Literature Review

8. Key regulatory issues: International comparisons of professions and jurisdictions

Introduction

1. In this chapter we shall examine a number of key regulatory issues through the prisms of international jurisdictional practice, and the practice of other professions. We shall consider first a number of methods of learning and teaching, or heuristics, and the relationship between them and regulation. Next we shall analyse the place of legal ethics within educational regulatory structures. We shall then consider the relationship of legal education, regulation and democracy. The role of technology in legal education is then considered, followed by a summary of some of the literature on change processes in HE and professional education.

Legal educational heuristics and regulation

2. In this section we shall explore a number of approaches to how legal educational practice can best be regulated. One of the core practices in other professions, particularly in medical education, is the generation of research and the encouragement by regulators of the production of that research.[1] It is a central feature of the literature considered in this section (and arises in other chapters of the literature review as well) that the generation, dissemination and implementation of research into educational and related matters is vital to the ongoing health and vitality of legal education in all sectors of the academy and the profession.[2] As we have seen in chapter 2, prior reports into legal education tended either to miss or dismiss this point. We believe that the evidence base provided here shows that legal educational research is critically important to the formation of regulatory policy and practice.

3. As examples we shall consider the research into problem-based learning, as well as the place of quality assurance in legal education. QA is not strictly speaking a heuristic, but the practice and influence of QA regimes do of course affect the structure and content of learning.

Quality Assurance in Scottish HE

4. Scottish HE approaches to quality assurance are significantly different to those of England and Wales. Law schools in Scottish universities have been affected by the same shaping pressures as have universities elsewhere in the UK: by government funding (or the lack of it), funding council policies, globalisation, information technology, and much else. The quality assurance process and benchmarking have left their mark on law curricula and teaching practices throughout the UK. Initially the concept of quality as accountability (as embodied in the Government White Paper of 1991 and the Further and Higher Education Act, 1992) was much criticised for its lack of focus on improvement or enhancement of educational provision

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[1] The lack of research data constrains our understanding of how regulation can best be framed. A recent report by the LSB on quality in other regulated professions, for instance, concluded, *inter alia*, that the 'lack of assessment of the quality assurance methods across the professions means that we cannot consider lessons-learned from these professions' (Sullivan, 2011, p. 28).

[2] In medical education it has long been recognized that one of the drivers for high-volume, high-quality research into educational issues has been the focus in medical schools, since at least the late eighties, on evidence-based medical practice. As Trinder and Reynolds put it, evidence-based practice is a significant move away from traditional guides to professional behaviour, namely 'knowledge gained during primary training, prejudice and opinion, outcomes of previous cases, fads and fashions, and advice of senior and not so senior colleagues' (Trinder and Reynolds, 2000, pp. 3-4).

(Yorke, 1994). The MacFarlane Report (1993) clearly pointed out the need for such enhancement. Nevertheless, even here there are differences – Scotland has adopted a quality enhancement regime aimed less at evaluation of quality and more at the enhancement of it. The strategy developed by QAA Scotland (which is based in the Scottish Credit and Qualifications Framework, SCQF, and has been certified against the European Qualifications Framework) has five strands, as outlined on the QAA website:

   a. *A comprehensive programme of institution-led reviews* carried out by HE institutions with guidance from the Scottish Funding Council (SFC)
   b. *Enhancement-led institutional review* – external reviews that involve all Scottish HE institutions over a four-year cycle
   c. *Improved forms of public information about quality*, based on the different needs of the stakeholders involved in HE
   d. *Greater voice for student representation* in institutional quality systems, supported by a national development service, SPARQS (student participation in quality Scotland).
   e. *A national programme of Enhancement Themes*, managed by QAA Scotland, which encourage academic and support staff and students to share current good practice and collectively generate ideas and models for innovation in learning and teaching. Each theme lasts for around two years (the current theme deals with integration of earlier themes around graduate attributes, and the idea of what it means to be a twenty-first century graduate[3]), and is supported through symposia, conferences and other events.[4]

5. Key to the Scottish approach is the process of Enhancement-Led Institutional Review (ELIR). The process reviews
   - an institution's approach to improving students' learning experiences
   - its strategy to ensure the academic standards of its awards
   - its management of the quality of the learning opportunities it offers students who take its programmes.[5]

6. Student experiences are much more to the fore in the ELIR process, as is the concept of partnership – not just between stakeholders in an institution (students, academics, administration), but between national bodies (National Union of Students Scotland, Scottish Funding Council, the Scottish Government and Universities Scotland for instance) and between institutions themselves (QAA Scotland, 2008a). The partnership approach extends to the review process itself, and the means by which standards are maintained. QAA Scotland developed a protocol for this in which the key features are, first, that the response by QAA to a request to investigate risk 'should be phased and proportionate. Second, Scottish HE adopted an 'informal protocol for sharing information often referred to as "no surprises"' (QAA Scotland, 2008b, p. 1).

7. As a regulatory response to the problems of quality assurance, Quality Enhancement is an interesting example where the regulator engages closely not just with the institution, but puts students at the forefront of the processes.

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[3] Final reports can be viewed at http://www.enhancementthemes.ac.uk/enhancement-themes/completed-enhancement-themes/graduates-for-the-21st-century
[4] http://www.qaa.ac.uk/Scotland/AboutUs/Pages/Quality-enhancement-framework-in-Scotland.aspx
[5] http://www.qaa.ac.uk/InstitutionReports/types-of-review/Pages/ELIR.aspx)

Problem-based learning

8. Where traditional medical education was content-focused and often organised by organ systems, in much the same way that legal education is organised by type of law and legal transaction, more recent approaches take an outcomes approach, with what might be termed clinical scenarios where basic knowledge benchmarks are achieved, alongside increased communication skills, values and attitudinal education and significantly more emphasis on professionalism (Stern, 2005). Medical education regulators have taken a key role in re-aligning medical education in this direction in different countries (Phillips, 2008).[6]

9. Few now doubt that educational theory is important to teaching in HE.[7] This is true of other disciplines too. As an approach to learning, problem-based learning (PBL) is generally taken as being a significant force for good in medical education, but this has not stopped the flow of research literature in medical education analysing why, under what conditions and to what extent it is good for the education of doctors, nurses, dentists and many others to be problem-based. This is in part a recognition that while general guidelines to PBL exist, its implementation can differ quite significantly from one medical faculty to the next; and that a number of different models exist, from pure PBL to hybrid models.[8] It is also a recognition that as a heuristic, PBL has the power to change how doctors practise, and in particular, to change *what* they know (domain knowledge) and how they solve problems.

10. PBL, it is generally agreed, began at McMaster Medical School in the 1960s, where a learning environment was introduced that combined small group, co-operative and self-directive learning methods. As Barrows & Kelson point out, it is both a method of learning medical science and a complete curriculum method. It has developed in many ways over the past half-century, adapted to local curricula and disciplines beyond medicine, including engineering and law, and has been extensively researched and regulated.

11. According to some of the literature, students on a PBL course show no decrease in science domain knowledge compared to their traditional course counterparts (Albanese, 1993, pp. 52-81). They are more likely to use that knowledge in problem-solving activities than students on more traditional courses, and to perceive that they have developed more effective problem-solving and communication skills, and a greater sense of personal responsibility than did students who received lectures (Bransford *et al,* 1989). These differences extend down to the detail of personal methods of study (Newble & Clarke, 1986; Nolte *et al,* 1988).

12. Other researchers found that PBL students could be weaker on basic sciences (Vernon & Blake, 1993). Colliver reported no overall and convincing evidence that PBL could significantly improve knowledge base and clinical performance, to the extent justified by the resources that were required for the task of implementing PBL (Colliver, 2000). It has to be said, though, that many other studies contradict these findings.[9] Norman & Schmidt (2000) for instance observed that a number of studies reported positively on PBL learners' abilities to recall information, in part

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[6] The following analysis of PBL is derived from Maharg (2007), with permission.
[7] See for instance Cownie (2000).
[8] For a general introduction to PBL, see Schmidt (1983).
[9] See for example Vernon *et al* (1993) and Hmelo *et al* (1997).

because remembered information helps learners to construct explanations; in part because elaborations of remembered information enables the integration of new information; and also because the contextual learning activities of PBL enabled information to be recalled more easily at a later point. In a two-year comparison study of a traditional curriculum against a PBL curriculum, Eisenstadt found that PBL students tested lower on test scores at the end of the study than traditional students, but retained much more after re-testing a year later (Eisenstaedt, 1990).

13. If the studies are contradictory, what the great majority of them agree upon is that PBL is a sufficiently powerful heuristic to have changed the way that many medical teachers now organise their teaching of problem-identification and problem-solving. The studies carried out by Patel *et al* confirm this. In their comparison of an admittedly small sample, they discovered that PBL curriculum students tended to solve problems by reasoning from the data of the problem to explanations. This they termed 'backward reasoning', and contrasted it with the 'forward reasoning', of experts, which proceeded by comparing data against previous experience of data types, to achieve a congruence between the two. Backward reasoning, they held, generated multiple explanations, some of them erroneous, while forward reasoning gave rise to fewer clinical errors. Perhaps most controversially, they identified forward reasoning in the practice of students undertaking traditional curricula, and identified its source as domain knowledge, not problem-solving heuristics. In other words, according to their results, PBL appeared to be teaching students ineffective reasoning methods. In response to these research findings, some researchers have advocated better methods of presenting domain knowledge, in place of a move to full-scale PBL (Claessen & Boshuizen, 1985).

14. It seems to be a persuasive point. But whether or not backward reasoning – or 'hypothetico-deductive reasoning', to give it its proper title – is ineffective is debatable. Forward reasoning may be useful for the diagnosis of relatively straightforward clinical problems, but even experts use backward reasoning when presented with uncertain or ill-structured problems, or when they move from a domain they are confident in to one in which they have less domain knowledge (Bergus *et al,* 1995). Moreover, accurate diagnosis relies on what some researchers have identified as an accurate and well-remembered network or semantic structure that is a form of schema (Bordage & Lemieux, 1991).

15. What the literature proves is that the experimental cognitive psychology research on this point of problem-solving is contradictory. Why is it, then, one might ask, that PBL has become so popular in the health sciences, and not least with regulators? One answer is that it has many other benefits that traditional approaches to health education do not offer. For instance, students enjoy problem-identification and problem-solving, and engage more readily in active learning (Amos & White, 1998; Barr & Tagg, 1995; Duffy & Cunningham, 1996). They make greater use of background reading, have more positive attitudes to the instructional milieu, and they take greater personal responsibility for their work.[10]

16. But if we step back for a moment from the detail of the research itself, we can see what is happening as regards PBL interdisciplinary research strategies. Medical practitioners and medical educators have liaised with cognitive scientists, or learned about cognitive educational research themselves, in order to understand more

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[10] See, respectively, Blumberg & Michael (1992); de Vries *et al* (1989); Lieux (1996).

about the processes of learning involved.[11] Cognitive psychologists themselves report on these processes and results. What we have, then, is a community of disciplinary practitioners in medicine co-operating with another disciplinary community in cognitive science. As a result, the standards and approaches of one community – experimental cognitive psychology – is brought to bear upon medical education, which becomes subject to forms of discourse, measurement and judgement appropriate to this disciplinary community. In turn, the medical community evolved its own special forms of educational expertise – PBL itself, and statistical and psychometric approaches to assessment, such as standardisation of patients. It has to be said, of course, that the statistical bases of cognitive science and medical science mean that *au fond* there are many overlaps between the two disciplines.[12] As one study puts it:

> systematic reviews of controlled studies that focus on outcomes resonate with a community which has seen the success of randomised, controlled trials in biomedical science. The complexities of educational interventions may indicate that this is not the most appropriate tool for research in this area and may have contributed to the difficulties that the authors had in coming to a definitive answer (Farrow & Norman, 2003, p. 1132).

17. Recently, other discourses have entered the field, notably situated learning, constructivist learning and teamwork learning. Regarding the last, Bleakely has noted that despite the emphasis in health care upon interprofessional teamwork,

> [i]ndividualistic models of learning continue to be privileged within medical education … Where clinical skills are collaborative, such as resuscitation team activity, we need learning theories with explanatory and predictive power for such contexts. This is a health-care imperative, where the majority of medical errors are systems-based and quality of teamwork is linked with improving patient outcomes. (Bleakley, 2006, p. 152).

Bleakely compares research based on acquisition metaphors to research based on metaphors of participation where collective work is 'more than the sum of any recollections individual team members might bring to the work situation' (p.153); and he goes on to explore aspects of theories of identity-formation, narration, the rhetorical strategies of practitioners, models of ethical awareness, the role of activity theory, distributed cognition and dynamicist learning in complex adaptive systems.[13]

18. Tracking the research base in this very brief overview of some of the literature, we can see how important it is for regulators and accreditors to have access to a body of evidence that may persuade new medical schools to commit to the PBL approach who otherwise might be reluctant to enter the field. It is also evidence of effectiveness that works to give security to regulators and to the representative bodies of professionals, eg the British Medical Association. The literature also acts as a filter to new approaches. PBL, as Davis & Harden point out (1999) is not a strictly-defined heuristic: they define it variously as 'an approach to learning and to curriculum design with a number of specified features', 'a range of approaches – a genus with different species', and 'an umbrella term that involves any learning experiences in which problems are solved' (Davis & Harden, 1999, p. 131). The

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[11] See for instance the interesting early history of the Standardized Patient movement, as recounted by Wallace (1997). See also Schmidt (1993), p. 432.
[12] Including the use of meta-analyses of research – see for example Newman (2001).
[13] Bleakley is also interested in the aesthetic dimensions of looking and judging – see the project involving three medical practitioners and three visual artists into processes of clinical and aesthetic judgements in the visual domain, in Bleakley *et al* (2003).

categories are not closed, and new approaches to PBL are constantly developed. What is important for regulators in this ecology is that they are developed, and then implemented, researched and written up. It is also important that the literature is peer-reviewed, and is set within a searchable context, with tools such as critical reviews, meta-reviews and the like. These give some clarity to the research results being obtained, and enable regulators to ascertain the quality of different approaches, and then to set their own guidelines based upon evidence arising from the field.

Ethics and educational regulatory structures

Ethics and undergraduate study: The Australian Learning and Teaching Academic Standards project

19. In England and Wales there is a complex debate about the place of ethics in undergraduate studies. The arguments for and against mandatory ethics and professional responsibility teaching is set out in Economides & Rogers (2009). Their report advocates strongly for the inclusion of ethics at the undergraduate stage. Their first recommendation states:

> We recommend TLS take a lead and encourage the SRA to initiate a review to consider the pros and cons of revisiting the content of the Joint Announcement in order to see whether any consensus exists, or could be constructed, to make awareness of and commitment to legal values, and the moral context of law, mandatory in undergraduate law degrees, as originally proposed in the ACLEC Report (1996, p. 24).

They also recommended that:

> the professional bodies should together consider what support might be offered to law schools to assist them to comply with this flexible guidance, as currently is the case with library provision, and in reviewing the process of validating law degrees.

20. Since the publication of the Economides & Rogers report, Australia has taken interesting steps in this direction that could inform the development of ethics at undergraduate stages in England and Wales. The Learning and Teaching Academic Standards (LTAS) project in Law has developed a set of what it terms six Threshold Learning Outcomes (TLOs) for the LLB.[14] The drafting process, carried out in 2010, was an iterative consultation process involving 'judiciary, admitting authorities, legal profession, regulators, academics, students and recent graduates'. The TLOs were endorsed by the Council of Australian Law Deans (CALD) in November 2010; and this was achieved in no small measure thanks to the 'genuine collaboration between the academy and peak professional, accrediting and student organisations' (Kift, Israel & Field, 2011, p. 1).

21. The six TLOs are not equally weighted across the curriculum (p. 9), but they are regarded within the Australian Qualifications Framework as the 'minimum standards of performance, achievement or attainment at the bachelor qualification level' (p. 9). The authors imply that this is not an attempt to create a national curriculum:

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[14] Note that the TLOs do not address the JD, NSW's Legal Profession Admission Board's Diploma in Law, the honours component of the LLB, the practical legal training (PLT) requirements for admission to the Australian legal profession, and other levels of qualification such as Masters programmes. These will be the subject of separate standards statements (4).

they state that programme diversity is 'valued', and providers of bachelor degree programmes are expected to meet or exceed the standards.

22. TLO 2 is the statement on 'Ethics and professional responsibility':
     Graduates of the Bachelor of Laws will demonstrate:
     - an understanding of approaches to ethical decision-making,
     - an ability to recognise and reflect upon, and a developing ability to respond to, ethical issues likely to arise in professional contexts,
     - an ability to recognise and reflect upon the professional responsibilities of lawyers in promoting justice and in service to the community, and
     - a developing ability to exercise professional judgement. (Kift, Israel & Field, 2011, p. 14)

23. The Notes give background to the phraseology and conceptual freight of the Statement. For example the Notes make clear that the phrase 'approaches to ethical decision-making' is 'not intended to limit law schools and their curriculum to the theoretical bases of ethical decision-making' (15). What is interesting about the Statement is how closely it is sited to professional work. The authors cite Economides & Rogers on the need to extend development of ethical awareness from undergraduate through to professional education, and cite Parker & Evans, (2007) on the process by which ethical awareness of practice issues is part of ethical reasoning. Indeed it is possible to see that the movement from a. through to d. is actually a circle – or perhaps more accurately, a developmental spiral. Point a. is really, as Kift, Israel & Field put it, 'an early, emergent standard of ability' (p. 15) where the student develops ethical awareness in the communities of self, social circles, academic circles. This, it is postulated, is further developed as a deepening awareness of legal ethics as students move through the higher reaches of the bachelor degree and professional qualifications. The 'promotion of justice' and 'service to the community' (point c.) clearly go beyond point a. (and the authors recognise this, citing US authors and the MacCrate Report in particular). 'Justice', the authors observe in their notes, is to be interpreted widely to 'provide opportunities for diverse curricular responses by different law schools' (p. 16). Point d., which focuses on 'professional judgement', returns to the individual, but the individual within a new and more sophisticated professional context, within which judgement is developed so that it can be practised more particularly within a professional legal context.

Pro bono, ethics and legal education

24. No one disputes that ethical awareness is essential in professional education and training, both at primary stages such as the BPTC and LPC, and in CPD. How regulators might ensure that such education and training takes place and how, is a much more complex issue. At CPD stage it is fairly clear that mandatory ethics initiatives, to date, have had little effect. A good example of this in the USA was the proposal of an ABA Commission on Evaluation of Professional Standards that there be a mandatory 40 hours annually given over to pro bono activities (Armstrong, 1982). The proposed rule provided for annual reports by lawyers concerning mandatory pro bono efforts to 'appropriate regulatory authorities'. The proposal caused considerable concern at the draft discussion stage, and was dropped from the final report (Slonim, 1981a).[15] Discussing the whole process by which the ABA

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[15] The strength of feeling on both sides is striking. Arguments against included analogies with the McCarthy era proposal that teachers take oaths of loyalty, as well as the view that the Commission was destroying '"a form of

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had developed its Model Rules for Professional Conduct, Schneyer argued against earlier critical theories about the provenance and significance of professional ethics codes, and for a view of the Model Rules as an instance of *de facto* law-making by a private group. He constructed what he termed 'professionalism-in-fact' – a matrix of common themes by which lawyers thought about the field of legal ethics – and sited this in the diversity and pluralism of lawyers' practices, arguing that the roots of lawyers' ethical preoccupations could be found in the circumstances of their particular practices.

25. The development of pro bono as an institutionalised practice is examined extensively in the US literature. Cummings (2004), for example, has analysed the move in the US from *ad hoc* and individualised pro bono to a centralise and streamlined system that is distributed institutionally (eg through local Bars, federal legal services and the non-profit sector as well as large law firms) by lawyers acting primarily out of a sense of professional duty. He reveals the consequences of the delivery of legal services in this structure, contrasting the benefits of leveraged law firm resources against what is often a set of circumstances where limitations on pro bono activity is imposed by the dependence on lawyers whose dominant professional and commercial concern is the interest of their commercial clients. The advantages are well recognised – 'decentralised structure, collaborative relationships, pragmatic alliances' – but Cummings also points to the 'systemic challenges' that pro bono poses – the refusal of pro bono to 'take on corporate practice and its dilettantish approach to advancing the interests of marginalised groups' and its tendency to privilege 'professional interests over concerns of social justice – promoting the image of equal access without the reality' (2004, pp. 148-9).

26. Rhode (1999) takes a more proactive approach to the issue of regulation, arguing that few lawyers in the US 'come close to the American Bar Association's Model Rules' on the subject (p. 2415) in spite of public need; and noting that 'many of the nation's landmark public-interest cases have grown out of lawyers' voluntary contributions' (pp. 2415-6). She also makes the case for creating a culture where pro bono is more accepted as part of the cultural *habitus* of lawyers' working environment, and argues for much more pro bono at law schools, noting that while there are obvious educational benefits to pro bono service, particularly in the development of legal skills and client-centred values, 'positive experience with pro bono work as a student will at least increase the likelihood of similar work later in life (p. 2435 – she notes that the evidence for this is 'thin but consistent' -- p. 2434). She notes, too, that pro bono activities can provide valuable contacts for students, and for all participating students, such activities

> break down the rigid distinctions that prevail in many law schools between students who are preparing for public-interest careers and those who are not. These "on-the-boat or off-the-boat" dichotomies send the wrong message about integrating private practice and public service. (p. 2435)

27. The activities of UK law schools, summarised in the database at the Student Pro Bono website (www.studentprobono.net), while LawWorks, the Law Society's initiative (www.lawworks.org.uk) maps out the law firm and law school context as

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recreation [pro bono] by changing its moral character" from something donated to something required'. Arguments for included appeals to professionalism, one Panel member declaring: "I cannot agree that reporting is demeaning". The obligation of a professional, he said, is different from that of a citizen. If lawyers overlook that, '"we step back to being a trade. If we do that, we might as well let the legislature regulate us"' (Slonim, 1981b, 652).

well as providing useful resources. The state of US law schools is summarised at the Pro Bono Institute (www.probonoinst.org/). The statistics show how numbers of participating law schools have increased on both sides of the Atlantic since Deborah Rhode's article in 1999. More of course could be done; and regulators have a part to play. Mandatory pro bono regulation is probably countercultural to pro bono's activities and values in terms of student initiative and altruistic commitment (Granfield 2007), but regulators could be more involved in the creation of a hub for the dissemination of information, commission research, eg met-reviews, collate research results, disseminate briefing papers and act as an intermediary between policy, the profession and educators. They also have a part to play in encouraging co-operative regional efforts and institutions to ensure that every law student has a place on a pro bono programme. They could also provide guidelines for integrating pro bono work into the mainstream of law school educational activities, at both undergraduate and postgraduate stages. As Rhode points out, support for the pro bono enterprise is critical to ethical lawyering: it is 'a central challenge of modern legal education' (p. 2446) and should have a higher curricular priority. It is unlikely to be a shaping force for good in the law school unless it is supported by regulation and by links with and to the profession and its own pro bono activities.

Legal education, regulation and democracy

28. In a number of jurisdictions and professions the relationship of regulation, education and democracy has come under scrutiny. The reasons for this are many, and include the realisation that professionalism as a construct requires re-definition. In this section we shall analyse briefly the approach of one jurisdiction, Scotland, to the problem of professionalism across the whole range of primary legal education, from undergraduate to qualification.

29. We can approach this by noting an early survey of Scots professional legal education. Wilson and Marsh's *Second Survey* gives interesting data on the introduction of the Diploma in Legal Practice (DLP) in Scotland. (Wilson & Marsh 1981). The DLP was introduced in October 1980. Then, around 70% of all law graduates sought entry to the profession – approximately 45 students from each of the five law schools in the first year of operation. According to Wilson & Marsh, citing the Law Society of Scotland,

> [t]he objective of the Diploma course is to provide in an institutional setting, simulated experience of the everyday legal transactions which a young solicitor can expect to encounter in his first few years of practice. Thus, students will be engaged in taking instructions, preparing and drafting documents, preparing court pleadings, and generally becoming familiar with the styles and materials which they will require in practice' (Wilson & Marsh 1981, p. 42).

30. Under the direction of the Central Liaison Committee, which consisted of representatives from the five university law schools and the two professional bodies, syllabi were drawn up and teaching resources were prepared. While no guidelines as to pedagogic approaches or methods were mentioned, Wilson & Marsh point out that on the subject of assessment, the Society 'envisaged that more emphasis will be attached to continuous assessment throughout the course than to formal examinations at the end' (p. 43).

31. Interestingly, Wilson & Marsh point out that the DLP was 'an attempt to provide the "organised vocational training in an institutional setting" advocated by the Ormrod Report' (p. 43). Its ambitions are clear, and it is certainly the case that the Ormrod Report influenced the designers of the programme; however there is no indication in the literature produced by the designers or in Wilson & Marsh's text of the tensions inherent in the Ormrod description. As a final point, it might be useful to note that in Scotland the regulations regarding the traineeship period of 24 months that proceeded the DLP were much laxer than those set out later by the Law Society of England and Wales. Traineeships, for example, could be either general or specific, since the point of the DLP was to give general training – for example restricted practising certificates were available to those trainees in their second year who wished to practise, under certain conditions, in the courts.

32. The DLP predated the LPC in its design; but from early on there were problems in the curricular design that were mitigated but not resolved by amendments to it throughout the eighties and nineties. These included:
    1. No meta-planning for curriculum review over a span of time. All was left in the hands of a Committee that became increasingly drawn into the annual administration of the DLP.
    2. No provision for ongoing review projects to identify the fit of the programme with the changing nature of legal services and professional work patterns.
    3. No provision for ongoing quality checks, or to check the matter of curriculum drift, over a span of time, from Law Society objectives.
    4. No requirement that any members of the DLP Committee should have educational training or background, though almost all were academics or drawn from the profession.
    5. The Ormrod description was followed without analysing the duality of the description: vocational training within academic institutions. At a time when it was recognised that law schools throughout the UK were moving away from vocational training, the tension between these poles would grow stronger.
    6. Institutions would interpret vocational training to suit their own image of the profession, and their own timetables and practices.
    7. The body of practitioner-tutors required initial and ongoing training
    8. The designers and materials authors appointed by the Law Society required training.
    9. The DLP was a watershed programme, in that both branches of the profession were required to take it. However there was no programme of training for those who wished to go to the Bar (later remedied by the Faculty of Advocates).[16]
    10. There was no stated ground to the standards of professionalism that students were expected to attain in the DLP (Maharg, 2004).

33. Focusing on point 10, it was clear that there was little agreed understanding of the ground of values and standards for professional education. Following a key conference on the Diploma in 2004 it was agreed that part of the work of the Diploma Working Group was to form those values and standards (Appendix 1). Simultaneously a Law Society Committee was working towards a statement of

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[16] See http://www.advocates.org.uk/training/index.html

standards for the legal profession in Scotland, and the work of the Diploma Working Group tracked the standards as defined by that Committee.

34. An example of regulator awareness of the meta-issues of professionalism, and used in the development of values, is the MacCrate Report, published by the ABA, which gives not just a substantial set of outcomes but a statement of the values that gives moral definition to the skills.[17] At the heart of the 414-page Task Force report is the Statement of Fundamental Lawyering Skills and Professional Values. The report groups essential skills under the following headings: problem solving, legal analysis and reasoning, legal research, factual investigation, communication, counselling, negotiation, litigation and alternative dispute resolution procedures, organisation and management of legal work, and recognising and resolving ethical dilemmas. Fundamental values are grouped under the headings: provision of competent representation, striving to promote justice, fairness, and morality, striving to improve the profession, and professional self-development.

35. In more detail, here is the statement of values:

Value 1:
As a member of a profession dedicated to the service of clients, a lawyer should be committed to the values of:
- attaining a level of competence in one's own field of practice
- maintaining a level of competence in one's own field of practice
- representing clients in a competent manner.

Value 2:
As a member of a profession that bears special responsibilities for the quality of justice, a lawyer should be committed to the values of:
- promoting justice, fairness, and morality in one's own daily practice
- contributing to the profession's fulfilment of its responsibility to ensure that adequate legal services are provided to those who cannot afford to pay for them
- contributing to the profession's fulfilment of its responsibility to enhance the capacity of law and legal institutions to do justice.

Value 3:
As a member of a self-governing profession, a lawyer should be committed to the values of:
- participating in activities designed to improve the profession;
- assisting in the training and preparation of new lawyers;
- striving to rid the profession of bias based on race, religion, ethnic origin, gender, sexual orientation, or disability, and to rectify the effects of these biases.
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Value 4:
As a member of a learned profession, a lawyer should be committed to the values of:
- seeking out and taking advantage of opportunities to increase his or her knowledge and improve his or her skills;
- selecting and maintaining employment that will allow the lawyer to develop as a professional and to pursue his or her professional and personal goals.

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[17] MacCrate, R. (1992), Legal Education and Professional Development -- An Educational Continuum. Report of The Task Force on Law Schools and the Profession: Narrowing the Gap, American Bar Association, Section of Legal Education and Admissions to the Bar. Excerpts are available on the web at: http://www.abanet.org/legaled/publications/onlinepubs/maccrate.html

36. It is significant that this statement of values goes beyond the specifics of professional conduct codes and guidelines. In effect, it is a statement of moral values relevant to the profession within the wider context of society, and profoundly democratic. It recognizes that whatever values are espoused by the profession, it is essential that the relationship between statement of skills and statement of values is explicitly drawn, for all stakeholders in the educational process. The MacCrate Report makes this relationship quite clear:

> As Value §1 explains, the specific skills examined in Skill §§ 1-10, together with the more general skill of self-appraisal (which is discussed in the text and Commentary of Skill §1) are essential means by which a lawyer fulfils his or her responsibilities to a client and simultaneously realises the ideal of competent representation. The process of preparing to represent clients competently is a matter both of accepting certain professional values and of acquiring the skills necessary to promote these values.[18]

37. The approach of the MacCrate Report was influential to the development of an approach to professional practice in Scotland. As we point out above, the early iterations of the DLP in Scotland had little stated concept of professionalism underpinning it. This was addressed in the latest iteration of the DLP by the regulator, the Law Society of Scotland, now called the PEAT 1 – Professional Education and Training, Stage 1. PEAT 1 was significantly different from the DLP not just in its core/elective structure, its detailed outcome statements and its guiding documentation on curriculum design for providers. The Society recognised the bridging nature of the programme by consulting not just on PEAT 1 proposals but also on the undergraduate LLB programme (termed the 'Foundation') and on traineeship (re-named PEAT 2) and CPD. For the first time in the history of the Society, legal education was thus envisaged as a holistic process. In this it went beyond the remit of the Training Framework Review. Indeed for the first time there was a requirement on Scottish law schools to embed ethics within their undergraduate curricula. Implicit in this first step to give ethical learning a much higher profile in the LLB was an acknowledgement that the curriculum was less of a uni-directional entity; and much more spiral in its structure and effects, and the spiral curriculum became a key element in the design of the new programme (Harden & Stamper, 1999).

38. But if PEAT 1 were really to be a 'bridge' course, then the foundations of that bridge to professionalism were the core outcomes described in Professionalism and Professional Communications. The outcomes were designed to declare to students and others that ethics and professionalism conjoined were regarded as critical to professional practice by the Society, and that effective communication was a critical part of the ethical dimension of professionalism. Other professions recognise this – see for example the work of Hickson and others in medical education and ethics.[19] In that discipline there has been a renewed focus on the concept of medical professionalism. Reports have been published by the Royal College of Physicians and Surgeons of Canada, the American Medical Association and the Royal College of

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[18] Part II, Chapter five, A. at
http://www.abanet.org/legaled/publications/onlinepubs/maccrate.html#Fundamental%20Values%20of%20the%20Profession

[19] See Hickson *et al*. (1992). The medical educational literature on the subject is considerable. See also Frank *et al* (2000), who point out, 'patients who feel ignored, deserted, or who suspect that there is a `cover up' by the medical profession, may be more inclined to sue. Failure to understand the patient and family's perspective and devaluing their point of view have also been identified as common triggers for lawsuits.'

Physicians of London that seek to map out the constituent elements of the concept. While there is difference, there is also a convergence upon certain qualities and values among them. In the UK, medical professionalism is defined in a General Medical Council publication called *Good Medical Practice* that includes a general definition, entitled *The Duties of a Doctor*. What is interesting about such documents is that they are used quite closely to map the lineaments of the outcomes of any educational programme for professionalism in medicine. This was precisely the approach of the Law Society of Scotland, who regarded it as part of their strategy that professionalism was a key educational quality – and again, there is good evidence that other professions have the same perspective.[20]

39. The Working Party drew up a core of professional values, therefore, which became the core of the professional programme. Visualised as series of concentric circles, around this core was the next ring of professional behaviour, namely communications, comprising professional relationships, interviewing, negotiation, writing and drafting, transactional research, use of technology and advocacy. The third ring comprised what is normally understood as ethical conduct rules: regulatory framework and professional standards, duties to Court and to Profession, the client-solicitor relationship, conflict of interest and confidentiality.

40. At the core of the statement of professionalism, in the centre of the circles, was the first statement: 'Throughout the programme a student should demonstrate a commitment to the interests of justice and democracy in society'. Positive indicators for this included: '[d]isplays an interest in the workings of justice in society; has an ethical awareness of legal practice, and a developing sense of the regulatory framework of professional ethics. Shows awareness of his or her responsibility to improve the capacity of legal institutions and process'.

41. The first clause in these positive indications goes beyond the social contractual nature of professionalism as it is normally understood, to something approaching a moral understanding of the role of justice in society. It thus goes beyond the network of values normally associated with lawyering, and which find their statements in lists of value in nearly all common law jurisdictions – the MacCrate values listed above are good examples. Part of the problem of many such statements may be that they are too close to professional work to encompass all stakeholders. Being statements of technical professionalism they could be regarded as statements made deliberately with an eye to the wider public, in that they improve the status and value of the profession and those serving in it, but do little for wider society (in the Scottish example, arguable ring 2, and certainly ring 3). The problem with opening up to wider society, however is what Webb & Nicolson (2005, 170) noted as the problem of commensurability.

42. The first value statement in the Scottish list is an attempt to find a common ground to what is otherwise incommensurable in the values of democratic commitment (Maharg 2013). Just what that commitment might entail on the PEAT 1 programme is set out in the positive indicators; and could be detailed for various future educational stages. It is not defined: the debate is left for the profession to engage in, and in the open porous nature of the statement lies both its strength and its

[20] See for instance in medical education, Brownell & Côté (2001), Bronwell (2001), Ginsburg & Stern (2004), Ginsburg *et al* (2000), Papadakis, Loeser & Healy (2004, Papadakis *et al* (2004). See also Breger, Calabrese, & Hughes (2004).

weakness. In that debate, however, is the attempt to escape a self-referential professionalism, the values of which are 'mostly unremarkable and unobjectionable, not least because they coincide with the commitments and objectives of lawyers' traditional professionalization project' (Webb & Nicolson, 2005, p. 168). Instead, a commitment to democracy reaches out to the fundamental values of our society and one that, in its recognition of the tension in those values, rejects 'the possibility of the conventional monistic approach capturing the complexity of ethical life' (Webb & Nicolson, 2005, p. 169).

43. The Law Society of Scotland's new programme began in 2011, and it will require some time before it can be claimed that the new approach to professionalism is making a difference to the quality of education and the quality of ethical professionalism in trainees and newly-qualified lawyers. In truth, much remains to be done to change the context of legal practice in this regard. The Society's initiative however gives an alternative and sophisticated approach to the complex problems of grounding ethics and practice in educational curricula, and the redefinition of professionalism in that regard.

Technology and legal education

44. That technology has a profound effect upon society cannot be doubted (Nardi, 1996, Slevin, 2000). That it is socially constituted, and mediated by culturally embedded practices is also widely accepted (Suchmann, 1987; Castells, 2000); and this is as true of legal education as it is of legal professional or indeed any other professional practice. At a time when the general trend with regard to educational technology is to converge discussion of technology as much as possible with its constituent sector (pedagogy, administration, technical infrastructure, etc) it may seem odd to extract and discuss it in this literature review in a chapter section separate from other educational issues. However technology presents regulation with unique opportunities and problems that require separate analysis.

45. The use of technology in one form or another has generally been recognised as significant by various regulatory reports. The SPTL Working Party on Law Publishing (1977), for instance, advocated the use of 'computer setting' for 'speedy updating' of textbooks and reference books (paras 71-73, p. 33). Pre-internet, it advocated micro-publishing (ie microfilm or microfiche). More interesting (and more relevant to contemporary legal education) the Working Party advocated 'on-demand publishing', which it describes as follows:
    > 'it is possible to install a machine on the lines of a superior photocopier which makes a complete copy of a book or manuscript, collates and binds it. An experiment in the "publication" of low-demand works by this method is to be carried out by the British Library Lending Division. (para 68, p. 33)
    There is no further reference of this BL pilot, but the idea is obviously still relevant – even more so in the internet age of digital texts, where it has been revived as print on-demand (POD), or podbook publishing (Haugland, 2006).

46. More interesting than the identification of possible technologies is the ways in which teaching habits and conventions might be changed. Two paragraphs illustrate this in the SPTL report. 'Personal source books' (para 61, pp. 30-31) refers not as we might expect in our age of personalisation to student materials, but to lecturers' materials, ie to the practice of lecturers personalising their materials for their courses. The

Working Party advocate against this on two grounds: first that too much of a lecturer's time would be taken up by the endeavour, and second 'the student's reading [would be] too fully structured by his teacher (but is it any less so by the standard text-book?)'. The question in parenthesis is a valid one (not least in an age of personalised textbooks or podbooks); but it is interesting that the idea that personalisation may apply more aptly to students than to staff does not arise in the report.

47. Second, the Working Party advocate 'greater inter-institutional co-operation and initiative' (paras 6467, pp.31-35), and explore the issues in some detail. The case is unarguable; the detail of co-operation one of the key difficulties. The Working Party recommended the approach to the SPTL Publishing Committee. The Working Party does however go further than advocating local co-operation: '[t]he real need for individual and co-operative production of materials within the academic world is for a good information system' (para 67, p. 32). The Working Party advocates for the creation and maintenance of a bibliographical service for legal education which it proposed that SPTL and ALT might join in producing. (This was not accepted, apparently, by the SPTL Committee – para 67, p. 32).

48. Even at this early, pre-internet stage of technology use we can see a number of themes arising. One is the way that curriculum structure encourages or constrains innovation. In the examples above, interesting proposals arise from members of the Working Party; but these ground-up proposals require consents from a parent body (acting as a form of regulator in this instance) to be taken forward. Note that actual regulators take no part in this transaction.

49. The second theme is the integration of technology and information. In these proposals we can see changes being proposed that would create a networked information environment. These changes are deep, structural and, since the steeply falling price of computation, communications and storage as well as the exponential increase in the access speeds of all three, have wrought massive changes in our society (Benkler, 2006). These changes go to the core of a number of regulatory issues, not least because they are rarely foreseeable. Two examples: the choice of digital hardware that we use grows more various over time, not less; and the wireless environments that we now almost take for granted were scarcely imaginable 15 years ago – only recently was it announced that London is currently setting up the largest free wi-fi zone in Europe http://www.bbc.co.uk/news/technology-16440911. We shall examine the issues for regulators, especially with regard to the attempts by the ABA to regulate use of technology in accredited JD programmes of study.

50. A definitive history of technology and legal education in England and Wales has yet to be written, but the work of Paliwala is the closest we have to that goal. In a series of articles he outlined many of the key influences and drivers for change (2002; 2004; 2007). He points to the effect of the European Union's e-Government and e-Communication initiatives on legal education, and the need therefore for interactive group e-learning that transcends the traditional institutional and national boundaries of legal education (Paliwala, 2005). He analyzed the impact of globalization on legal education and the associated processes of IT convergence (of learning technologies and theories) and divergence (law schools themselves have diversified nationally and globally – Paliwala, 2004). He drew attention to the

growing commodification of legal education and the role that technological learning spaces played in bringing this about, together with the decline of domestic institutions, and differentiation of institutions and regions (Paliwala, 2002). He also drew attention to the shifts from standalone to networked pedagogies (Paliwala 2007). The history of the IOLIS project is a good example that stands for many other smaller initiatives in this regard. Funded initially by the Funding Council's Teaching and Learning Technologies Project grant in the early 1990s, it provided an innovative, well-used and sophisticated resource for undergraduate student learning. A theme throughout Paliwala's work with IOLIS and with other applications is the call for a renewed attention to educational theory at all levels of technology. Others such as Maharg (2007) have made the same appeal. He argues that as a discipline we need to develop technologies that are specifically developed for the requirements of our discipline, our curricula and our profession, where we give learners much more control over the learning environment, and where technology is used to enhance educational approaches such as transactional learning (Maharg 2007).

51. The scope of technological use in law schools and other institutions cannot be summarized in this literature review – it is too extensive. Goldmann (2008) provides a useful summary of the literature. Technology is fundamental to the operation of universities and educational institutions. It is used as part of the administrative infrastructure, as well as for finance and other applications. As such, institutional systems rapidly become institutional silos, and often the advent of new technologies, for example cloud computing, is difficult to implement because old technologies thwart newer technologies. Conventionally physical campuses find it difficult to move to cloud computing or cloud apps such as Google Apps, because their culture and practices are based upon the institution having a physical being in a particular place. Such issues should be at the centre of regulators' concerns with regard to accreditation and monitoring of quality. At the very least they should be aware of the powerful indirect effect that institutional systems have upon the systemic context of learning.

52. The same is true of technical services delivered for the purposes of teaching and learning; and it is here that regulatory issues begin to arise directly. University learning systems, for example Virtual Learning Environments (VLEs) such as Moodle or Blackboard, are designed more for internal than for external collaboration; and as such, the local area networks do not integrate well with services that could be delivered over the public internet. Public access may thus be denied. In some respects (eg student and staff privacy) this is a good thing; but in other respects it is not – it can constrain the ability of academics to open up programmes to a wider range of stakeholders – the general public, for example. It often encourages staff to use digital technologies as if they were analogue platforms – as Jos Boys points out, technology is thus used to mimic traditional forms of university administration, teaching, learning and assessment (Boys, 2002).[21] It can also constrain the production, sharing and re-use of Open Education Resources (OER), and the

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[21] What have always been regarded as separate systems of learning services – registry services, archival services, library functions, learning interfaces – still largely remain so in the VLE, and the key opportunity for change, organizationally and technically, is lost. Indeed, Boys argues that 'the portal approach is taking hold precisely *because it enables institutions to avoid difficult questions about how they organize themselves*' (their italics: Boys, 2002, quoted in Maharg & Muntjewerff, 2002, 310–11).

development of Open Education Practices (OEP).[22] Using both approaches, and engaging in educational design processes such as 'participatory design', organizations can cut the costs generating structure and content in educational resources, and can improve the quality of the resource much more quickly than they might otherwise be able to do. Both these initiatives are therefore important for regulators to recognize, support and facilitate.

53. A number of institutions and organizations set out the future of technology in learning and teaching as they see it. One of the most reliable is Educause, whose Horizon Report 2013 describes the following six areas of emerging technology that will have significant impact on higher education over the next one to five years. Starting at a baseline of 2013 the areas are as follows:

Time to adoption: One Year or Less
- Massively Open Online Courses
- Tablet computing

Time to adoption: Two to Three Years
- Games and gamification
- Learning analytics

Time to adoption: Four to Five Years
- 3D printing
- Wearable technology
  (Johnson *et al,* 2013)

54. It could be argued that the use of many of these technologies should be encouraged by regulators. Granted that they are statements of technology uptake in the future, it is nevertheless remarkable that, to date, very few of them are used in law schools.[23] The gathering importance of learning analytics in particular cannot be underestimated. As the Report describes it,

> Whereas analysts in business use consumer-related data to target potential customers and thus personalize advertising, learning analytics leverages student-related data to build better pedagogies, target at-risk student populations, and to assess whether programs designed to improve retention have been effective and should be sustained — important outcomes for administrators, policy makers, and legislators. (Johnson *et al,* 2013, p.24)

While it has been used to date on campuses for admissions and other marketing-related initiatives, the approach has the capacity to personalise learning for students and enable much more specific feedback upon performance.

55. Technologies, though, need to be fused with curriculum design if they are to be used successfully in a programme of study. There are many examples of failure, where technology is viewed as a form of cargo cult object – a magical object that will of itself transform learning, without the need to alter teaching, assessment, presence, and much else in the programme. One example where a professional curriculum was radically altered to enhance learning with technology was the transactional learning initiative at the Glasgow Graduate School of Law, Strathclyde Law School. There, technology in the form of web-based simulation environments, enabled

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[22] For examples see http://www.oercommons.org/ and http://www.heacademy.ac.uk/oer. JISC has an extensive programme to develop OER – see http://www.jisc.ac.uk/whatwedo/programmes/ukoer3.aspx. For examples of legal educational OER, see http://simplecommunity.org (open-source software and associated documentation) and http://www.simshare.org.uk (multidisciplinary simulation resources).

[23] The exception is the work of the academics and technologists around the SIMPLE (http://simplecommunity.org) simulation application, and Simshare, the OER website that hosts simulations, both conventional paper-based simulations and virtual sims.

students on the Diploma in Legal Practice (the Scottish equivalent of the LPC) to play the role of trainees and newly-qualified lawyers, while staff (who were tutor practitioners from local firms of solicitors) role-played supervisors, and trained mentors played the parts of virtual characters in a virtual town on the web (Barton, McKellar and Maharg, 2007; Maharg, 2007; Gould *et al,* 2008; de Freitas and Maharg, 2011).

56. For regulators, concerned with quality in online education, a key question is: can the web encourage deep learning amongst students? One early piece of research, in the discipline of History, answers this concern. It is a substantial and long-term analysis of the use of the web made by students in a history course entitled 'Western Civilization: A Course Portfolio'. The study was part of the American Historical Association Teaching Portfolio Project, funded in part by the Carnegie Foundation. Professor Kelly taught two sections of the course in each semester. The students in one section acquired all their materials from online sources while students in the other section received them in printed form only. Kelly designed the online course so that he could make as much use as possible of the communicational potential of the web; he tracked student performance throughout the project, and performed careful pre- and post-test analyses on assessment pieces submitted by students.[24]

57. The results were surprising. First, it was clear that students who used the online resources displayed a higher level of recursive reading. They used historical sources that were posted on the class site much than students did who were using printed versions. The main reason for this was the ease with which students could access the resources – 'just a click away', as one of them reported. However they engaged in this recursion only when it was clear to them that their assignment grade would improve if they did so. Good syllabus assessment design, in other words, was essential as a complement to ease of resource access. This was true of wider access to the web. Students performed little in the way of web searching, in part because they did not perceive that it was necessary for the assessment task. When they did so, it was because the concept of affordance affected them – ie they needed information that was lacking from the class site, or came to a point in the resources where there was a vagueness that left them wanting to know more. As Kelly points out, the web thus encouraged independent learning, but perhaps not as much as he would have liked. His conclusion for history teachers was that the web course signalled the end of what he called the 'coverage model introductory history survey course', ie 'from Plato to NATO in just 28 weeks'… Instead, the web seemed to encourage careful consideration of topics and deep understanding of historical issues and episodes. As a result, he argued, historians needed to re-think the design of such courses, and needed to consider teaching web literacy, including examination of web sites as proper sites of historical documentation.

58. But there may be other forces at work here, too. The effect of what Barthes (1970) called the 'referential illusion' of textbooks, ie the illusion that ideas can be narrated in only one polished stream of discourse, was mitigated in the set of resources with which Kelly presented his students. Both printed and online resources consisted of primary sources as well as a textbook. There was of course a difference for the online section between the online sources and the textbook that significantly set

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[24] See American Historical Association at http://www.theaha.org/teaching/aahe/aahecover.html and in particular T. Mills Kelly, Western Civilization: A Course Portfolio at http://www.theaha.org/teaching/aahe/Kelly/Pew/Portfolio/welcome.htm

aside their work online from the text. For the printed text readers, however, there was no such divide. In other words the form of the resources affected the ways in which Kelly's students used the resources. The digital revolution, avalanching all around us, and radically transforming the form of resources, should give legal regulators good enough reason to raise fundamental questions about use of the internet for teaching and learning (Maharg 2007).

59. If the results of Kelly's research seem clear, and relevant to other textual disciplines such as Law, other studies, particularly meta-reviews, are more complex in their conclusions. For instance, a meta-analysis of student use of multimedia by Liao (1998), based on 35 studies, concluded that multimedia-based instruction was superior to more traditional forms of instruction.[25] However a meta-analysis by Dillon and Gabbard in the same year concluded that there was little evidence that multimedia could improve user comprehension. A year later a further and more detailed meta-analysis by Liao (1999), this time of 46 studies, confirmed his earlier conclusion but cautioned that the form of multimedia and the form of traditional instruction being compared is critical to any evaluation of learning gain.

60. Part of the problem is methodological. The multimedia applications being compared were different in content, aims and method, and probably in quality as well. The instructional strategies they were compared with were different, too. But part of the problem is also conceptual: such conflicting findings take us back to the classic debates and complex issues surrounding the influence that media has on learning and knowledge structure within a discipline – a debate that goes right back to the thirteenth century (Maharg, 2007). One way out of this endlessly unfolding debate is to step aside in a distinctively pragmatic way, and consider how, for any particular situation of teacher and learner, given a certain forms of assessment and many other local variables, the quality of learning is improved with technology. How, in other words, can regulators ensure that extensive multimedia and internetworked applications will enhance the quality of student learning? The issue is a microcosm of the larger dilemma faced by regulators: how can they be sure that a wholly online programme, for example, is not simply a cheap, poor-quality version of a face-to-face, campus-based programme?

61. It is useful for regulators in answering this question to bear in mind Christensen's concepts of sustaining and disruptive technology. Within the context of corporate production, he identified two sorts of technological change. The first *sustained* the industry leaders' rates of improvement in product performance, while the second *disrupted* or redefined performance trajectories, and according to Christensen, 'consistently resulted in the failure of the industry's leading firms'.[26] To apply this analogy to education, we can point to improvements in face-to-face lecturing as sustaining the relatively settled body of conventions within a law school that constitute lecture-programmes. Contrast this with digital and multimedia learning environments, which often disrupt such settled patterns for students and staff. We would argue that such intrusion is often typical of the movement from one technology of learning to another, and if it contributes to the quality of learning and teaching, then it is justified. If law schools and other institutions are to act responsibly, they need to consider and respond to many of the pressures they operate under today - pressure of student debt, student numbers, fewer resources,

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[25] In Liao's study, however, it should be noted that 10 of the studies showed the opposite.
[26] See http://www.businessweek.com/chapter/christensen.htm

a complex curriculum, regulatory pressures and much else. Under such conditions the learning of knowledge, skills, values and attitudes is quite a different process and experience than it was for the generality of students at the time of the Ormrod Report. Technology, and specifically internetworked technologies enable local and targeted responses to such pressures. Indeed it might be said that if legal education developers and curriculum designers do not consider the use of technology in their work, then in the words of Christensen, they will be 'held captive' by students and staff to traditional patterns of working and studying – patterns that, under the pressures mentioned above are already crumbling.

Regulation issues

62. What are the key issues for regulators in all of this? We can appreciate them if we track the debate currently ongoing in the ABA Standards Regulation Committee on provisions for the regulation of distance learning. It is likely that the Standard that deals with Distance Learning (now proposed Standard 311, current Standard 306) will be considered and discussed by the SRC in April 2012 and voted on during the July 2012 meeting. The issues go to the heart of the future of technology in legal education.

63. Standard 306 restricted US law schools that wished to offer online subjects in the JD because it permitted only 12 credits' worth of classes in total, restricted these 12 credits to four credits per session maximum and barred any online credits to be offered in the first year of the JD. The restrictions, quite apart from seriously curtailing curriculum design, were drafted in order to prevent online law schools from winning ABA accreditation. As it stood, Standard 306 was actually an improvement on the previous regime, which allowed no distance education credits to be part of a law degree. However the restriction has been heavily criticized in the literature (Rakes, 2007; Bynum, 1998).[27] The pattern is one where the regulator, for any number of reasons, is conservative in its regulation of curriculum structure and content.[28]

64. By 2006, when Standard 306 was formed, there were already online law schools in the US (Concord School of Law graduated its first students in 2002 – Salzer, 2004, 102). For a decade, the Standard prevented dynamic change in law school development. As Martin (2006, 514) pointed out:

> the longer it is that accreditation standards are used to protect conventional classroom-based instruction from online competitors, the less likely it will be that schools practicing only traditional modes of education will be able to respond to the challenge of online instruction when that barrier is finally lowered.

For Martin, and for many other commentators, Standard 306 acted against the direction of increasing networked connectivity. It did not ensure quality in face-to-

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[27] Rakes (2007, 2) put it well:
> While distance education can be analogized to classroom time, it would seem that a better approach is to think about what we want the education to accomplish – knowledge of subjects needed to be a lawyer, inculcation of skills and values necessary to be a good lawyer, and some experiential component – then set out how any program proves that it does so. The proof may be through bar results, employer surveys, student surveys, observations by site visitors, and review of curriculum.

[28] Technology is not the only curriculum area where this occurs. As Morton (1993) points out with regard to regulations on field placements, the then current regulations 'place unnecessary restrictions on their programs, show insensitivity toward program goals of self-learning, and are an ill-disguised attempt to fit field placement programs into the more traditional models of in-house and simulation clinics' (Morton, 1993, 20).

face classes any more than it did in online or distance learning classes, nor did it encourage innovation. On the contrary it acted as a stop against innovation, not just within modules, but strategic innovation across the curriculum, urged by the Carnegie review on US legal education (Sullivan *et al* 2007).

65. Standard 306 is currently in the process of being redrafted as Standard 311, but while the number of credits is increased, little else has altered. Part of the problem is the definition of distance learning by the ABA:

Standard 311. DISTANCE LEARNING

a. Distance education is an educational process in which more than one-third of the instruction of the course is characterised by: (1) the separation in time or place, or both, between instructor and student; and (2) the use of technology to deliver instruction.

Distance learning is defined as delivery – the underlying metaphor is that of learning not as experience but as something transmitted wirelessly, as if the educative intent and the educational experience have themselves become technologized. The definition is defined arithmetically in later subsections, but it breaks down when one examines what exactly it means for students. Is a videoconference distance-learning in the same way that study packs of printed materials delivered across the internet are often considered so? It also does not account of technology's protean, ever-changing nature. Online maps and GIS, for instance, may not seem to be technologies amenable to legal learning, but this is changing (Pacheco & Velez, 2009; Barton, Garvey & Maharg, 2012). Moreover, learning, as opposed to teaching, can take place anywhere, and does not necessarily take place in face-to-face sessions with teachers. The description of technology as used to 'deliver instruction' is curiously beside the point. Technology is paradoxical: at once endlessly new, and actually nothing new in itself: books are technology, as are yellow pads, quill pens, gel ballpoints, iPads, clay tablets, webpages, TV, vellum pages, telex, voicemail, codices, GIS – all of which could, conceivably, be used to 'deliver' legal instruction with better or worse results for student learning.

66. Currently there are proposals that arose out of the series of FutureEd conferences held at New York Law School and Harvard Law School, to develop a new Model Law School Distance Learning Policy; but it could be argued that what is require is a substantial change of strategy by the regulator, based upon a reading of the literature (which, incidentally, was summarised by an extensive critical review – Torres & Sterling, 1999).

67. Other regulators have taken different approaches. In April 2010 the General Medical Council assumed statutory responsibility for all stages of medical education and now oversees every stage of doctors' training and professional development. Part of its educational remit is to ensure that the standards it sets provide a framework for excellence. It is currently undertaking a consultation to do so. *Tomorrow's Doctors* (2009) currently sets out the standards for use of technology. There, discussion of technology is not an issue separated out from other educational issues but an integral part of them, eg para 100: 'Medical schools should take advantage of new technologies, including simulation, to deliver teaching'.[29] This overview statement is of course evidenced by many ancillary reports, including

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[29] Standards and processes for postgraduate medical education are similarly set out in the document entitled *The Trainee Doctor*, and again, the use of technology is seen simply as one educational approach amongst others (http://www.gmc-uk.org/Trainee_Doctor.pdf_39274940.pdf).

meta-reviews, updates of research, research reports on innovations, all of which are commissioned or written by medical educationalists. There is, in other words, a constant and rich exchange between regulator and those working in the field, and the sophisticated infrastructure – comprising, eg, the National Institute for Health and Clinical Excellence, the Royal Colleges, Scottish Deans' Medical Education Group, Medical Schools Council and many more – is itself a mode of regulation for the quality of research and implementation.[30]

Change processes in legal education

68. Change processes are affected by many factors, cultural, regulatory, professional work routines, concepts of professionalism and knowledge, and economic. For instance the decline in funding and the rise in fees (not only in England and Wales but in all jurisdictions) and the practical limit of many personal and household incomes to cope with this has driven much change in recently in Higher Education. On the staff and institutional side, culture and funding are intimately related. One of the key features is the relative importance of the balance of research-allocated funding to an institution, over against the teaching-allocated funding. The source of funding, together with perceived benefits of following that funding (whether in terms of increased student numbers on programmes, or research positioning and status) shapes the financial and knowledge strategy of HE institutions. It is one of the key influences upon institutional ability of universities generally and law schools in particular to engage in change processes. Others include leaders' positions in institutional hierarchy (vice-dean, dean, etc), regulatory accreditation ratings, and league table rankings in research and teaching and learning, as they are represented in the media commentary. These factors affect not just aspirational motivations but conforming motivations as well.

69. On the student side there is pressure to reduce the amount of unpaid time spent in the qualification process. In the US for example students bear a heavy burden of debt from the years of undergraduate college studies, followed by three years of a JD in law school, and further time spent in preparation for a state Bar Examination. A number of universities are seeking innovative ways to reduce the amount of time spent in the qualification process. One option is to embed an exemption to the Bar Exam within the JD. This has been implemented by the University of New Hampshire Law School, whose Daniel Webster Honors Scholars Program has been mandated by the Supreme Court of New Hampshire to be a exemption programme for the state Bar Exam. The programme runs as an elective stream within years two and three of the JD and was designed 'to offer program participants practice courses that would be small, emphasise the MacCrate skills and values, and be taught in the context of real life' (Garvey & Zinkin, 2009, 117). The capstone programme was formed, initially as a project that grew out of the MacCrate Report publication when representatives from the high courts of Maine, New Hampshire and Vermont met with the deans of local law schools, together with the Bar presidents in the three

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[30] *Tomorrow's Doctors* currently has four supplementary advice documents, containing advice for medical schools on a range of issues (http://www.gmc-uk.org/education/undergraduate/8837.asp). They contain snapshot examples of local practice from UK medical schools. The areas are:
- Clinical placements for medical students
- Assessment in undergraduate medical education
- Patient and public involvement in undergraduate medical education
- Developing teachers and trainers in undergraduate medical education

states. A Task Force was convened consisting of law school deans, members of the judiciary, bar presidents and community leaders. The broader initiative ran into budgetary and other difficulties, but out of this grew the New Hampshire programme, which initially was designed as a three-year pilot for the aims of the larger initiative and which, after two years of consultation and preparation, was implemented (Dalianis & Sparrow, 2005).

70. The literature on change in Higher Education points to a number of key issues that regulators will face in implementing change such as the New Hampshire programme, some of them summarised below.

Bi-lingualism

71. Research into attempts to change cultures and attitudes in schools discovered that an unexpected by-product of the change initiative was a bi-lingualism, in which multiple sets of cultures and attitudes compete with each other, and are drawn upon where the context seems appropriate (Gewirtz *et al*, 1995)

72. A good example of this is the result of change to the qualification process undertaken in Germany. Legal education is regulated by each of the sixteen states that enacts its own legislation (*Justizausbildungsgesetz*), as well as by a federal statute, the *Richtergesetz* or statute of judges (Wolff 2008). Prior to recent reform, academic education was almost wholly lecture-based (involving as many as 1200 students at a time) with a high staff-student ratio (Leith (1995) cited 34 permanent full-time teaching staff to a student body of around 5,000 in the University of Munich Law Faculty), the curriculum was rigid with little elective choice, and the student body heterogeneous, in that first-year students could study subjects alongside third-year students. Evaluation was by written and oral exams, but in addition the assessment system was based on a *Staatsexamen*, an examination set by regional Ministries of Justice, which had a high failure rate (almost 50% - Schafer 2001, 308). With little support for student learning, the system encouraged students to adopt their own systems, but also encouraged the growth of 'commercial "repetitors", or cramming schools' (Schafer 2001, 309) that provided rich resources and seminars, at extra cost to students. The rigidity of the formal educational system thus encouraged a sub-culture to flourish in the eco-system.

73. This was reformed a decade ago. In 2002 reforms were implemented that emphasised legal skills (by adding to the four-year academic stage a two-year *Referendarzeit* or apprenticeship), and enabled a more flexible curriculum by making elective components more important (Korioth 2008). Some small-group discussion has been introduced, but the system is still dominated by what is now a two-stage *staatsexamen* the form of which encourages cramming and rote memorisation because of the breadth of the subjects (effectively all German law) open to assessment in the examinations. Currently in Germany therefore there is what might be called an uneasy dual system of *staatsexamen* and modified LLB, where much of the theoretical knowledge is still understood and memorised at the academic stage, and where practical skills are separated from this body of knowledge not just by the two-stage process, but by the nature of the double *staatsexamen*. As a result, and as Korioth points out, the reforms have had little effect:

> legal education has remained unamended, despite social and economic changes. It is likely, however, that the process of European integration and globalisation will initiate a radical change in the near future. (Korioth 2008, 86)

74. The 'bi-lingualism' of the German system is indicative of a system that has only partially adopted change because the reforms themselves did not reach to the core of the issues that required reform. The Bologna process, as Korioth acknowledges (2008, 107) will force change, though he was sceptical if it would change for the better:

> Especially on the European level, there is no profound concept of reforming legal education, only the well-known and extra-legal demands that it should be faster and less expensive. This could end with a specialized legal craftsmanship, neglecting all the questions that have to be answered before designing legal education. (2008, 107)

Bi-lingualism, therefore, is a complex state, to some extent unavoidable in the process of change, but which in the medium- to long-term slows down change and can render it ineffective, unless regulators take steps to enable culture to change as well as regulation.

75. One way of changing legal culture is to transplant educational ideas and forms from other professions and jurisdictions. The reform of legal education in Japan is an example of this. Japanese legal education had changed little since the substantial reforms after WWII. Law degrees were largely knowledge-based courses taken by students who entered a wide variety of professions and occupations (Maxeiner & Yamamaka 2004). Entry to the profession was governed by examination, but the numbers were severely limited (in 2002, 'only 1183 out of a total of 41,459 applicants were admitted to [the final stage of] training' – Maxeiner & Yamanaka 2004, 308-09), which led to the growth of preparatory schools. In addition, much training was focused on the learning of abstract bodies of knowledge, and lecture-modes of teaching – The national Legal Training and Research Institute, an agency of the Supreme Court, is responsible for legal education. In its Reform Report (Shihōseido kaikaku shingikai, 2001) it reduced the time taken from five or more years to a three-year degree structure (two years, if students already have a degree). Over 60 new law schools were created, and the Report anticipated that around 70% of applicants to the Institute would be admitted. In practice the number was around 25%, and decreased thereafter (Maxeiner & Yamanaka 2004, 312).[31] In addition, the model for the new law schools, that of the American law schools did not, according to Saito (2007, 202-04) address the problems of Japanese legal education – for instance, there was a universally-recognised need for practical training in the Japanese system; but the US system has been criticised for the lack of such training, apart from clinical education initiatives, which do not play a key role in the JD core curriculum. Such initiatives would, in any case, need to be adapted to suit Japanese educational stages, institutions, aims and culture.

Change by facilitation and innovation

76. It has been pointed out, and by academics themselves, that the university, while the loci of much social change in the last millennium, is a highly traditional organisation (Clark, 1983), and one that, in the pre-1992 sector at least, resists managerialist strategies that seeks to impose change. Change needs managing, but it has been

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[31] Saito (2007, 197-8) confirms this, citing a lower figure for 2005 than 2004, and observing that this will lead to the closure of some of the new law schools. He points out: 'The real victims, however, are not the law schools but their students.'

argued that top-down change imposed by management or indeed by regulation alone is problematic and not necessarily successful (Trow 1993). Some key reports, however (the Dearing Report (National Committee of Inquiry into Higher Education, 1997), for instance), took a managerialist view of university structures, assuming large-scale compliance, national frameworks for academic degrees and standards and the closer grading of student achievement and staff research outputs (Trow 1997, 26, cited Deem 2004).

77. One direction of change literature emphasises the need to take into account identity and its horizons – the bounded space in which agents work and have their being (Taylor, 1989, 28). These spaces are fluid, and are derived from personal and institutional histories, values, practices and objects; and identity is often distributed in this environment. Thus HE academics, and indeed anyone working in education, will bring their understandings of their horizon, personal, disciplinary and institutional, and will adopt and adapt schemas or scripts by which they enact those understandings. Geertz (1983) saw disciplines as ways of thinking and living in the world; and these and similar ideas were taken forward by Becher (1987; 1989) whose work revealed the important links between the epistemological structures of disciplines and the social dimensions of academic tribes or disciplines. Clark, by contrast, emphasised the tension between discipline and institution; and it is only another step to see a triangle of tensions, similar to Clark's own classic triangle of co-ordinating influences, with the third corner belonging to the regulator. Other studies point out that the key element is how 'a culture shapes an institution's change processes or strategies' (Kezar & Eckel, 2002, 438; Petersen & Spencer, 1991); and if change is to be brought about successfully it is probably the case that a regulator would need to engage with institutions on this level.[32]

78. Elton (2003) points to how this may be resolved. He describes, for instance, how dissemination of innovation can best be done, in three stages:
    a. From the innovator to the converted or readily convertible, usually best through a workshop;
    b. From the converted, back at base, to the convertible ones in the same discipline in the home institution, as well as in other institutions;
    c. From the converted discipline to other disciplines within each of the institutions. (2003, 4)

    Elton acknowledge that processes such as this require to take place within a further process where there are least five stages, reaching from initial awareness of the existence of proposed changes to final adoption. Elton cites examples of successful change from other disciplines, eg in nursing (Francke, Garssen & Saad, 1995). In more detail he shows how project work was adopted by the disciplines of physical sciences because it was, conceptually and practically, close to the practical research base of the discipline, and therefore tracked the professional patterns of research work carried out by physicists in industry and academia.

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[32] Other international research results from the educational literature pointed in similar directions. Resnick & Nolan (1995) described the New Standards Project, in which educational standards in countries other than the US are described using an ethnographic approach to data collection (eg curricula, texts, examinations, tasks students undertake and professional views). Louis & Versloot (1996), commenting on their work, argue for a more detailed understanding, taking the example of mathematics curricula and assessment in the Netherlands, and pointing out that there, much is due to the balance between legal autonomy that schools have, and the national consensus around high standards for student learning.

79. Another success Elton quotes is the adoption of problem-based learning (PBL) by medical educationalists, observing that the widespread adoption of the heuristic was due to specific conditions in disciplines. He points out, as do a number of other commentators, that the extensive literature on PBL demonstrates how it was not, as in the example from physics, the research pattern that brought about acceptance of the new heuristic, but 'the practice of the most prestigious members of the profession' (Elton 2003). This is undoubtedly true but there are other reasons why this change process succeeded so well. PBL has many other benefits that traditional approaches to health education did not offer. For instance, students enjoy problem-identification and problem-solving, and engage more readily in active learning (Amos & White, 1998; Barr & Tagg, 1995; Duffy & Cunningham, 1996). They make greater use of background reading, have more positive attitudes to the instructional milieu, and they take greater personal responsibility for their work.[33]

80. But if we step back for a moment from the detail of the student engagement we can see what is happening in the change process as regards PBL interdisciplinary research strategies. Medical practitioners and medical educators have liaised with cognitive scientists, or learned about cognitive educational research themselves, in order to understand more about the processes of learning involved.[34] Cognitive psychologists themselves report on these processes and results. What we have, then, is a community of disciplinary practitioners in medicine co-operating with another disciplinary community in cognitive science. As a result, the standards and approaches of one community – experimental cognitive psychology – is brought to bear upon medical education, which becomes subject to forms of discourse, measurement and judgement appropriate to this disciplinary community. In turn, the medical community evolved its own special forms of educational expertise – PBL itself, and statistical and psychometric approaches to assessment, such as standardisation of patients. It has to be said, of course, that the statistical bases of cognitive science and medical science mean that *au fond* there are many overlaps between the two disciplines (Maharg 2007).[35]

81. Elton questioned whether initiatives such as PBL can be transplanted into other disciplines, noting that it will be 'very different' once there (2003, 5). That it need not be substantially different is proved by the curriculum at York Law School (Fitzpatrick & Hunter 2011), the development of which involved designers from the York-Hull Medical Education Unit, and which is a model of good interdisciplinary design work in that respect.

Themes arising from debates

Development of ethics programmes

82. What the literature on the two examples above on mandatory ethics and the development of Threshold Learning Outcomes (TLOs) in Australia point to is the necessity for ongoing and genuine collaboration. Out of that collaboration the authors of the Statement envisage that the Standards 'would be fleshed out over time through the development and inclusion of a Commentary' (11). In the

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[33] See, respectively, Blumberg & Michael (1992); de Vries *et al* (1989); Lieux (1996).
[34] See for instance the interesting early history of the Standardized Patient movement, as recounted by Wallace (1997). See also Schmidt (1993), p. 432.
[35] Including the use of meta-analyses of research – see for example Newman (2001).

Statement itself the Notes on the TLOs provide 'non-prescriptive guidance on how to interpret the TLOs' (11), and it is clear that they regard these helpful notes as the seed of further Commentary. The authors do, however, make the valuable point that continuing development should be the responsibility of the academic community – 'it is not the role of the LTAS project to tell law schools how they should go about the learning, teaching or assessment of their students' (11).

83. The same might be said for development of standards in England and Wales – indeed it is a striking element of the Australian approach that the method of constructing the Standards embodies many of the ethical practices that are in the Standards.

Professionalism and programme design

84. The debates on professionalism outlined above go to heart of regulatory activity; and in many respects shape the legal curriculum and are shaped by them (one reason why the Law Society of Scotland provided commentary on curricular method, while leaving curricular design open to diversity of approaches from educational providers). In Scotland the primary professional educational programme is not divided as it is in England and Wales into LPC and BPTC. If they wish to practise at the Bar, entrants are require to undergo specialist education and training within the Faculty of Advocates as part of their training as 'devils'. The educational process has been designed as part of what the devils do as their everyday activities at the Bar. It benefits from close proximity to the courts, both inferior and superior, in Edinburgh – professional and workplace culture is a powerful transmitter of values and attitudes. This means that the Diploma in Legal Practice, now PEAT 1, is a watershed programme through which virtually all graduates pass. It contains within it basic knowledge and skills for both solicitor and advocate branches of the profession, and therefore the concept of professionalism that is part of the programme is taught to and learned by all students and trainees entering the same legal profession in the same programme, though practising in different domains of law. This is one structural strategy by which the law profession in Scotland hopes to counter the regulatory problems of atomisation and fragmentation that all legal professions face. The other, discussed above, is the embedding of a sense of professionalism with the fundamental values of democratic responsibility. The spiral curriculum that is embedded in the Australian TLOs on ethics and professional responsibility is there, too, in the example of the Scottish professionalism curriculum.

Technology, legal learning and regulation

85. Contrary to what some early web enthusiasts asserted, the internet is not an inherently democratic network. In fact there is a body of literature that shows that the web and its applications are not in themselves more democratic than other institutions and networks (eg Hawisher & Selfe, 2000; Zembylas, Vrasidas & McIsaac, 2002). The web is a remarkable communications network, one among many. It has profound implications for our lives, and therefore regulators, as well as educational providers, need to think closely about how it is used, and how we allow it to be used by others.

86. One theme discussed above has been the ways in which the technologies used by lawyers can be used by law students to enhance their learning. Another is to harness the use of technology as consumer and leisure practices – in casual reading,

games, virtual environments, etc. For example – consumer attitudes to e-reading are changing. According to the Book Industry Study Group the number of e-books sold last year grew by 43%, accounting for around 20% of all book sales reported by publishers.[36] In addition, web technologies are gradually becoming more focused on educational structure and content, and providing radical solutions – see the new revamped iTunes U, from where, rather than presenting brochure sites for universities, staff can produce their own textbooks, and students can produce textbooks too, with iBooks Author -- http://www.apple.com/apps/itunes-u/. A lot remains to be done to make this venture and similar actually useful within an educational environment (there are serious issues to do with open educational resources that are not restricted to proprietary hardware and software systems, such as Apple's; and many more interactive tools need to be embedded within text to enable deep learning to take place, as opposed to browsing).

87. But if, as in the example of Apple's technology, we can easily be constrained to the private agendas of corporate capitalism, technology can also liberate. The Swedish Free School Organisation, Vittra, http://vittra.se/, has built a unique pedagogical space that takes up many of the innovations of progressive schools in the 1960s in England. Classrooms have been abolished, and in their place are themed learning environments, neither work nor place spaces, where digital media is the key pedagogical tool. Much more requires to be done in the way of meta-reviews of research if we are to understand the full implications of what works and under what conditions for law students at every level in legal education (Song and Herman, 2010).

88. And if, as we say, the international and multi-professional literature point to how important it is to engage with the research evidence, how that evidence is used, and how technology mediates that evidence, is just as important. The literature points to the necessity to engage teachers in the development of their own expertise with regard to both research and practice. In US high schools, for example, the development of the Common Core State Standards was followed in some states by the development of lessons taught by expert teachers, and shown *via* online videos. Anderson & Herr (2011) argued that that the use of such externally developed, research-based, and standards-aligned videos violated the principles of authentic inquiry that underlie professional learning communities. They also cautioned that a profit-seeking education industry was increasingly behind the promotion of such evidence-based products. Their work has implications for the ways that regulators may want to think about how technology and educational standards may be best integrated so that both educational diversity and educational quality is enhanced.

Change and regulatory focus

89. What is interesting about the change process that brought about the Daniel Webster capstone programme at the University of New Hampshire law school is the context and the focus. Arising initially from the impetus of a new legal educational report, the more ambitious project involving three states failed. The much smaller and agile project within a single state and law school succeeded. It could be argued that it was relatively easy for the project to succeed in New Hampshire that has, to date, only one law school and a homogeneous legal culture in what is one of the smallest

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[36] See http://www.bisg.org/news-2-841-e-book-sales-are-up-43-but-thats-still-a-slowdown.php. Reported 16 May 2013.

states in the US. Nevertheless the significant change would not have come about had there not been regulatory personnel and law school staff who were willing to rethink regulatory processes and the content of legal education, and undertake to commit to a relatively small-scale pilot in order to bring about improvement. The scale of the project also allowed for fairly detailed planning and liaison between Bar regulators and law school that took account of assessment culture, risk, learning and teaching, economic considerations and many other aspects of the needs of both sides. This contrasts strongly with the implementation of change by Japanese regulators, where the culture of the US law school model actually created more difficulties in the teaching of the civil law structure of Japanese law, and the 'unique nature' of Japanese legal practice (Saito, 2007, 206).

90. The same point arises with regard to instances of innovation and change. In each country where PBL was adopted by medical schools, for example, regulators were involved not only in the regulation of the changed curriculum processes, but often in learning about and developing good practice with medical schools, as well as ensuring good practice was sustained and disseminated.

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Appendix: PEAT 1 Professionalism Outcomes (Law Society of Scotland)

The full set of learning outcomes for PEAT 1 is available at
http://www.lawscot.org.uk/media/39767/peat_1_guidelines_-_final.pdf.

Major domain	1. Professionalism		
Minor domain	**Throughout the programme a student should demonstrate a commitment to:**	**Positive indicators**	**Appropriate forms of assessment**
1.	The interests of justice and democracy in society	Displays an interest in the workings of justice in society; has an ethical awareness of legal practice, and a developing sense of the regulatory framework of professional ethics. Shows awareness of his or her responsibility to improve the capacity of legal institutions and process.	Best assessed longitudinally throughout the programme, by more than one assessor, and in more than one assessment, so that a variety of views are obtained under different conditions. Providers should be under an obligation to inform the Society of students who obtain problematic scores in any of the minor domains.
2.	Effective and competent legal services on behalf of a client	Updates and expands knowledge of the law, knowledge of legal practice, client-centred practice and management of client service. Pays careful attention to standard of detail in legal work; evaluates own client care; appraises new forms of client care and adopts improvements; acts quickly to protect clients and the public from risk.	Forms of assessment could include: 1. Client-based long case 2. Case file review of simulated client file 3. Portfolio – self-assessment 4. Log book/activity log/confidential file 5. Critical incident review 6. Peer-review 7. Transactional assessment 8. Tutor reports
3.	Continuing professional education and personal development	Is aware of own strengths and weaknesses and forms plans to develop character, values, knowledge and skills throughout the course.	
4.	Diversity and public service	Shows an awareness of the importance of equality of access to and participation in legal services regardless of culture, race, religion, gender, disability; assists in the training of new lawyers through peer learning and training of undergraduate students or other groups in society.	
5.	Personal integrity and civility towards colleagues, clients and the courts	Is honest with all others on the course; relates to colleagues on the programme with civility; treats tutors, administrative staff and others with respect.	