

Towards Inclusive Legal Education: Complications and Challenges

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While massification has made legal education accessible to an increasing number of students, and scholars have been urging schools to address the issues of diversity and inclusion, law schools across the Western world are still regularly criticised for being not particularly inclusive environments.¹ This can be attributed to both the curriculum and culture of law school and the legal profession in general.

The contributions to this special issue address the subject of inclusive legal education by highlighting a range of initiatives that have been implemented at law schools and judicial training centres across the world. These initiatives are described, analysed and evaluated to provide insights into the rationale behind them and their potential contribution to overcoming some of the problems of the inclusivity deficit in legal education.

This editorial begins by pointing out some of the fundamental dilemmas inherent in creating an inclusive legal education within the current setup of many legal educational programmes. Next, three possible approaches to addressing these dilemmas are explored. Then, an overview of the contributions to this issue is offered that connects these contributions to the dilemmas and the potential solutions. The editorial ends with conclusions based on the insights which can be drawn from this special issue.

1 The Dilemmas Inherent in Creating an Inclusive Legal Education

Law school can be regarded as education for the purpose of entering a particular profession: the legal profession. As such, a large part of legal education involves equipping students to become lawyers. This means that legal education is not only about knowledge transmission but

also about socialisation into the social, cultural and political traditions that are part of the legal profession.² Socialisation in law school entails students learning to ‘think like a lawyer’.³ Introducing students to this new perspective on the world around them has a strong transformative effect for them.⁴

A first obstacle to creating inclusive legal education is that, in socialising law students, legal curricula tend to focus on doctrinal analysis of the law and training law students in a fairly limited set of professional skills. The ethos of legal education is said to be strongly oriented towards the legal profession’s commercial paradigm and client-centredness,⁵ a finding which is even more prevalent with regard to the professional legal training programmes of the bar association and the judiciary. Thus, law schools are identified as primarily training future lawyers to develop a technocratic perspective on the law.⁶ Students learn to disconnect the law from its social and political contexts, and law schools habitually teach students to regard their personal values as irrelevant.⁷ Several authors have pointed to the fact that this approach produces students who drift away from initial motive for attending law school – serving the public good – and become, to a large extent, interested in working in private practice.⁸ Such a narrow view of the legal world is in itself not very inclusive, as it disregards the relevant societal context in which the law operates. Furthermore, a technocratic perspective on the law can alienate students whose personal identities and values do not align with this view, which appears to be particularly true for students from minority backgrounds.⁹

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1 See, for example, M. Thornton, ‘The Demise of Diversity in Legal Education: Globalisation and the New Knowledge Economy’, 8(1) *International Journal of the Legal Profession* 37 (2001); S. Leahy, ‘Integrating Doctrine and Diversity: Inclusion and Equity in the Law School Classroom’, 71(1) *Journal of Legal Education* 221(2021).

2 G. Biesta, ‘What Is Education for? On Good Education, Teacher Judgment, and Educational Professionalism’, 50 *European Journal of Education* 75 (2005).

3 E. Mertz, *The Language of Law School: Learning to ‘Think Like a Lawyer’* (2007).

4 S.A. Scheingold and A. Sarat, *Something to Believe in: Politics, Professionalism and Cause Lawyering* (2004), at 54.

5 H. Sommerlad, ‘Researching and Theorizing the Processes of Professional Identity Formation’, 34(20) *Journal of Law and Society* 190 (2007).

6 M. Thornton, ‘Technocentrism in the Law School: Why the Gender and Colour of Law Remain the Same’, 36(2) *Osgoode Hall Law Journal* 369 (1998).

7 D. Schleef, *Managing Elites: Professional Socialization in Law and Business Schools* (2006); F. Cownie, ‘Alternative Values in Legal Education’, 6(2) *Legal Ethics* 159 (2003); J. Bliss, ‘Divided Selves: Professional Role Distancing among Law Students and New Lawyers in a Period of Market Crisis’, 42(3) *Law & Social Inquiry* 855 (2017); Mertz, above n. 5.

8 Referred to as ‘public interest drift’; see, for example, J. Bliss, ‘From Idealists to Hired Guns: An Empirical Analysis of Public Interest Drift in Law School’, 51(5) *UC Davis Law Review* 1973 (2018).

9 See C.Y. Costello, *Professional Identity Crisis: Race, Class, Gender and Success at Professional Schools* (2005).

A second obstacle is that legal education is still regarded as fostering a rather conservative and elite culture that aligns with the archetypal white male lawyer. This perception relates to the function of legal education as providing education for the purpose of entering the legal profession, which has historically been characterised as based on privilege. Thus, an elite group of professionals have, for decades, expended effort to maintain their privileged position by underscoring the superiority of their services and the exclusive character of the legal profession.¹⁰ ‘Boundary work’¹¹ plays an essential role in this effort, which results in lawyers maintaining predominantly homogeneous background characteristics, especially within the higher echelons of the profession. Hence, the legal profession is often regarded as strongly associated with social reproduction of hierarchy – a hierarchy whose foundations are built in law school.¹² Students and beginning professionals with non-traditional backgrounds face various obstacles while trying to fit in.¹³ This process also raises a dilemma for law faculty. On the one hand, various faculty members may want to deconstruct the current dominance of the elite culture of the legal profession. On the other hand, they are motivated to help students obtain positions in that still largely elite culture and need to take care not to harm their student’s future careers.¹⁴

These difficulties have certainly been recognised for quite some time, not only by academics but also by legal practitioners.¹⁵ Various drawbacks that result from the lack of inclusion have been referenced, such as a disregard for the interaction of the law with society and a lack of social representation within the legal profession, which may harm the profession’s legitimacy. Other drawbacks include a one-sided approach towards legal problems, the risk of constraining the interest in public-interest occupations (particularly with high-achieving students), and the hazard of inducing ethical minimalism among those working in private practice. These potential drawbacks to a lack of inclusion in the legal profession illustrate that the profession must change to meet the needs of our modern society. Legal education is positioned to play a key role in instigating this change.

2 Addressing the Challenges and Initiating the Way Forward

Several routes can be explored to address these difficulties. We elucidate three prominent directions from the current research that also resonate with the contributions to this special issue. It is important to note that many of the potential approaches have had a place in legal education for a long time, albeit mostly in the margins. The initiatives discussed in the contributions to this issue are generally aiming to bring them more to the centre of legal education.

2.1 Diverse Perspectives and Skills

Various new educational initiatives aim to complement the technocratic approach to the law by introducing students to a more diverse set of perspectives and skills. Interdisciplinarity and reflectivity are critical components of this approach. One might think of introducing students to social-scientific insights in law and society courses or courses that deal with interpreting social-scientific data. Or, going a step further, students could be trained in the methods of conducting empirical research on legal issues. This would introduce students to the relevance of understanding the functioning of law in action. Likewise, philosophical and ethical insights are also essential in creating more reflective lawyers. Courses on the theoretical foundations of law as well as legal ethics can play an important role in students’ understanding of the law in its broader societal context.¹⁶ These insights also could make students aware of the societal responsibilities related to being a lawyer. Such interdisciplinarity can result in training so-called T-shaped lawyers: lawyers with deep legal expertise as well as a breadth of general knowledge from other disciplines, an avenue that is also embraced by the legal profession.¹⁷

2.2 Awareness by Experience

Having students passively encounter the interaction between law and society is a good starting point, but it is probably even more powerful to provide them with actual societal experiences. Experiential learning and clinical education are one of the fastest-spreading teaching methods globally.¹⁸ Experiential learning is a way of teaching students by providing them with actual real-life experiences with the law. Like theoretical and methodological interdisciplinary courses, experiential learning also contributes to providing students with

10 M.S. Larson, *The Rise of Professionalism: A Sociological Analysis* (1977); E. Freidson, *Professionalism, the Third Logic: On the Practice of Knowledge* (2001); Scheingold and Sarat, above n. 6.

11 When one group distinguishes itself from other(s).

12 D. Kennedy, ‘Legal Education and the Reproduction of Hierarchy’, 32(4) *Journal of Legal Education* 591 (1982); L.A. Jewel, ‘Bourdieu and American Legal Education: How Law Schools Reproduce Social Stratification and Class Hierarchy’, 56(4) *Buffalo Law Review* 1155 (2008).

13 Sommerlad, above n. 5.

14 See on this point also Jewel, above n. 14, at 1155-1156.

15 Big law firms commonly have DE&I policies, and diversity and inclusivity are commonly also point of attention for the Judiciary.

16 See also S. Taekema and W. Van der Burg, *Contextualising Legal Research: A Methodological Guide (Elgar Studies in Legal Research Methods)* (2024), for example, chapter 6.

17 E. Mak, *The T-shaped Lawyer and beyond. Rethinking Legal Professionalism and Legal Education for Contemporary Societies* (2007).

18 O. Hammerslev, ‘Globalisation and Education: Reconfigurations in Location, Scale, Form and Content’, in R.L. Abel, H. Sommerlad, O. Hammerslev & U. Schultz (eds.), *Lawyers in 21st-century Societies. Vol. 2: Comparisons and Theories* (2022), at 264.

context and reflection on what it is like to practise law. Simultaneously, it can generate passion among students for the law in general and especially for the social justice side of it.¹⁹ It can, therefore, potentially be a way to prevent the drift away from public-interest law among law students.²⁰ The social justice dimension of clinical education can particularly speak to students who might otherwise feel alienated by their law school experience due to the dissonance between their personal values and the values emphasised in law school.²¹

Experiential learning can encompass clinical education, such as in a legal clinic for victims of crime, which is central in the contribution by Wemmers and colleagues to this issue. However, it can also encompass other experiences with law in action, such as the University in Prison project by Lanio and colleagues, which is also analysed in this issue. By dealing with real-life clients with real-life problems, students also have the opportunity to reflect on the ethical dimension of providing legal services to clients. This ideally would create novice lawyers who are better able to deal with the responsibilities and fundamental purposes of the profession.²²

2.3 Student Well-being and Professional and Personal Development

A third approach to making legal education more inclusive is focusing on the well-being of law students and by providing them with support during the formation of their professional identities. Various surveys throughout different legal education systems have revealed particularly high levels of psychological distress and mental health issues among law students.²³ The suggestion is that at least part of these well-being problems are related to the aforementioned way in which law students are socialised.²⁴

The increased worries about well-being have resulted in many law schools setting up programmes to enhance students' well-being as well as offer mentoring and other support for students to aid in their personal and professional development. This approach can help improve

students' sense of belonging and their performances. It may also help prevent students from dropping out of law school. While all students could benefit from well-being and mentoring initiatives, such initiatives can be particularly beneficial to non-traditional law students who, due to their outsider status, are more likely to have especially high levels of distress²⁵ and a relatively low sense of belonging.²⁶ Thus, promoting student well-being and professional development can play an important role in making law schools more inclusive environments.

3 The Contributions to This Issue

As already mentioned, the contributions to this issue analyse different initiatives in legal education from all over the globe that can support a more inclusive law school experience. All of the initiatives encompass various elements of the aforementioned approaches.

Knop and Lanio report on the project 'University in Prison' in Berlin, Germany.²⁷ In this project, the lecturers teach a class within the walls of prison to a group of partly incarcerated and partly 'free' students. Primarily, the course offers students an interdisciplinary perspective which, according to the authors, is often found only in the margins of German legal education. Secondly, the project includes elements of experiential learning by incorporating the perspectives and experiences of the persons undergoing the disciplinary character legal system. The programme has been shown to benefit both the non-incarcerated students – who are exposed to the views and experiences of the persons undergoing legal discipline – as well as the incarcerated students, for whom the experience is a step towards their re-socialisation in society.

Wemmers and colleagues discuss the aim, design and evaluation of a legal clinic for victims of crime at the Université de Montréal, Canada.²⁸ The clinic provides direct and indirect victims of crime and their direct relatives with free legal information. Law students and criminology students collaborate in this project, which is overseen by accredited professionals. Similar to the previously described project, this clinic combines an interdisciplinary approach with experiential learning. In doing so, the clinic teaches students non-legal skills that they can only truly obtain through direct interac-

19 D.A. Maranhão, 'Infusing Passion and Context into the Traditional Curriculum through Experiential Learning', 51(1) *Journal of Legal Education* 51 (2001).

20 *Ibid.*

21 As mentioned by Costello, above n. 9.

22 W.M. Sullivan, A. Colby, J.W. Wegner, L. Bond & L.S. Shulman (eds.), *Educating Lawyers. Preparation for the Profession of Law* (2007).

23 See, for example, D. Jaffe, K. Bender & J.M. Organ, 'It is Okay to Not Be Okay: The 2021 Survey of Law Student Well-being', 60 *University of Louisville Law Review* 441 (2021); A.J. Bergin and K. Pakenham, 'Law Student Stress: Relationships between Academic Demands, Social Isolation, Career Pressure, Study/Life Imbalance and Adjustment Outcomes in Law Students', 21 *Psychiatry, Psychology and Law* 1 (2014); L.S. Krieger and K.M. Sheldon, 'What Makes Lawyers Happy? A Data-driven Prescription to Redefine Professional Success', 83(2) *George Washington Law Review* 554 (2015); J.C. Wilson and C. Strevens, 'Perceptions of Psychological Well-being in UK Law Academics', 52(3) *The Law Teacher* 335 (2018).

24 M.T. O'Brien, S. Tang & K. Hall, 'No Time to Lose: Negative Impact on Law Student Wellbeing May Begin in Year One', 2(2) *The International Journal of the First Year in Higher Education* 49 (2011); T.D. Peterson and E.W. Peterson, 'Stemming the Tide of Law Student Depression: What Law Schools Need to Learn from the Science of Positive Psychology', 9 *Yale Journal of Health Policy, Law & Ethics* 357 (2009).

25 S. Grover, 'Personal Integration and Outsider Status as Factors in Law Student Well-being', 42(2) *Washburn Law Journal* 419 (2008).

26 D. Uehara, S. Cotner, M. Langford, N. Noorestaney & A. Kjensli, 'Do I Belong in Law School? The Role of Academic and Social Climate', *The Role of Academic and Social Climate* (2024) SSRN paper.

27 In this issue: J. Knop and J. Lanio, 'Unlocking Minds and Rethinking Law School: The Transformative Power of 'University in Prison'', 16(4) *Erasmus Law Review* 160 (2023).

28 In this issue: J.A. Wemmers, A. Manirabona, M.L. Quirion, A. Zota, A.G. Sipowo & A. Deschênes, 'Including the Forgotten Party in Legal Education: Victims of Crime', 16(4) *Erasmus Law Review* 169 (2023).

tion with victims. Additionally, it provides students with an opportunity to help the community. The participating students are confronted with their own privileged position and how their views are deeply influenced by their privilege. After working with victims, the students appear to develop a broader view of the criminal justice system and recognise the resources and services available for victims. In turn, this exposure equips them to better inform victims.

Mira, Nieva and Fernández Meijide describe and analyse a long-existing mandatory one-year course at the University of Buenos Aires referred to as ‘the Practical’.²⁹ In this course, the law students provide vulnerable people who have limited financial means with legal advice on all manner of issues. While this is to some extent similar to the clinical education as described by Wemmers et al., the duration and mandatory character of the Practical make it stand out from typical clinical or experiential education. The intensive character of the first experiences of many students with the legal profession makes the experience a rite of passage for the law students. In providing access to justice for vulnerable people, the Practical also encourages students to become reflective legal professionals who engage critically with the world around them. The interaction with the recipients of legal aid in this study also resulted in the students developing non-legal skills. In particular, they discovered the importance of an interdisciplinary approach to legal problems. The authors furthermore remarked that ‘the Practical’ deconstructs hegemonic views of the law and legal practice.

In line with the third approach to addressing the inclusivity dilemmas in law schools, Hughes-Gerber, McGuirk and Savva identify law students as being particularly vulnerable to low levels of well-being. In contrast, they also claim that well-being is essential for students to reach their full potential.³⁰ Based on their own experiences at Lancaster University, their contribution argues for combining pastoral care (provision of well-being support that extends beyond the ambit of academic support) and academic support (provision of educational guidance and assistance) in providing well-being services to students. Usually, academic support and pastoral care are offered as separate services provided by different actors (professional service colleagues versus legal academics). However, the current division in providing care does not adequately take into account the dynamic nature of students’ needs, and it creates barriers for students to access pastoral care. Thereby, it runs the risk of operating in a vacuum. A more active role on the part of law school departments in terms of pastoral care, on the other hand, can increase the sense of community within the department. In their contribution, the authors pro-

pose a taxonomy for how a more holistic and inclusive student support system can be structured.

Lastly, Moreira and Ghirardi analyse an experiment in the training of Brazilian judges.³¹ The aim of this training programme is to overcome potential biases that can originate from the homogeneous social and educational backgrounds of most Brazilian judges. The majority of Brazilian judges come from a small, highly-privileged segment of society, and, according to critics, their hegemonic worldview may affect their decision-making. During the programme’s different modules, the judges visit numerous institutions related to the justice system, which also promotes affective dialectics and horizontal interactions between judges and societal actors. By providing newly appointed judges with real experiences and direct engagement with marginalised communities and vulnerable populations, the training aims to have a transformative effect on the new judges. Several judges have testified about the eye-opening experience and transformative effects of the training as well as the importance of judges engaging with society. At the same time, a sizable group of judges were uncomfortable stepping out of their comfort zone and vocalised critiques of the programme. This caused the judicial school to make this an optional training. While the authors note that the judges’ discomfort only underscores the importance of the training, it also demonstrates that there is still a long way to go for the Brazilian judiciary to become an inclusive and socially aware institution.

4 Conclusion

The contributions to this special issue all demonstrate different ways of making future legal professionals more aware of their own position, whether it concerns their mental well-being or their place in society. The contributions combine elements from the abovementioned pathways to promoting inclusivity in legal education in diverse ways. In particular, the added value of interactions with marginalised groups in society is demonstrated by the different authors. This approach would seem to promote a more holistic approach to solving legal problems with sensitivity for the ethical considerations that are involved.

The contributions also emphasise how the challenge of providing an inclusive legal education is in many ways a universal one. We can learn a great deal by looking over the boundaries of our own country to search for ways to enhance inclusivity. Likewise, the analyses of the different initiatives demonstrate the importance of the projects. They can be regarded as starting points in changing the manner in which socialisation takes place in law school, with the potential of also modifying the culture of the legal profession. While they offer promising ideas

29 In this issue: J. Mira, J. Nieva & C. Fernández Meijide, ‘“The Practical”: Professional Legal Training and Social Commitment in the Curriculum of the Law School of the University of Buenos Aires (Argentina)’, 16(4) *Erasmus Law Review* 183 (2023).

30 In this issue: L. Hughes-Gerber, N. McGuirk & R. Savva, ‘Sculpting the Provision of Student Support for Law Students to Enhance Inclusivity: Complications and Challenges’, 16(4) *Erasmus Law Review* 200 (2023).

31 In this issue: R.S. Moreira and J.G. Ghirardi, ‘Innovative Pedagogical Approaches in Judicial Education: The Case of a Pioneer Training Programme for Magistrates in Brazil’, 19(4) *Erasmus Law Review* 211 (2023).

and insights, the contributions also highlight the hurdles faced while attempting to promote substantial change. All of the initiatives hinge on the intensive engagement of highly motivated teachers. They are – in neoliberal universities – most likely not regarded as very cost-efficient. Some are rather small-scale studies that have reached only a relatively small group of students.³² Others are positioned in late stages of the socialisation process and therefore struggle to counterbalance the dominant legal culture that has already been established.³³ Evidently, there is only so much that these individual projects can achieve. To really change socialisation through legal education and training, more fundamental modifications to the curricula are needed.

Furthermore, the aims of the initiatives portrayed in the contributions are promising, and so are the various mechanisms that are suggested to achieve these aims. However, we still know relatively little about the results; in the contributions for which data are available, the amount of data is still quite limited. This indicates that more elaborate evaluation and research is needed, which can help to identify best practices and demonstrate the actual relevance of incorporating such projects within legal education.

32 See, for example, Knop and Lanio, above n. 27 and Wemmers et al., above n. 28.

33 Moreira and Ghirardi, above n. 33.