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LEGAL EDUCATION IN IRELAND: A PARADIGM SHIFT TO THE PRACTICAL?

Abstract – Irish legal education is under increasing pressure to reform and reinvent itself in the face of various challenges, especially those implied by the Bologna process. In line with two of the main priorities of the process, namely employability and student-centred learning, a growing number of Irish law faculties have incorporated, or are planning to incorporate, more practice-related components into the law curriculum and, in some cases, a fully fledged Clinical Legal Education programme. This is an important shift in the paradigm of legal education in Ireland which should be welcomed and encouraged by all stakeholders – students, academics, practitioners, judges and those involved in myriad capacities in the administration of justice.

In the first part, a comprehensive presentation is given about the general structure of legal education in Ireland dealing with the main legal education providers, academic and professional requirements for legal training, as well as figures on the legal population and the approximate cost of legal education. The second part goes on to consider three views[M1] about the role of practice in Irish legal education, namely the 'traditional' view, the 'holistic' view and the 'clinical' view[M2]. The traditional view is that the status quo, i.e., in which practical elements are not a big feature of legal education at third level, has worked well and should, more or less, be preserved. The holistic view encourages the teaching of some element of practical preparation, but that this can best be provided to students by third level institutions through interdisciplinary courses that put law in context. The view which favours clinical legal education is that more can, and indeed should, be done to enhance the preparation of students for law practice, although it has to be pondered in light of economic realities, competing views about pedagogy and the Bologna context.

Key Words – law schools, legal education, Irish legal education, clinical legal education, practice elements, legal skills, Ireland, Bologna, solicitors, barristers, King's Inns, Law Society

LEGAL EDUCATION IN IRELAND: A PARADIGM SHIFT TO THE PRACTICAL?[1]

I. Introduction

It is an interesting time to reflect on Irish legal education as it is under increasing pressure to reform and reinvent itself in the face of various challenges.[2] Imposed by national or European imperatives, these challenges affect academic studies provided by higher education institutions, as well as vocational training provided by professional legal bodies. For instance, one of these challenges has been the recommendation by the Irish Competition Authority to reform the legal profession in general, and its professional training in particular, in order to remedy a lack of transparency and accountability, as well as change the educational monopolies exercised by the two professional legal bodies.[3]

However, the major driving force behind changes in legal education, as with education in other disciplines, is the Bologna process[4] to which Ireland has been a full member since 1999. Initiated by the Bologna Declaration (19 June 1999), the process was designed to promote the European system of higher education world-wide and establish the European Higher Education Area (EHEA) by introducing a system of academic degrees that are easy to compare, promoting the mobility of students, teachers and researchers and ensuring quality in education. In a unique partnership between public authorities, higher education institutions, students and staff, together with employers, quality assurance agencies, international organisations and European institutions, the 47 participating countries[5] have now officially launched the EHEA.[6] Whereas the last decade of the Bologna process has been more inward-oriented, dealing with the institutional and substantial reforms necessary to the emergence of the EHEA, the next ten years will be more outward-oriented and will "serve to boost the global dimension of the Bologna process."[7]

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[1] This is a revised version of the National Report on Legal Education to be presented at the 18th International Congress on Comparative Law (Washington, DC, USA July 25 – August 1, 2010) on *The Role of Practice in Legal Education in the Republic of Ireland.* The authors thank their colleagues T.P. Kennedy, Imelda Maher, James McDermott, Maureen Reynolds for their useful assistance and the anonymous reviewers for their constructive comments. The authors' views expressed do not necessarily reflect the views of the institutions they are affiliated to. Any errors remain their own.

[2] For an historical perspective of Irish legal education*, see* Patricia Herron, "Two Thousands Years of Legal Education in Ireland," (2006) 3 *Web Journal of Current legal Issues* at http://webjcli.ncl.ac.uk/2006/issue3/herron3.html (last accessed 3 May 2010).

[3] *See below* II. 3. Professional Legal Training.

[4] *See* www.bologna2009benelux.org for the current official Bologna website (last accessed 3 May 2010). A permanent address will be secured after the 2010 discussions.

[5] Kazakhstan joined the Bologna process in March 2010.

[6] *See* The Budapest-Vienna Declaration on the European Higher Education Area, 12 March 2010 adopted on the occasion of the 10th anniversary of the Bologna Process at http://www.ond.vlaanderen.be/hogeronderwijs/bologna/2010_conference/documents/Budapest-Vienna_Declaration.pdf (last accessed 3 May 2010). *See also* The Bologna Process 2020 – The European Higher Education Area in the new decade, Communiqué of the Conference of European Ministers Responsible for Higher Education, Leuven and Louvain-la-Neuve, 28-29 April 2009 at http://www.ond.vlaanderen.be/hogeronderwijs/bologna/conference/documents/Leuven_Louvain-la-Neuve_Communiqué_April_2009.pdf (last accessed 3 May 2010).

[7] *See* The Budapest-Vienna Declaration on the European Higher Education Area, 12 March 2010 (note 6 above).

The Bologna process involves an ongoing curricular reform and this recent impetus is of timely significance. It forces further reflection on how to develop and improve legal education in Ireland in future years in order to address the multifaceted challenges of globalisation and the need to train highly qualified and skilled global lawyers in a small common law jurisdiction. It echoes a wide-spread debate among academics on the nature of legal education and the role of practice in the law curriculum. In dealing with the quandary about the vocational/academic purpose of legal education and in line with a similar concern in other European institutions,[8] a growing number of Irish law faculties have incorporated, or are planning to incorporate, more practice-related components into the law curriculum and, in some cases, a fully fledged Clinical Legal Education programme close to the US model. This is an important shift in the paradigm of legal education in Ireland because the introduction of more elements of practice is arguably relevant to two of the main priorities of the Bologna process, namely employability and student-centred learning.[9] To allow their graduates to fully seize the opportunities of changing labour markets, European higher education institutions need to be more responsive to employers' needs. To this end, work placements embedded in study programmes as well as on-the job learning are encouraged in the Bologna framework.[10] Student-centred learning requires empowering individual learners, new approaches to teaching and learning as well as a curriculum focussed more clearly on the learner.[11] Practice-related components, such as case presentations, mooting, internships and, more generally, clinical modules, certainly allow this kind of involvement of law students.

Before examining the role of practice in the law curriculum, an overview of the general structure of Irish legal education is provided. While comprehensive, the information given is generalised in that it does not dwell on the specific details of each educational institution's structures and/or course design, but rather endeavours to provide an overarching description of legal education in the Republic of Ireland as of 2009/2010.

The article goes on to consider three competing[M3] views about the role of practice in Irish legal education, namely the 'traditional' view, the 'holistic' view and the 'clinical'. The first view is that the status quo, i.e., in which practical elements are not a big feature of legal education at third level, has worked well and should, more or less, be preserved. The second is that there should be some element of practical preparation, but that this can best be provided to students by third level institutions through interdisciplinary courses that put law in context. The third is that more can, and indeed should, be done to enhance the preparation of students for law practice. Specifically, monetary and other resources should be dedicated to clinical and similar initiatives and the criteria used to evaluate academic performance must be recalibrated for those academics heavily engaged in these initiatives. While this argument is far from radical – in fact, it mirrors long-standing practice in many other jurisdictions –

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[8] A Bücker & W.A. Woodruff, 'The Bologna Process and German Legal Education: Developing Professional Competence through Clinical Experiences', 9 *German L. J.* 575 (2008) at http://www.germanlawjournal.com/pdfs/Vol09No05/PDF_Vol_09_No_05_575-618_Articles_Bucker%20and%20Woodruff.pdf (last accessed 3 May 2010).

[9] *See* The Bologna Process 2020 – The European Higher Education Area in the new decade, Communiqué of the Conference of European Ministers Responsible for Higher Education, Leuven and Louvain-la-Neuve, 28-29 April 2009 (note 6 above).

[10] *Ibid.*

[11] *Ibid.*

structural, fiscal and attitudinal impediments militate against it to a far greater degree than the first two.

The article concludes by pondering what the future holds for legal education in Ireland in light of economic realities, competing views about pedagogy and the Bologna context.

II. General Structure of Legal Education

The description of a national system of legal education involves a number of issues pertaining to academic, regulatory and financial matters. Information is provided below on the main legal education providers in Ireland, academic and professional requirements for legal training, as well as on figures about the legal population and on the approximate cost of legal education.

1. Law Schools in Ireland

In the Republic of Ireland, law is studied at undergraduate level in higher education institutions. Higher education comprises seven universities, fourteen institutes of technology, and a number of private independent colleges.[12] All the seven universities, namely the Dublin City University (DCU), National University of Ireland[13] Galway (NUI Galway), National University of Ireland Maynooth (NUI Maynooth), Trinity College Dublin (TCD), University College Cork (UCC), University College Dublin (UCD) and University of Limerick (UL), offer law degrees in a school, faculty or department of law.[14] Some institutes of technology (IoTs) also provide for legal education, such as the School of Social Sciences and Law of the

[12] *For a full picture of the Education System in Ireland, see* The Information Database on Education Systems in Europe Eurybase at http://eacea.ec.europa.eu/education/eurydice/documents/eurybase/eurybase_full_reports/IE_EN.pdf (last accessed 3 May 2010).

13 The National University of Ireland (NUI) is a federal university comprising the largest element of the Irish university system. Its mission is to provide a supportive framework for its confederate institutions, to promote the objects of the University, thus contributing to educational, cultural, social and economic advancement. It has four constituent universities, namely University College Dublin, University College Cork, NUI Galway and NUI Maynooth. These have the same statutory status as the State's three other universities but a small number of administrative and academic functions are carried out on their behalf by the NUI. However, the Minister for Education and Science announced the dissolution of the NUI on January 20, 2010. A new qualifications and quality assurance agency for the further and higher education sectors is now being proposed. The remaining of the tasks carried out by the NUI, and not taken up by the new agency, will be transferred to the constituent universities.

[14] DCU School of Law and Government at http://www.dcu.ie/law_and_government/index.shtml, NUI Galway School of Law in the College of Business, Public Policy and Law at http://www.nuigalway.ie/law/, NUI Maynooth Department of Business and Law in the Faculty of Social Sciences at http://business.nuim.ie/Law.shtml, TCD School of Law in the Faculty of Arts, Humanities and Social Sciences at http://www.tcd.ie/Law/, UCC Faculty of Law in the College of Business and Law at http://www.ucc.ie/en/lawsite/, UCD School of Law in the College of Business and Law at http://www.ucd.ie/law/index.html, and UL School of Law in the Faculty of Arts, Humanities and Social Sciences at http://www2.ul.ie/web/WWW/Faculties/Arts,_Humanities_&_Social_Sciences/School_of_Law (all websites last accessed 3 May 2010).

Dublin Institute of Technology (DIT),[15] as well as a few mostly Dublin-based private colleges.[16][M4]

The institutions linked to professional careers have also law schools. There are two main legal professions in Ireland: solicitors (those lawyers who have direct contact with clients, initiate court proceedings and appear in the lower courts and are regulated by statute) and barristers (those lawyers who draft legal submissions and opinions and appear as advocates in the high courts, regulated by their own disciplinary body, the Bar Council). The Law Society of Ireland is the representative body of the solicitors' profession in Ireland. Its education department comprises Law Schools in Dublin and Cork which run courses for those seeking to become solicitors or for previously-qualified solicitors. The Honourable Society of King's Inns provides a course of education and training which enables its students to be conferred with the degree of barrister-at-law, be called to the Bar of Ireland and admitted to practice in the courts of Ireland. Its School of Law is the oldest institution of professional legal education in Ireland.

All in all, Ireland has a set of over ten law schools – seven in universities, two in professional schools and several in IoTs and private colleges. The latter group (IoTs and private schools) provide legal education either to fewer students or on a lesser scale, though their student numbers and course offerings are growing. For purposes of this article, however, emphasis will be put on the universities and professional colleges. Requirements for academic legal training and professional legal training are examined below.

2. Academic Legal Training

This is the training provided by the higher education institutions above described (universities, IoTs, and private colleges, with main emphasis on universities). A number of academic requirements have to be satisfied in terms of entry into, and graduation from, law school. The main features of the standard law curriculum are described in terms of duration of study and course content.

Entry Requirements into Law School

The minimum academic entry requirements for entry into law school at undergraduate level, as into the majority of third-level courses in Ireland, are determined at individual institution level and are generally based on a national examination performance, namely the Leaving Certificate examinations taken at the end of second-level schooling. In general, individual institutions do not hold entrance examinations nor do school reports or interviews form part of the entry procedures for school-leaver applicants.[17] Some specific law courses may require applicants to have a particular subject, such as, for example, a certain level of French for undertaking a

[15] Other institutes offering legal education are Athlone IT, Carlow IT, Letterkenny IT and Waterford IT.

[16] These are the Dublin Business School (which incorporates Portobello College), Dorset College, Griffith College, and Open University of Ireland.

[17] *See* http://eacea.ec.europa.eu/education/eurydice/documents/eurybase/eurybase_full_reports/IE_EN.pdf (last accessed 3 May 2010).

degree in Irish law and French law.[18] Applications for entry to undergraduate courses in universities, colleges of education, IoTs and some other institutes of higher education,[19] are processed by the Central Applications Office (CAO), though the participating institutions retain the function of making decisions on admissions.

However, a student leaving school in Ireland and possessing the academic qualifications for higher education entry is not automatically entitled to a place at university because there tend to be more applicants than places for most courses. The institutions indeed reserve the right to restrict the number of students entering first-year undergraduate courses. Where it is found necessary to limit the number of entrants to a course, places are allocated in order of merit on the basis of points achieved in the Leaving Certificate examinations; thus creating a competition for places for entry into first year. Competition for entry is very high in law (and in disciplines like medicine, veterinary, pharmacy, etc.) and this reliance on points secured in the Leaving Certificate examination as the sole criterion for access has sparkled controversy regarding access for higher education courses, including law.[20]

Institutions can make special provision for mature students. These are understood as applicants over 23 years of age, who may not have achieved the normal entry requirements of school leavers. Institutions vary in their arrangements for mature student entry. Applications for postgraduate law courses are made directly to the relevant institution and admission is at its discretion.

Standard Course of Study in Law

In terms of duration, the standard course of study for law school students in Ireland is a three-year undergraduate course which is the standard time for undergraduate degrees in the Bologna framework pledged by 47 European nations, including Ireland.[21] It is followed by two years of professional training, i.e., two years for solicitors, including the in-office training and professional practice course, and two years for barristers, including the degree of barrister-at-law and the "devilling" year.[22] To provide more details on this matter, the following observations can be made. First, the duration of study for an undergraduate degree in law, the Bachelor of Civil Law degree, is three years at the colleges of National University of Ireland.[23] There are exceptions with the LL.B. in TCD, the Bachelor of Civil Law in UCD, and the Bachelor of Laws (Law Plus) in the University of Limerick which are of four years duration, as well as degrees courses in IoTs. Secondly, student exchange programmes, whether at international or European level, may add up to one year to the duration of undergraduate study unless the year abroad is integrated into the degree programme. Thirdly, the first postgraduate degree, the master's degree (LL.M.), requires another one to three years of study and can be taken either by thesis

[18] Marie-Luce Paris, 'Challenging Exchange Programs: Studying the Common Law and Civil Law Systems in a Joint Law Degree', 5 (1) *European Journal of Legal Education* 47 (2009) at http://elfa-afde.eu/Documents/EJLEAPRIL09CH.pdf (last accessed 3 May 2010).

[19] Since 1996, a number of the private colleges have joined the CAO system. However, if prospective students fail to apply via this route, these institutions will generally accept direct entry.

[20] Sean Flynn, "HEA calls for 'overhaul' of Leaving Cert exam," *The Irish Times*, 6 April 2010.

[21] *See* Introduction.

[22] *See below* II. 3. Professional Legal Training.

[23] Some universities, like NUI Maynooth, offer a Bachelor of Arts degree in law.

or by examination and minor thesis. A further three years of full-time study are normally required for the degree of Doctor of Philosophy (Ph.D.).

In terms of content, tertiary institutions in Ireland generally enjoy academic freedom in the design of their curricula. No guidelines exist regarding a minimum common curriculum for tertiary level. As academically autonomous institutions, the universities, and increasingly, the IoTs, have the authority to set the content of their courses and decide the methods of student assessment. There are general requirements for law schools, just as for setting up other departments in other disciplines. These are provided by the Higher Education Authority (HEA), the statutory planning and policy development body for higher education and research in Ireland. Once courses are established, academic departments have the authority to adapt and refine them.

However, the content of the law school curriculum is at least partly determined by the requirements of the professional legal bodies, if the law undergraduate degree is to be recognised for professional license purposes. The undergraduate law curriculum at third level is, therefore, made up of a combination of mandatory and optional elective courses determined by the Schools seeking accreditation of their law degrees by the Law Society of Ireland and the King's Inns. In the case of solicitors, eight law subjects are core subjects required by the Law Society: Company Law, Constitutional Law, Criminal Law, Equity and Trusts, European Union Law, Law of Contract, Law of Tort and Real Property. For barristers, the King's Inns require intending barristers to hold a degree in Irish law, including a certain number of subjects: Administrative Law, Company Law, Equity and Trusts, Jurisprudence, Land Law and Succession, Law of the European Union.

Graduation Requirements

Generally, tertiary institutions also have the authority to certify the awards given and confer their own certificates, diplomas and degrees which are recognised by the State. However, two types of requirements are specifically relevant for graduation from law school coming from different authorities. On the one hand, as mentioned above, professional legal bodies will recognise qualifications in their ambit of responsibility subject to their fulfilling certain requirements for professional recognition which are, for the law discipline, determined respectively by the Law Society of Ireland for those considering practicing as solicitors, and the King's Inns for those considering practicing as barristers. Law graduates in the Republic of Ireland may also consider proceeding to practice in Northern Ireland and/or England and Wales. They must ensure that their undergraduate law degree complies with the requirements imposed by the relevant professional legal bodies in these jurisdictions, namely the Institute of Professional Legal Studies (IPLS) in Northern Ireland, the Law Society of England and Wales and the General Council of the Bar in England and Wales.[24]

[24] Requirements for the professional legal bodies in Northern Ireland and England & Wales are not detailed here. They do not differ much; the IPLS will require Law of Evidence as part of an acceptable law degree (but not Company Law); the Law Society and the General Council of the Bar of England and Wales will require Public Law including Administrative Law, Constitutional Law, and Human Rights Law, as well as English Land Law.

On the other hand, according to the Bologna process, a valid Bachelor's degree in law, like in any other discipline, must be 60 ECTS (European Credit Transfer System) per year, i.e., a minimum of 180 ECTS over the three years, meaning a certain number of hours of study.

3. Professional Legal Training

Prior to licensure as practising lawyers, law graduates[25] must complete a professional training provided by schools run by the legal professions. Those who seek to become solicitors[HD5] receive professional legal training from the Law Society of Ireland at Blackhall Place and those who seek to become[HD6] barristers[M7] receive their professional training from the King's Inns. The education of solicitors and barristers, and the overall control exercised by the two professional legal bodies over entry into the profession, came under intense scrutiny from the mid-1980s, culminating in the 1990 Irish Fair Trade Commission Report on restrictive practices in the legal profession.[26] Calling for a new appraisal of the whole system of legal education, the Commission recommended, among other changes, the fusion of a vocational course for prospective solicitors and barristers. This has not occurred yet and, despite a more recent report by the Irish Competition Authority calling for "a more modern, transparent and accountable system"[27], each profession has maintained its distinctive training which is described below.

Training of Solicitors[28]

Solicitors are professionally trained to provide clients with skilled legal advice and representation on all legal matters. Most solicitors work in private practice, but commercial and industrial organisations also employ solicitors, as do the Civil Service and the public sector generally.

The Law Society administers the examination for entry into the solicitors' profession and requires its students to undertake a combination of study and

[25] Both professional law schools are open to applicants with non-law degrees provided they pass a preliminary examination offered every year by the professional bodies. Holders of an approved degree (other than an approved degree in law) and mature applicants (defined as students who do not hold an approved degree and are over 25 years of age) will need to study for a two year Diploma in Legal Studies at the King's Inns and pass the relevant annual examination before proceeding to take the entrance examination to the bar. This is the first stage of training; it is an academic course and the standard of the examinations is the same as that obtaining in the universities. The very first step for non-graduates wishing to enter the solicitors' profession is a preliminary examination in English, Irish Politics & Government, and General Knowledge. University graduates from Ireland and the United Kingdom or holders of degrees (regardless of the discipline) awarded by the Higher Education and Training Awards Council (HETAC) are exempt from this examination.

[26] Fair Trade Commission Report of Study into Restrictive Practices in the Legal Profession (Dublin: Government of Ireland Stationary Office, 1990).

[27] Competition Authority Report on Competition in Legal Services in Ireland 2006 (final). Online at: http://www.tca.ie/EN/News--Publications/News-Releases/The-Competition-Authority-finds-the-legal-profession-in-need-of-substantial-reform-.aspx (last accessed 3 May 2010). The Authority concluded that the Irish legal profession in general was in need of substantial reform. As far as legal education was concerned, one recommendation was the abolition of the Law Society's and King's Inns control of professional legal education which facilitates their educational monopolies. This was in line with a 2001 OECD report on *The Role of Competition Policy in Regulatory Reform in Ireland*. Online at http://www.oecd.org/dataoecd/27/37/34768100.pdf (last accessed 3 May 2010).

[28] *See* The Law Society of Ireland at http://www.lawsociety.ie/ (last accessed May 3, 2010).

supervised apprenticeship with practicing solicitors before they qualify.[29] The Final Examination-First Part (or the FE-1) is held twice a year and requires that candidates pass eight papers (Company Law, Constitutional Law, Criminal Law, Equity and Trusts, European Union Law, Law of Contract, Law of Tort and Real Property). Having passed the FE-1 exams,[30] aspiring solicitors can then proceed to the training phase.

The training programme is two years in duration and consists of two elements: an in-office training period and completion of a professional practice course (one being conditional on the other because applicants must secure a training contract before they can apply for a place on the professional practice course). The in-office training period is the core of the training programme and all trainees are required to have general practice experience. The professional practice course is a full-time course run by the Law Society and phased in two blocks over the 24 month period. The course is practice-oriented and instruction is given mainly by practicing solicitors and Law Society staff. Emphasis is on practice skills, such as "Civil & Criminal Advocacy," "Interviewing & Advising," "Legal Research," "Legal Presentation Skills," "Legal Writing & Drafting," "Negotiation & Professional Development," "Professional Practice" and "Conduct & Management." Once a trainee has passed all the examinations,[31] successfully completed the training period and the training solicitor has sworn that the trainee is a fit and proper person to become a solicitor, s/he may apply to have her/his name entered in the Roll of Solicitors.

Training of Barristers[32]

The primary function of barristers lies in pleading in court (Supreme, High, Circuit and District Courts). They also give advice on legal matters, draft legal documents and give expert legal opinions on particular issues. Increasingly, they are retained to represent their clients' cases outside the conventional courtroom setting, such as in mediations, arbitrations, tribunals, disciplinary hearings and a broad spectrum of public and private inquiries.

The King's Inns provide an intensive one-year course to its students with a heavy emphasis on the practical elements of working as a barrister and then, on qualification, require its recent graduates to work for one year as a "devil" under the supervision of a well-established practicing barrister. The King's Inns administer the examination for entry to the Bar. It consists of five papers (Contract Law, Criminal Law, Irish Constitutional Law, Law of Evidence and Law of Torts) and is open to

[29] Apart from the preliminary examination, every aspiring solicitor is obliged by statute to pass a written examination in the Irish language – the First Irish Examination.

[30] The Law Society entrance examination, and the exemptions from sitting it in particular, gave rise to important litigation in the mid-1990s (cf. *Bloomer & Others v The Law Society of Ireland & Others* [1995] 3 IR 14, *Abrahamson & Others v The Law Society of Ireland & Others and the Attorney-General* [1996] unreported, High Court, 15 July 1996).

[31] A second written and oral examination in the Irish language must be passed before a trainee qualifies. Again, no exemptions are granted. Please note that exemptions from the Irish language requirement are made for foreign qualified lawyers seeking admission to the Roll of Solicitors either by reciprocity or by virtue of having passed the Qualified Lawyers Transfer Test.

[32] *See* The Honorable Society of King's Inns at http://www.kingsinns.ie (last accessed 3 May 2010).

holders of an approved degree in Irish law.[33] Having passed the entry examination, aspiring barristers proceed to the vocational stage of training, consisting of a one year full-time course (or two year part-time) in the King's Inns leading to the degree of Barrister-at-Law. Intending to bridge the gap between the academic study of law and practice at the Bar, the course puts strong emphasis on practice skills and ethics. The syllabus covers subjects and activities such as civil and criminal practice, remedies and quantum, legal skills (e.g., advocacy, negotiation, consultation, opinion writing, drafting, legal research, etc.), ethics, professional responsibility and practice management. Having successfully completed the Barristers-at-Law degree,[34] prospective barristers are called to the Bar of Ireland by the Chief Justice of Ireland. Before being allowed to practice on their own, barristers are required to do a pupilage (commonly called "devilling" or on the job training) with a suitably qualified barrister in an established practice for a period of 12 months.

Providing a percentage of aspirants passing the professional examinations is difficult. Regarding the barristers' profession, no data has been made available. As for the solicitors' profession, given the number of combinations in which the aspirants sit the entrance exam (two sittings per year and possibility of re-sitting the exam a number of times), it is difficult to give a number. However, in 2008, 716 students were declared to have passed the entrance examination (FE-1s) overall.

Training in Ethics and Professional Responsibility[35]

Prospective solicitors and barristers receive explicit and detailed training in their ethical duties and responsibilities as lawyers from the Law Society and at King's Inns. While this includes some of the more profound issues adverted to in the last part, the primary focus is on ensuring that lawyers are aware of their obligations and potential liabilities when it comes to handling client funds and managing their finances. How to manage solicitors' accounts is a central part of what erstwhile solicitors learn in their course of study and apprenticeship at the Law Society and it is such a fundamental concern to the King's Inns that newly-qualified barristers can avail of the services of an accountant at no cost under an agreed scheme.

4. The Legal Population in Ireland

Law Graduates

As far as law graduates are concerned, according to statistics data published by the HEA, an overall figure of 590 Honours Bachelor's degrees were obtained in law in the academic year 2006-2007 by full-time students in universities.[36] If overall figures are combined for the same year, namely honours Bachelor's degrees part-time (78), postgraduate Master's degrees full-time and part-time (484), postgraduate diplomas and certificates full-time and part-time (including distance and e-learning

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[33] They must also have studied Administrative Law, Company Law, Equity and Trusts, Jurisprudence, Land Law and Succession and Law of the European Union in their degree course.
[34] They must also have passed an examination in Irish and made a satisfactory declaration to the benchers.
[35] *See* The Law Society of Ireland at http://www.lawsociety.ie/ (last accessed 3 May 2010); The Honorable Society of King's Inns at http://www.kingsinns.ie (last accessed 3 May 2010).
[36] HEA 2007-2008 Statistics are available online at http://www.hea.ie (last accessed 3 May 2010).

students)[37] (125), PhD degrees full-time and part-time (26), as well as a few hundred graduates of IoTs and private colleges, the grand total would be approximately 1,500 law graduates per year. In the present climate of economic difficulty and uncertainty, the number of students opting to study law as undergraduates and the points necessary to be admitted to undergraduate law degree programmes has fallen.[38] It remains to be seen whether there will be a concomitant fall in the number of postgraduate students though.[39]

Licensed Lawyers

Giving a number of law graduates who go into the practice of law in Ireland is difficult. Because of the explosion in law programmes in Ireland in the last 20 years (with the established universities putting on new courses, the IoTs offering law programmes, and the private colleges offering courses validated by English universities, as well as the Open and Distance Learning courses in law), it is virtually impossible to estimate how many law graduates there are in this jurisdiction. The added complication is the large numbers of Irish school leavers who pursue legal courses in Northern Ireland or England and then return here for professional training. Over the last few years for instance, the percentage of law graduates on the Law Society training courses has varied from 73% to 66%[40].

As for the licensed lawyers, the overall figure is around 11,150. According to the Law Society of Ireland, there are approximately 12,000 solicitors in the Roll – 9,150 of those hold practising certificates.[41] And there are approximately 2,000 practising barristers.

The Professoriate within Law Schools

The professoriate within Irish law schools is generally made up of full-time lecturers. Part-time staff members are the most likely to be engaged in the private practice of law as workload allocation makes it difficult in practice to combine both academic and practice roles full-time. Part-time lecturers can be engaged in practice provided they can accommodate their lecturing/tutoring at the timetabled hours. Some institutions may have put in place a policy and/or practice expressly prohibiting persons undertaking full-time lecturing posts to practice as solicitors or barristers at the same time. Generally speaking, although no strict impediments are put to engaging in practice as well as lecturing, members of staff in university must declare

[37] Open and Distance Learning (ODL) methods have become very popular in Ireland in disciplines including law. While student participation figures in ODL courses are difficult to establish on a consistent basis, it is estimated that approximately 10,000 adults are participating in distance education programmes, thus adding a certain number of law graduates to the above mentioned figures.
[38] Grainne Faller, "A shift in student priorities," *The Irish Times*, 12 January 2009.
[39] Some institutions have reported a sharp increase in the number of qualified lawyers returning to pursue postgraduate study. Again, this is doubtless attributable, at least to some extent, to the economic climate.
[40] Internal data from the Law Society of Ireland made available by TP Kennedy, Director of Education.
[41] In the last annual report of the Law Society (2008/2009), the number of practising solicitors was given as 8,169, i.e. 9,150 holding practising certificates less 981 not practising members (*See* Law Society of Ireland Annual Report & Accounts 2008/2009 – Facts about the Profession). Online at:http://www.lawsociety.ie/Global/About%20Us/Annual%20Reports/AR08-09.pdf (last accessed 3 May 2010).

their consultancy and external work hours – and these must not exceed 20% of working time, generally counted as one day per week or 3/ 4 days per month[42].

5. The Cost of Legal Education[43]

The cost of legal education is of significance, especially at a time of dire economic conjuncture when the Irish government is looking at major investment into the education sector, while, at the same time, re-engaging in the fee debate for undergraduate courses.[44]

A distinction has to be drawn between public and private law schools, and between undergraduate and postgraduate legal education within the public sector. The universities and institutes of technology are autonomous and self-governing, but are substantially state-funded. Since 1996, "tuition" fees have been abolished for undergraduate courses in all tertiary education institutions supported by the state. Under the Government Funded Free Fees Scheme, the Irish Exchequer will pay tuition fees to the university or institute of technology on behalf of students registered for full-time undergraduate degree programmes (of minimum two years' duration) who are EU nationals with no previous third level attendance, and who have been permanently resident in an EU Member State for three of the five years prior to entry to university. However, all students, regardless of discipline, are required to pay "registration" fees on an annual basis to cover academic facilities, sports and leisure facilities and some student support services. Over the last few years, these fees have increased significantly and now cost in excess of €1, 650 inclusive of a student services charge of €1,500 for 2009-10 (covering registration, examinations and other student services) and a student levy which varies from one higher education institution to another and generally exceeds €150[45]. Students are not required to pay any other amounts, but they are liable for the costs of books and course materials. For students who do not qualify under the free fees initiative, the cost of one academic year undergraduate course in law is in the range of €5,000 to €7,000 for EU nationals and far higher for non-EU nationals – in the €12,000 to €16,000 range[46]. Fees are applicable for postgraduate courses and institutions are allowed to set their own fee levels for such courses. Such fees, while not high by international standards, have been increasing in recent years, i.e., in the €6,000 to 8,500 range for a full-time Master of Laws. Non-EU students are liable for fees close to the full unit costs which are much higher than the normal fees charged, i.e., in the €12,000 to €18,000 range.

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[42] The other conditions set by most universities to engage in paid external work for an academic staff (not only in Law) are that the activities must be related to the academic and professional interests of staff, must not interfere with the performance of normal academic duties and must be recommended, in certain cases approved, by the Head of School. *See. e.g.* UCD Consultancy and External Work Policy at http://www.ucd.ie/hr/t4cms/consultancy_and_external_work_policy_v3%200.pdf.

[43] Costs estimates are given in euros (€) and are based on 2009-2010 information.

[44] *For elements of the fees debate, see, for example*, James McDermott, 'Minister needs to move quickly on college fees, Sunday, August 16, 2009, *The Post.ie* at http://archives.tcm.ie/businesspost/2009/08/16/story43749.asp, and Diarmuid Doyle, 'Who will make the case for free third-level education?', Sunday, August 10, 2008, *Tribune News* at http://www.tribune.ie/news/editorial-opinion/article/2008/aug/10/who-will-make-the-case-for-free-third-level-educat/ (last accessed 3 May 2010).

[45] *e.g.* €157,50 in UCD, €224 in NUI Galway. Figures provided are sourced from the *Fees & Grants* section of each university webpage.

[46] Ranges of fees given are the result of a comparison of *Fees & Grants* information made available for each of the 7 universities on their website.

Private law schools request fees which are in the €5,500 to €6,500 range per year for a law degree, at undergraduate or graduate level (e.g., €5,950 for an LL.B. in Irish Law and €6,500 for an LL.M. in International Law at Griffith College). These are substantially higher for non-Irish, non-EU nationals.

The full cost of legal education also includes fees incurred during the training period for prospective solicitors and barristers. The cost of the professional course for barristers is more than €13,000, including the application fee for sitting entrance examination (though excluding extra fees for repeating exams, inspecting scripts, etc). The cost for trainee solicitors would be around €15,000, including application fees to sit all the papers for entry examination, professional course and application for entry on the roll of solicitors.

Overall, the approximate cost of legal education for an Irish student from undergraduate studies through completion of professional training exceeds €22,000 (based on €1,600 undergraduate studies + €7,000 median figure for postgraduate studies + €14,000 median figure for professional training), given that most students in law undertake a postgraduate course. Indeed, more than a third of primary degree graduates generally (all disciplines considered) proceed to further study, which includes a postgraduate degree and other professional training. While fees are not likely to be reintroduced during the lifetime of the current government,[47] registration fees remain on the increase and this is likely to be an exponential trend in future years.

III. The Role of Practice in Irish Legal Education

Examining the role of practice in Irish legal education first entails to describe what currently exists in the law curriculum that can be qualified as practice elements. Useful factual data is given below about foundational skills training, generally taught in the first years of the law curriculum, more advanced practice skills as well as the few Clinical Legal Education programmes offered in Ireland. Secondly, more discursive developments describe the three views on the role of practice in legal education, namely the 'traditional' view, the 'holistic' view and the 'clinical' view. While the first expresses clear reluctance towards practice and the second an intermediary way of introducing some elements of practice in a law discipline 'put in context', obviously the last one advocates a completely practice-oriented curriculum.

[47] A promise not to reintroduce fees was extracted by the Green party from the Fianna Fáil, Ireland's governing party, when the current Governement was planning a new fees regime. In a statement issued in late 2009, the Government explained that '[c]onscious of the economic pressure on parents today, [it] will not proceed with any new scheme of student contribution to Third Level education' (*See* Renewed Programme for Government, 10 October 2009 at http://www.taoiseach.gov.ie/eng/Publications/Publications_2009/Renewed_Programme_for_Government_October_2009.html (last accessed 3 May 2010). The Governement had envisaged a hybrid system of graduate taxes and/or student loans. Students could be offered the option to pay the cost of their undergraduate legal education upfront (with fees starting from €5,000), with the possibility of a discount on the overall cost of the degree. For those students (the majority?) who couldn't pay upfront, the alternative was that, on the English model, they would repay the cost once their professional income had reached a certain threshold thus carrying debt after graduation, mitigated by some kind of low-interest loan arrangement. *See* Sean Flynn, "College fees – What's going on?" *The Irish Times*, 31 March 2009.

This is by no means a definite model. However, it appears as a not inconsiderable, and possibly necessary, shift in the paradigm of legal education in Ireland.

1. Facts: Practice Elements within the Law School Curriculum

University/Third Level Law Schools[48] [M8]

There are elements of practice in courses across the curriculum in Irish law schools. In terms of skills training, research, written/oral communication and persuasion skills are taught – both directly and indirectly – in courses in the first year. Most law schools offer courses with titles like "Legal Methods & Research," "Legal Research & Writing" and "Legal Writing, Research & Communication."[49] Others integrate skill development in core first year courses like Legal Systems, Contract or Constitutional Law.[50] While most substantive law courses are still taught by the traditional lecture method, individual lecturers often seek to develop skills by engaging students in innovative exercises (e.g., presenting cases, interactive discussions, etc.) that bring to light the practical realities of the theoretical concepts they are studying.[51]

More advanced law practice skills (e.g., law office management, client interviewing, etc.) are largely absent from the curriculum, although some law schools offer courses in alternative dispute resolution at undergraduate and/or postgraduate level.[52] Moot court, however, is increasingly becoming a key part of the curriculum and student participation in national and international moot court competitions has increased dramatically in recent years.[53] Within the curriculum, at least one law school has a stand-alone course in mooting and others incorporate a moot court exercise into one or more substantive law courses with plans for further expansion of mooting programmes afoot virtually everywhere.[54] Technology is increasingly being used to facilitate mooting activities.[55]

Clinical Legal Education (CLE), while long a feature of legal education throughout the common law world, has only recently become a part of the curriculum in a few Irish law schools.[56] Because there is no scope for students to be specially licensed to actually practice law, the nature of CLE in Ireland is quite different to

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[48] *See above* II. 3. Professional Legal Training (text and footnotes) for detailed information about elements of practice in legal education at Blackhall Place and King's Inns.

[49] *See* notes 14-16 above and accompanying text with relevant websites where more detailed information can be obtained.

[50] *Ibid*.

[51] *See* Jennifer Schweppe, "You Can Leave Your Hat On: Applying Edward de Bono's Approach to Business Management to Problem Solving in the Law Classroom," (paper presented at the 4th Irish Legal Education Symposium, University of Limerick, May 2010) (paper on file with authors).

[52] TCD and the NUI, Galway are among the law schools that do. At least one private college, Dublin Business School, offers a diploma in alternative dispute resolution.

[53] *See* Yvonne Daly & Noelle Higgins, "Mooting in the Modern Legal Curriculum," (paper presented at the 4th Irish Legal Education Symposium, University of Limerick, May 2010) (paper on file with authors).

[54] *Ibid.*

[55] *Ibid.*

[56] Mel Cousins, *How public interest law and litigation can make a difference to marginalised and vulnerable groups in Ireland* (Dublin, 2005) at http://www.flac.ie/download/pdf/cousins_flac_061005.pdf (last accessed 20 May 2010).

what exists in other jurisdictions.[57] There are CLE programmes available in at least two Irish law schools (NUI Galway and UCC) currently and plans are well-underway at several others.[58]

Again, because students are prohibited from practicing in the courts, the CLE programmes currently operating involve placements (externships in the North American model) of students with government agencies and bodies, quasi- and non-governmental organisations, charitable organisations, advocacy groups, individuals working on public policy research projects and with practicing lawyers.[59] The students get a chance to see how the theoretical concepts they are learning in the lecture hall work in the "real world."[60] They perform legal research, make presentations, draft policy documents, make legal recommendations, meet with clients, review case files, attend court proceedings and provide general assistance.[61] In keeping with the lofty aims and greatest successes of CLE elsewhere, many of these placements are with organisations and individuals that help serve the indigent and marginalised individuals and groups in Irish society.[62] On placements, the students get to see how the law and legal system serves, or does not serve, society's disenfranchised and also gain a cognisance of how law can be an effective tool for advancing the public interest. Moreover, CLE programmes offer some placements with commercial entities and with lawyers who specialise in related areas; the primary goal of these placements is to equip the students with practical experience.

The two law schools with CLE programmes have a member of staff charged with directing and managing the programmes, but to varying extents and in myriad ways, other members of staff are involved in the programmes as well. Placements are arranged by the clinical directors and the students who choose to take part are supervised directly by the relevant individual(s) where they are working. One of the programmes currently operating is full-time and students receive one year's academic credit for their participation as part of a denominated clinical law degree programme; the other is part-time and students receive the equivalent of one course's worth of academic credit. Students must complete at least two years of law study to participate in either programme and, generally, students are assigned placements that correlate with their areas of interest and that will involve legal issues they have previously studied while pursuing their law degrees. Seminars are conducted throughout the duration of the placements and students are provided with training prior to

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[57] Lawrence Donnelly, "Clinical Legal Education: Translating an American Innovation into Irish Practice," (paper presented at the Irish Association of Law Teachers Annual Conference, Cork, April 2006) (paper on file with authors).

[58] Lawrence Donnelly, "Irish Clinical Legal Education *Ab Initio*: Challenges and Opportunities," (2008/2009) 13 *International Journal of Clinical Legal Education* 56 at note 1; *see also* Sarah Neville, "Young Legal Eagles Will Get To Spread Wings in Mock Court as part of New University Project," *Evening Herald*, 2 August 2008 (detailing plans for CLE at University College Dublin).

[59] Lawrence Donnelly, "Irish Clinical Legal Education *Ab Initio*: Challenges and Opportunities," (2008/2009) 13 *International Journal of Clinical Legal Education* 56 at 60-61.

[60] *Ibid.* at 61.

[61] *Ibid.* at 60-62.

[62] Peter Joy, "Political Interference in Clinical Programmes: Lessons from the U.S. Experience," (2005) 8 *International Journal of Clinical Legal Education* 83 at 87 (noting that foremost among the objectives of students, educators and students who pioneered legal education was to "expand access to justice by representing poor and unpopular clients and causes. . .").

commencement of the placement and with opportunities for reflection on what they have learned while on placement.[63]

Externships/internships are an integral part of the two existing CLE programmes. In a broader context, however, all Irish law schools either offer externships/internships to students or encourage them to apply for externships/internships outside of the academic year. Many Irish law students do undertake them and, in addition to rather basic, informal externships/internships with practicing lawyers, some students have availed of tremendous opportunities to work with world leaders, politicians, judges, law reform bodies, international law firms, multinational corporations, international organisations and national parliaments and assemblies both here in Ireland and around the world.

Formal training in legal ethics and/or professional responsibility is not prevalent in Irish law schools. It is touched upon in courses offered by some law schools, but is not central to the curriculum, perhaps because many law lecturers do not currently, nor have they ever, practiced as either a solicitor or barrister. However, the promotion of justice, fairness and equality is of central importance to the training all students at Irish law schools receive. Exploration of where the law and legal profession achieve these fundamental goals or, more often, where they fall short of the mark, is central to virtually every course students take. The Irish law schools, because they exist and operate separate and apart from the two legal professions, are well-positioned to question whether the professions effectively discourage or indeed perpetuate discrimination and/or unfairness on a variety of different grounds. While the legal profession has made great strides against discrimination on the basis of gender, race, ethnicity, sexual orientation, disability, etc., the question of class (i.e., entry into the legal profession for students from deprived backgrounds or areas) remains.[64]

2. Debate: Traditional, Holistic or Clinical?

Traditional

It is undeniable that "Ireland, as an independent country, has a long and often illustrious pedigree in the provision of legal education."[65] Law, as an arts/humanities discipline, has been taught by the lecture method traditionally. Law teachers lecture and students listen. This was the primary means of teaching law across Europe.[66] The "lecture method" has the advantage of showing students how a scholarly mind is working.[67][HD9] But an extraordinary weight of evidence, both systemic and anecdotal, illustrates the myriad weaknesses of the lecture model – the primary flaw

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[63] The websites for the School of Law at NUI Galway (http://www.nuigalway.ie/law/) and for the Faculty of Law at UCC (http://www.ucc.ie/en/lawsite/) contain further information on their CLE programmes.

[64] Mel Cousins, *How public interest law and litigation can make a difference to marginalised and vulnerable groups in Ireland* (Dublin, 2005) at http://www.flac.ie/download/pdf/cousins_flac_061005.pdf (last accessed 20 May 2010).

[65] Patricia Herron, "Two Thousands Years of Legal Education in Ireland," (2006) 3 *Web Journal of Current legal Issues* at http://webjcli.ncl.ac.uk/2006/issue3/herron3.html (last accessed 20 May 2010).

[66] Andras Jakab, "Dilemmas of Legal Education: A Comparative Overview," 57 *Journal of Legal Education* 253 at 257 (2007).

[67] *Ibid.* at 257.

being that it promotes passive learning and creates passive learners, while different, more innovative teaching methodologies promote active learning and create active learners.[68] Only the most curmudgeonly of Irish legal academics would deny the foregoing statement and still argue for retaining the lecture model. Law teaching by lecture does persist, but largely because it is the cheapest means of educating ever-growing numbers of students with an ever-shrinking amount of resources in this era of "massification."[69] This is often a two way street; students, who increasingly view third level education from a consumerist perspective, "believe they are getting value for money if their teachers provide them with information."[70]

Yet the overwhelming majority of traditionalists in Ireland would seem to recognise that "effective teaching in law requires interrogation and discussion of the subject matter."[71] To this end, a number of innovative teaching practices, which often involve technology, have emerged in recent years.[72] What these traditionalists do revere, however, is their distinct function as legal academics as opposed to the function of the professional educators who work at Blackhall Place and King's Inns. As one commentator notes,

> "In Ireland, the primary objective of academic legal education is intellectual formation in the law through the acquisition of analytical and research skills while professional legal education is more vocational and directed toward practice training. This is not to suggest a dichotomy, but rather a difference in ethos and emphasis."[73]

In sum, law schools in Ireland should not provide more practice-related components because students wishing to enter into the profession can progress to the professional training bodies. Besides, not all law students wish to practice law. Therefore, according to the traditional view, they[HD11] should not be forced to undertake practice components as part of their undergraduate studies. While adhering to this traditional view of academic legal education as something totally separate and apart from practice has its advantages – economic and otherwise – it runs contrary to a number of competing realities and traditionalists are likely to have to accept a number of changes, which are, in fact, ongoing, if still incremental.[74] After all, "today's provisions have been repeatedly criticised and found wanting."[75][HD12][M13]

Holistic

[68] *See generally* Michael Richmond, "Teaching Law to Passive Learners: The Contemporary Dilemma of Legal Education," 26 *Cumberland Law Review* 943 (1995/1996).
[69] Margaret Thornton, "The Law School, the Marketplace and the New Knowledge Economy," (2009) 10 *German Law Journal* 641 at 653-654.
[70] *Ibid.* at 654.
[71] *Ibid.* at 652.
[72] *See* note 47 above.
[73] Paul O'Connor, "Legal Education in Ireland," 80 *Michigan Bar Journal* 78 at 79 (2001).
[74] Lawrence Donnelly, "Irish Clinical Legal Education *Ab Initio*: Challenges and Opportunities," (2008/2009) 13 *International Journal of Clinical Legal Education* 56 at 62 (where a clinical student comments that theory should be left to academics and that client-centred aspect of law practice is too often neglected in university courses). The traditional view also runs afoul of the spirit of Bologna.
[75] Patricia Herron, "Two Thousands Years of Legal Education in Ireland," (2006) 3 *Web Journal of Current legal Issues* at http://webjcli.ncl.ac.uk/2006/issue3/herron3.html (last accessed 20 May 2010).

Accepting the need[HD14] for change in the way law students are educated in the early twenty-first century, many Irish legal academic feel that students can be better prepared by pursuing studies that put the law in context[76]. The importance of this view stems from a change of approach in legal scholarship and research which has had wide resonance in law teaching across the common law world[M15].[HD16] Many acknowledge that this change "[leads] to a greater ability to provide law students with a truly liberal education,"[77] but that traditional three (or even four) year "pure law" degrees fail to achieve this aim as graduates attain, and are only asked to attain, a thorough knowledge a black letter law and legal doctrine in a vacuum. Going further, many would agree with the following statement that there is far more to higher education than this.

> "However there is another essential part of university education that has almost been completely lost sight of i[HD17]n the current debate relating to university reform. It is that part of education that allows the student to discover their own personality, their own relative position in time, in space and in relation to other humans. It is the part that permits students to study and reflect on cultural and moral values so as to enable them to weigh the pros and cons in moral and social questions in order to make a balanced judgment which can carry them through the increasing uncertainties of the times. For a scientist, also for a legal scientist and for a legal professional, it is very important to develop such a stable and balanced personality. An education that develops the human side of a person's intellectual capabilities is as important as total technical mastery of a scientific discipline."[78]

And there is a corollary to this observation at a more practical level.

> "[T]he profession of a lawyer is not as a legal technician. The practising lawyer is often a social worker, a business advisor, supporter for a family, as well as a troubleshooter."[79]

The study of other disciplines, in addition to law, and particularly the study of law in ethical, philosophical and other contexts, is arguably regarded by some as [HD18]the basis for the ideal legal curriculum.[80] Naturally, the study of other disciplines and the placing of law in context are a complement to, not a substitute for, the more scientific and professional elements of legal education.[81] To this end, at virtually

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[76] Initiated in the 1960s and 1970s by legal realists and socio-legal scholars, the law and society movement pointed to the importance of understanding the gap between 'law in books' and 'law in action', and the operation of law in society (*See* Mike McConville & Wing Hong Chui, *Research Methods for Law*, Edinburgh University Press, 2007, 1 at 5).

[77] And 'will also enable the law school to take a much greater part in the intellectual debates to be found elsewhere in the university' (*See* Anthony Bradney, 'Law as a Parasitic Discipline' (1998) 25 *Journal of Law and Society* 71).

[78] Frans Vanistendael, "Designing a Humanistic Legal Education," (2006) 3(1) *European Journal of Legal Education* 56 at 63.

[79] John Bell, "Legal Education and Bologna: A British Perspective," (2005) 2(2) *European Journal of Legal Education* 95 at 96.

[80] Frans Vanistendael, "Designing a Humanistic Legal Education," (2006) 3(1) *European Journal of Legal Education* 56 at 64-67.

[81] *Ibid*. at 64-65. There is also the fact that law students are now more research-based than before and are asked, at postgraduate as well as increasingly undergraduate level, to undertake more research to complete coursework assignments, especially if they have to look at other disciplines and methods. At

every Irish law school, there are now opportunities for students to study law with other subjects (business, languages, history, politics, etc.).[82] These inter- and cross-disciplinary degree courses are gaining in popularity and are likely to continue to grow in light of a myriad of new realities law graduates now face and will face in the future.[HD19][83][M20]

Clinical

A third view [HD21]is[M22] that practice and, more specifically, the preparation of students for law practice should definitely play a greater role in legal education in Ireland.[84] Exponents of this view contend that law is a quasi-academic and quasi-vocational discipline. Therefore, the curriculum law students undertake, at every stage, should be consistent with that reality. Consequently, law schools in every other common law jurisdiction have embraced the role of practice in legal education – primarily, but not exclusively, by promoting and investing in Clinical Legal Education (CLE) – yet Ireland still lags far behind.[85]

Anecdotally, well-established Irish solicitors and barristers often comment that the third-level law degree they studied for did little, if anything, to prepare them for the realities of law practice. Students who have been through the fledgling CLE programmes in Ireland remark upon the dissonance between their studies and the reality of the workplace – whether it's a practitioner's office, a non-governmental organisation or elsewhere.[86] And in general, prospective employers are far more interested in a student's practical know-how and relevant experience than on how she performed on a Tort or Criminal Law examination (provided she hasn't failed!).

Adherents to the aforementioned traditionalist or holistic views often pose a number of admonitions to those eager to embrace CLE in Ireland. First is with respect to the distinct roles of higher educational institutions and the professional law schools in the training of legal professionals. The second is that many law graduates do not seek to qualify as practitioners and might benefit far more from interdisciplinary studies than from the introduction of practical elements into the curriculum.[87][HD23] Advocates in Ireland of CLE respond that the first places the abstract ahead of the practical – law can never be divorced from practice – and leaves

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first glance, it might run against the idea of a more practice-related curriculum. However, increasingly research-based studies have their role to play in teaching invaluable practical transferable and analytical skills.

82 William Binchy, "The Irish Legal System," 29 *International Journal of Legal Information* 201 at 216-217 (2001). *See also* note 14 and accompanying text for relevant information on the various interdisciplinary law degrees offered by Irish law schools.

83 *See generally* Paul Maharg, *Transforming Legal Education: Learning and Teaching Law in the Early Twenty-First Century* (Ashgate, 2007).

84 *See* Lawrence Donnelly, "More practice needed in legal education," *The Irish Times*, 19 October 2009. Clearly, one of this article's co-authors is inclined to the third view.

85 *See generally* Richard Wilson, "Western Europe: Last Holdout in the Global Acceptance of Clinical Legal Education," (2009) 10 *German Law Journal* 823.

86 Lawrence Donnelly, "Irish Clinical Legal Education *Ab Initio*: Challenges and Opportunities," (2008/2009) 13 *International Journal of Clinical Legal Education* 56 at 61-62.

87 This sentiment emerged from our informal "polling" of legal academics about the introduction of more practical elements in the Irish legal curriculum.

way too much formative responsibility to the professional bodies. They further argue that the second is similarly weak; practical skill development is important to students studying law regardless of how they will ultimately use their degrees.[88]

However, a third objection is more understandable. Irish legal academics do not have the time or, in many cases, the experience necessary to incorporate elements of practice into their teaching. Most Irish universities have undergone a restructuring in recent years and, as a result, law is no longer treated as an autonomous discipline. Legal academics are subjected to the same pressures as colleagues in inapposite disciplines to produce research, bring in funding, supervise doctoral students, etc. The career progression of legal academics may indeed depend upon the performance evaluations from colleagues in other disciplines who don't understand or appreciate that law is a both and academic and a vocational discipline[M24]. [HD25]And because law is no longer treated as an autonomous discipline, legal academics typically have not spent time in law practice and many do not have professional qualifications. Now, like other academic disciplines, an academic doctorate in law is increasingly a prerequisite to entry to the legal academy. That naturally limits the number of past or present practitioners engaged in law teaching.[89] In theory, the Irish legal academy could be greatly expanded to include a cohort of new law teachers with experience of practice and/or experience directing CLE programmes. But financial realities, in concert with Irish law schools' gradual loss of autonomy, render this an impossibility.

Those who wish to include more practical and clinical elements in Irish law schools (and elsewhere in Europe) point to the great, global successes of CLE. As one world-renowned clinician notes:

> "I have come to believe, over the last two decades of my consulting work outside of the United States, that the origins, growth and acceptance of clinical legal education throughout the world is the greatest single innovation in law school pedagogy - and certainly in student learning - since the "science" of the Socratic, case method was brought to Harvard by Christopher Columbus Langdell."[90]

This observation prompts a question: What is CLE?[91] Stated another way, for a programme to be considered sufficiently "clinical," must it involve actual law clinics or is CLE more protean than that? The answer to that question may depend on where it is asked.. [HD26] In North America, clinical programmes usually involve actual law clinics where indigent clients seek legal services from final-year, law students who have special licences to practice before state courts.[92] North American law

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[88] *See* Lawrence Donnelly, "More practice needed in legal education," *The Irish Times*, 19 October 2009.

[89] Lawrence Donnelly, "Irish Clinical Legal Education *Ab Initio*: Challenges and Opportunities," (2008/2009) 13 *International Journal of Clinical Legal Education* 56 at 57-58.

[90] Richard Wilson, "Western Europe: Last Holdout in the Global Acceptance of Clinical Legal Education," (2009) 10 *German Law Journal* 823 at 823.

[91] *See* Richard Wilson, "Training for Justice: The Global Reach of Clinical Legal Education," 22 *Penn. State International Law Review* 421 at 423 (2004) (noting that the debate as to the appropriate definition of CLE is ongoing).

[92] Elliott Milstein, "Clinical Legal Education in the United States: In-House Clinics, Externships and Simulations," 51 *Journal of Legal Education* 375 at 376-377 (2001). While students don't have the same right to practice law, in-house clinics have sprouted up in Eastern Europe. *See generally* Izabela

school graduates, at the completion of their studies, can sit bar examinations and be fully licensed to practice law with no further educational preparation. Conversely, in Ireland and the United Kingdom, for instance, law is an undergraduate subject and students must complete vocational courses accredited by the two professions (solicitor or barrister) prior to qualification. As such, many clinical programmes in these two countries have taken the form of externship or placement programmes,[93] but some in the UK have gone even further and now incorporate live law clinics where students work on actual cases under the supervision of supervisors who are both practicing solicitors and members of the law school faculty.[94]

Must a programme of CLE have live clinics to be *clinical*? Most commentators accept that the externship/placement model is just as valid a type of clinical pedagogy as the "live client" model.[95] *Irish* CLE, therefore, is likely to continue to expand slowly and incrementally, largely because Irish clinicians are steadily increasing the number of externship/placement opportunities for academic credit and because more law schools are starting clinical programmes.[96] Technological innovations are also likely to be used as a means of facilitating practical elements into the curriculum through simulations, but there seems to be some dispute as to whether this is, in fact, CLE or simply a form of experiential learning or "learning by doing."[97] At any rate and for all of the foregoing reasons, while CLE is likely to play a bigger role in Irish legal education in future, it is unlikely to gain the foothold it occupies in the legal curricula of many other jurisdictions around the world in the near future.

IV. **Conclusion**

The development of a more practice-oriented curriculum in Irish law schools should be welcomed and encouraged by all stakeholders – students, academics, practitioners, judges and those involved in myriad capacities in the administration of justice in Ireland. Such a curriculum will address many issues, such as: the necessity to prepare students for their professional careers and increase their chances at employability in a very difficult climate; the renewal of teaching and learning methods towards more student-centred learning; and the development of more transferable skills.

This development is likely to be iterative and will, to varying extents, incorporate elements of each of the three "views" adverted to [HD30]in the preceding

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Krasnicka, "Legal Education and Clinical Legal Education in Poland," (2008/2009) 13 *International Journal of Clinical Legal Education* 47.

[93] *See* note 55 above and accompanying text.

[94] *See, e.g.,* the "student law office" operating at the University of Northumbria http://www.northumbria.ac.uk/sd/academic/law/slonew/?view=Standard.

[95] *See* Kelly Terry, "Externships: A Signature Pedagogy for the Apprenticeship of Professional Identity and Purpose," 59 *Journal of Legal Education* 240 at 267 (2009).

[96] Existing clinical programmes include more students every year and new initiatives are afoot in the law schools at University College Dublin and the University of Limerick, among others.

[97] *See* Elliott Milstein, "Clinical Legal Education in the United States: In-House Clinics, Externships and Simulations," 51 *Journal of Legal Education* 375 at 376-377 (2001) (including simulated exercises in a classroom under the rubric of CLE); *but see* Richard Wilson, "Training for Justice: The Global Reach of Clinical Legal Education," 22 *Penn. State International Law Review* 421 at 423 (2004). Prof. Wilson excludes simulations from the list of necessary components in his definition of CLE.

section. There will be traditional teaching and learning still; a greater number of students will study law in context and law together with another discipline(s) – and even, in some places, useful language skills in multilingual Europe; and Clinical Legal Education of one guise or other will increasingly be a feature of law degree programmes. Development – and, at micro-level, developments – will necessarily and inevitably be shaped by changing times, technological advancement, economic realities (difficult for the foreseeable future), the Bologna context and endlessly competing philosophies about appropriate pedagogy and "best practices" in the legal academy.

In the academy's approach to legal education, it must remain mindful of the key role played by the professions in educating lawyers. Too often in the past, the academy has constructed a "wall" built on foundations of snobbery and pretence to defend itself against what it might be termed the "needs of the professions." Likewise, the professions and professional schools should not see the ongoing evolution in Irish legal education as a threat to their vital role in forming new lawyers. Because of the "wall," the Irish legal academy historically left too much formative responsibility to the professions. The academy's slow but sure embrace of interdisciplinary and practical education will ensure that law graduates will possess superior critical and analytical capacities and better practical skill sets than their predecessors. A renewed emphasis on these ends represents a complement to, not a substitute for, the training and education those law graduates who desire it will receive at Blackhall Place or King's Inns.

All in all, the Irish legal academy collectively would do well to take the following point on board as we consider the future of legal education in Ireland in the early twenty-first century. "[A] law school should reflect long and hard on its mission and the position that it wants to achieve, first in the immediate surroundings and then in the wider world."[98]

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[98] Frans Vanistendael, "Designing a Humanistic Legal Education," (2006) 3(1) *European Journal of Legal Education* 56 at 63.