commitments were openly made the subject of inquiry. This is not to argue against such values, if they are made express students may choose to adopt them, but to argue against implicit inculcation of values in legal education.

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[25] Graham Ferris *We Should Look to Legal Theory to Inform the Teaching of Substantive Law* (2009) 3 Web Journal of Current Legal Issues.

[26] *One L* (1997) Warner Books Edition, New York.

[27] Scott Turow *One L* (1997) Warner Books Edition, New York at pp. 72-73.

[28] W Wesley Pue *Legal Education's Mission* (2008) 42 **T**he Law Teacher 270**.**

Traditionally in the legal curriculum courses on jurisprudence or legal theory have been the uniquely legitimate location for critical analyses of the values present in the legal system. However, values are present in all areas of law. Thus, we should consider making some of those values the subject matter of inquiry in our teaching practice. Reflection on these values should open up a discourse on the inherent values that are implicit and explicit in the law. A discourse that can take place in the public space of the law school, and that can consider value conflicts, and value compromises, and even values currently rejected by the legal system.

## *To Bring Home to Students the Vital Importance of Professional Ethics as a Source of Legitimacy for, and Idealism in, the Practice of the Legal Profession*

This reflects informed authoritative opinion and need concern us only briefly. In the UK the Lord Chancellor's Advisory Committee on Legal Education and Conduct gave voice to an unambiguous assertion of the centrality of professional ethics in legal education in 1996:[29]

> "no amount of external regulation of professional practice will serve as an adequate substitute for the personal and professional values and standards that lawyers should internalise from the earliest stages of their education and training."

Certainly a clear and fully articulated account of the professional duties of a defence lawyer gives vital support in dealing with the conflicts felt when defending a client who one feels is both guilty and abominable. It is important to understand precisely what the extent of one's duty is, what the limits of one's role are, and why in systemic terms it is sometimes necessary and right to act in a way that feels contrary to one's ethical centre.

Of course lawyers who do adhere to their codes of ethics can sometimes offend the powerful, and there is a constant pressure from the State to do no more than give the impression of fulfilling the role. The Cory Collusion Inquiry Report into the killings of British lawyers Rosemary Nelson and Patrick Finucane suggests that lawyers may be called upon to take grave personal risks in order to fulfil their professional obligations.[30] It calls for more than mere compliance with regulatory authorities to uphold the rule of law in the face of civil strife and terrorism. It takes brave people doing what they feel they must because it is the right thing to do.

Recent events in Pakistan have also illustrated how powerful lawyers can be when acting collectively in response to a threat to core legal values. The protests by lawyers following the dismissal of Chief Justice Iftikhar Chaudhry and other judges undermined the regime of President Musharraf. Eventually, collective action led by lawyers forced the reinstatement of the judges.[31]

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[29] *First Report on Legal Education and Training*

[30] Return to an Address of the Honourable the House of Commons dated 1st April 2004 for Cory Collusion Inquiry Report. The report found evidence of collusion between the security forces and paramilitary groups in carrying out the murders of both Nelson and Finucane.

[31] See: http://news.bbc.co.uk/1/hi/world/south_asia/7945294.stm

http://news.bbc.co.uk/1/hi/world/south_asia/7452121.stm and

In short the potential benefits that might be derived from the adoption of the values of Professional ethics by law students are incalculable for the future.

## *To Allow a Practice of Genuine Discussion and Debate on a Foundation of Mutual Respect, Toleration, and Belief in the Efficacy of Rational Debate (if not in its Ability to Solve all Disputes Definitively), thus Fulfilling the Promise of Higher Education as a Culturally Enriching Process*

We have already touched upon this above, and will not repeat ourselves here. [32] We argue that we can strive for, and achieve, workable methodologies for resolving value conflicts, which give a central and justifiable role to reason and rational discourse.

We plan to pursue this theme elsewhere and we rest heavily upon the articulations of the issues made by Thomas Scanlon and Amartya Sen.[33]

## *To Allow the Social and Economic Impact of the Legal System to be Appreciated and Developed*

We have already mentioned the recent events in Pakistan, and it would be far too large a task to undertake here to describe the impact of the law, lawyers, and the legal system upon the constitutional history of Great Britain and the USA. However, the possible effects extend further than the maintenance of the liberal democratic state.

In the work of Amartya Sen on development, he treats the legal institution of human rights as potentially powerful factors in building capacity and producing developmental outcomes.[34] The new institutional economics movement, as represented by such writers as Douglass North,[35] also allows a powerful role to law in supporting economic productivity. The values that law might serve extend to the alleviation of poverty and the facilitation of choice and freedom by the poorest people of the world. There might be more to care about than is usually within the purview of legal education. Even in the developed world we suffer from problems that law could be used to alleviate through its

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http://news.bbc.co.uk/1/hi/world/south_asia/7945294.stm all last accessed 9/10/09.

[32] See text at nn. 6-11.

[33] Graham Ferris and Rebecca Huxley- Binns *Are we all going to the same place: pluralism and value driven legal education* LILAC 10; Thomas Scanlon *What We Owe To Each Other* (1998) Harvard University Press, Cambridge MA; Amartya Sen *The Argumentative Indian* (2006) Penguin Books, London; *The Idea of Justice* (2009) Allen Lane, London.

[34] See: *Development as Freedom* (1999) Oxford University Press, Oxford.

[35] See: *Institutions, Institutional Change and Economic Performance* (1990) Cambridge University Press, Cambridge; and *Understanding the Process of Economic Change* (2005) Princeton University Press, Princeton. Attempting to tie together North's analysis with legal scholarship see: *Unlocking the potential of property law for development: What does path dependence mean for the relationship between traditional doctrinal and institutional scholarship in property law and development theory?*(2010) Annual Meeting Association of Property Law and Society, Georgetown Law School 5-6 March.

facilitative action.[36] Once we open legal education to values that might be served by law and lawyers, we enter new realms of potential action and inspiration for those students who want to make a difference.[37]

## Concluding Remarks

We have given extensive consideration of the first of our six functions for values in legal education as this reflects our own values. We feel that if our approach were harmful to the development of students as individuals then it would be unacceptable, even if the other functions were all served.

Our conclusion is that not only is the incorporation of values into the legal curriculum not harmful but that we might hope for powerful benefits for students. In the light of this conclusion and the possibility of other functional benefits, there is a very strong case for a serious attempt to transform legal education. We have tried to anticipate, and give appropriate consideration to, possible objections to any such project. We recognise the sincerity of fears over loss of focus on the core concerns of legal education, the introduction of indoctrination into the curriculum, and the introduction of irrational matter into an area where reason should prevail. We have some sympathy with the yearning for an overarching value that would avoid the need to negotiate value pluralism. However, at the end of the day we feel the case for a change in the direction of embedding values into legal education is overwhelming. The next theoretical task is to consider how this might be achieved, and the next practical task is to start implementation in practice.

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[36] See: *Development as Freedom* (1999) Oxford University Press, Oxford; and Robert D Putnam *Bowling Alone* Simon & Schuster Paperbacks, New York.

[37] Some of the possibilities, and problems, legal education informed by value discourse opens up are explored by the remarkable series of collected essays edited by Austin Sarat and Stuart Scheingold: *Cause Lawyering: Political Commitments and Professional Responsibilities* (1998) Oxford University Press, Oxford; *Cause Lawyering and the State in a Global Era* (2001) Oxford University Press, Oxford; *The Worlds That Cause Lawyers Make: Structure and Agency in Legal Practice* (2005) Stanford University Press, Stanford CA; *Cause Lawyers and Social Movements* (2006) Stanford University Press, Stanford CA; *The Cultural Lives of Cause Lawyers* (2008) Cambridge University Press, Cambridge.