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# The Legal Education and Training Review: Regulating Socio-Legal and Liberal Legal Education?

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Dr Jessica Guth and Professor Chris Ashford

*The Legal Education and Training Review which reported in June 2013 conceded that undergraduate law degrees are generally outside the remit of the review other than when there is a direct impact on the provision of legal services. On first glance therefore the review has few implications for those of us interested in delivering a liberal legal education and developing socio-legal approaches to law and legal study. However, on closer reading, the report contains a number of suggestions which, if taken up by regulators, have significant potential to change law degrees, even if regulation remains 'light touch'. This article explores those issues with a particular focus on the implications for liberal law degrees and socio-legal approaches to law teaching. In particular the paper will explore issues around possible changes to foundation subjects, the creation of a framework of learning outcomes; the possible strengthening of legal writing and research in the curriculum and the opportunities offered for the introduction of more socio-legal material; and the trickle-down effect likely to be felt by providers of undergraduate law degrees of changes in regulation of legal services and as a result of student, employer and other stakeholder expectations.*

## Introduction

The Legal Education and Training Review (LETR) report published in June 2013<sup>1</sup> does not, at first glance, contain much with obvious implications for undergraduate (UG) law provisions. This is not surprising, the review's focus was on the education and training of those providing legal services and as such most UG law provision was outside LETR's remit.<sup>2</sup> However, it would perhaps be a mistake to assume that changes in regulation of legal services or changes to the education and training of personnel working in legal service provision will not have a knock on effect. Closer reading of the report suggests that if regulators take up recommendations made, the impact on UG law degrees could be significant even if regulation in the end remains 'light touch'. This article focuses on the impact of the LETR report on the provision of a liberal legal education and on the inclusion in the law curriculum of socio-legal studies.

## Defining A Liberal Legal Education and Socio-Legal Studies

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<sup>1</sup> "Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales" (2013) <http://letr.org.uk/wp-content/uploads/LETR-Report.pdf> (last accessed 2 December 2013).

<sup>2</sup> This is commensurate with the approach taken by the Solicitors Regulation Authority (SRA) following the review, and stated in their response, "Training for Tomorrow" (2013), <http://www.sra.org.uk/sra/policy/training-for-tomorrow/resources/policy-statement.page> (last accessed 2 December 2013). Whilst the regulator may have a view about the best approach to legal education, the ways in which legal education might be delivered and so on, they are not – in the regulators emerging view – matters that they should necessarily focus upon. Instead, Roadshow events in late 2013 accompanying the "Training for Tomorrow" consultation suggest a combination of a 'light touch' to regulation with a greater freedom for market forces in legal education.

Bradney<sup>3</sup> has noted that there is no one definition of liberal legal education<sup>4</sup> and that interpretations vary between academics<sup>5</sup>; the same is true for socio-legal studies<sup>6</sup>. In order to set our argument in context it is therefore useful to briefly explain our interpretation of both concepts. A liberal legal education is one which does not focus on education for a particular purpose other than education itself. It is not aimed at preparing students for a particular job or profession<sup>7</sup> and is not concerned with notions such as employability<sup>8</sup>. It is however concerned with pursuing knowledge for knowledge's sake and developing skills of knowledge acquisition through research, critical thought and debate. It is also a buzzword and one that is perhaps not that well understood. In 2003 Bradney argued that it is often used simply to mean 'not vocational'<sup>9</sup> and there is little evidence to suggest that things have changed. In fact the debates surrounding the LETR suggest that arguments around the purpose of law degrees have crystallised into a liberal versus vocational dichotomy. However, we would like to return to a more nuanced understanding of liberal legal education. One which does not oppose the teaching or exploration of practice relevant subjects or the learning of professional knowledge and skills; but one where these are acquired, if indeed they are, because they facilitate or come with the wider learning that constitutes a liberal education.<sup>10</sup> A liberal education is more specifically understood to be education for education's sake, equipping students for life and helping them to 'call their minds their own'.<sup>11</sup> Ilgunas in his novel 'Walden on Wheels' eloquently captures why a liberal education is important:

*'Reading 16<sup>th</sup> Century French poetry, suffering through Kant, and studying the finer points of the Jay Treaty may seem to be, on first appearance, completely, utterly, irrefutably pointless, yet somehow in studying, discussing, and writing about these "pointless" subjects, the liberal arts have the capacity to turn on a certain part of the brain that would otherwise remain*

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<sup>3</sup> A. Bradney, "Conversation, Choices and Chances: The Liberal Law School on the Twenty-First Century" (Oxford: Hart Publishing, 2003)

<sup>4</sup> See, also: S.J.Clark, "Law School as Liberal Education" (2013) 63 *Journal of Legal Education* 235; C.Epstein, "Knowledge for What?" (1999) 49 *Journal of Legal Education* 41; R.Collier, "The Liberal Law School, the Restructured University and the Paradox of Socio-Legal Studies (2005) 68 *Modern Law Review* 475; and A.Sarat (ed.), *Law in the Liberal Arts* (New York, Cornell University Press, 2005).

<sup>5</sup> This creates a landscape which must constantly be (re)discovered and (re)negotiated by law teachers, particularly those new to the profession. See for example: J.Guth, "My 'Conversations, Choices and Chances': becoming a Law Lecturer in the 21<sup>st</sup> Century" (2008) 6 *Journal of Commonwealth Law and Legal Education*, 41.

<sup>6</sup> See, A.Bottomley, "Lessons From the Classroom: Some Aspects of the "Socio" in "Legal" Education", in P.A.Thomas (ed.), *Socio-Legal Studies* (Aldershot, Dartmouth Publishing, 1997); R.Cotterrell, *Subverting Orthodoxy, Making Law Central: A View of Sociolegal Studies*" (2002) 29 *Journal of Law and Society* 632; ESRC, *Review of Socio-Legal Studies: Final Report* (Swindon, ESRC, 1994); D.Galligan, "Socio-Legal Studies in Context: The Oxford Centre past and Present, Introduction" (1995) 22 *Journal of Law and Society* 1; P.Hillyard, "Invoking Indignation: Reflections on Future Directions of Socio-Legal Studies" (1997) 29 *Journal of Law and Society* 645; and P.Hillyard, "Law's Empire: Socio-Legal Empirical Research in the Twenty-First Century" (2007) 34 *Journal of Law and Society* 266.

<sup>7</sup> This sits in stark contrast to some of the alternative routes into the profession which have been considered over the past decade, such as apprenticeships. See: C.Ashford, "Legal Education and the Academic-Commercial Nexus" (2004) 38 *The Law Teacher: The International Journal of Legal Education* 80.

<sup>8</sup> Contrast with the specific legal services focused approach to employability described by Strevens et al. See: C.Strevens, C.Welch and R.Welch, "On-line Legal Services and the Changing Legal Market: Preparing Law Undergraduates for the Future" (2011) 45 *The Law Teacher: The International Journal of Legal Education* 328.

<sup>9</sup> Bradney, *supra* n. 3

<sup>10</sup> *ibid*

<sup>11</sup> M. Nussbaum, "Cultivating Humanity: A Classical Defence of Reform in Liberal Education" (Cambridge: Harvard University Press, 1997) 293.

*shut off – the part of our brain that makes us ask ourselves questions like: Who am I? What’s worth fighting for? Who’s lying to us? What’s my purpose? What’s the point of it all? Perhaps many students would rather not be irritated with these questions, yet being compelled to grapple with them, it seems, can make us far less likely to be among those who’ll conform, remain complacent, or seek jobs with morally ambiguous employers.<sup>12</sup>*

While Ilgunas is talking about liberal arts degrees generally, the same argument can be applied to liberal law degrees: They are important because they encourage and enable us to ask searching questions about life in general and because they are about thinking about ‘stuff’ rather than knowing ‘stuff’.

Socio-Legal Studies focus on the study of law in a wider context and go beyond doctrinal studies of legal principles. Socio-legal studies are concerned with how law works, how it impacts on people and how it plays out beyond the legal text itself. The Nuffield Enquiry highlighted why a socio-legal approach to legal education is important: *‘Lacking a broad perspective on legal enquiry and constrained by a lack of skills and familiarity with empirical research, when law graduates who do consider an academic career choose postgraduate courses and topics for doctoral research, they naturally gravitate towards doctrinal topics and issues in law’.*<sup>13</sup> Socio-legal studies can provide students with opportunities to acquire skills doctrinal legal studies do not offer. While, as the Nuffield Inquiry suggests, this is important for the future of the legal academy and our understanding of how law works in the real world, it is also of wider significance. Socio-legal studies provide new perspectives on law, they complement and add value to more doctrinal considerations of legal issues and importantly provide opportunities for liberal legal education by encouraging deeper and more critical thought.

Having considered our vision for legal education above, we now need to consider which areas of the LETR potentially impact on the regulation of UG law degrees. We do this next, before considering the LETR recommendations most relevant in the contest of liberal law degrees and socio-legal studies in further detail in the following section.

### **The Legal Education and Training Review and Undergraduate Degrees**

The LETR which reported in June 2013 conceded that undergraduate law degrees are generally outside the remit of the review other than when there is a direct impact on the provision of legal services. On first glance therefore the review has few implications for those of us interested in delivering a liberal legal education and developing socio-legal approaches to law and legal study. However, on closer reading, the report contains a number of suggestions which, if taken up by regulators have significant potential to change law degrees, even if regulation remains limited.

The first and perhaps most obvious one is the recommendation that the Foundations of Legal Knowledge be reviewed.<sup>14</sup> The report stops short of recommending what the Foundations should be

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<sup>12</sup>K. Ilgunas, *Walden on Wheels: On the Open Road from Debt to Freedom*. (Amazon Publishing, 2013). At p 243

<sup>13</sup> H.Genn, M. Partington, and S.Wheeler, *Law in the Real World: Improving our Understanding of How Law Works* (London, Nuffield Foundation, 2006) [http://www.ucl.ac.uk/laws/socio-legal/empirical/docs/inquiry\\_report.pdf](http://www.ucl.ac.uk/laws/socio-legal/empirical/docs/inquiry_report.pdf) (last accessed 2 December 2013).

<sup>14</sup> LETR report Recommendation 10

and accepts that there seems to be little appetite for change but does suggest a review is necessary in order to ensure that the Foundations remain relevant.

Recommendations 3 -5 are also likely to have implications for the UG degrees are structured, taught and assessed. They deal with the idea of learning outcomes for different types of roles in the provision of legal services and the creation of a common framework of learning outcomes. Recommendation 3 notes that these learning outcomes should *'be cascaded downwards, as appropriate, to outcomes for different initial stages or levels of LSET'*.<sup>15</sup>

Recommendations 6 and 7 suggest a greater need for the inclusion of ethics at all levels of LSET and indeed the inclusion of ethics as a possible new foundation subject has been hotly debated. How proposals develop in this area might determine whether or not ethics does in fact become a separate module or topic to be studied, whether it will be mainstreamed throughout QLDs or whether nothing much changes.

Finally, recommendations apparently respond to the criticism levelled at recent law graduates by their employers that their writing and research skills are not up to scratch and need significant improvement.<sup>16</sup> An increased focus on these skills in the regulation of education and training and indeed as one of the possible 'day one' learning outcomes mentioned above is likely to have a knock on effect on UG degrees.

There are other recommendations which might have some impact on the way law is taught and studied at UG level and from our perspective it is particularly interesting to note that even though the review was titled Legal Education and Training, the majority of it is concerned training and relatively little thought has been given to the impacts on education. The focus of the report has been on the needs of the profession for obvious reasons but it has taken this focus at the expense of fully understanding what a legal education could and, we would argue, should be.

### **The Foundations of Legal Knowledge**

There has been significant debate over the foundations of legal knowledge and what should be core subjects for QLDs<sup>17</sup> and in some ways there is more than one debate going on here. One is what the foundational, or critical subjects are for legal practice in whatever capacity and the other is what the subjects which are core to the academic discipline of law are. These two may not be the same even where there is some overlap. Questions are therefore raised about what subjects should be taught as part of a UG law curriculum and which of those should be compulsory for either QLD purposes or because they are considered core to the academic discipline of law. The latter is a question for liberal law degrees, the former is not.

In 1995, the late Peter Birks asked 'will the seven foundations ever crumble?' and bemoaned the growing prescription being imposed upon legal education by the regulators. Since that time, there

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<sup>15</sup> LETR report Recommendation 3

<sup>16</sup> See LETR report Recommendation 11 in particular

<sup>17</sup> See for example P. Birks, "Compulsory Subjects: Will the Seven Foundations ever Crumble?" (1995) 1 *Web Journal of Current Legal Issues*. D. Edmonds, "The Lord Upjohn Lecture 2010: Training the Lawyers of the Future – a Regulator's View" (2011) 45(1) *The Law Teacher: The International Journal of Legal Education*. R. Huxley-Binns, "What is the "Q" for?" (2011) 45 (3) *The Law Teacher: The International Journal of Legal Education*

has been a reduction in the regulation of the QLD. The subjects are set out, but not their specific content<sup>18</sup>. The LETR potentially ushers in a further reduction if not an abolition of the ‘foundations’. Moreover, the report itself does not suggest which subjects should continue to be foundations subjects, which should be scrapped and which should be added and it does point out that there seemed to be little appetite for change in this regard. It does however suggest that the *balance between Foundations of Legal Knowledge in the Qualifying Law Degree and Graduate Diploma in Law should be reviewed*.<sup>19</sup>

The current Joint Statement<sup>20</sup> has arguably been seen as an excuse to limit the experience of law students to a doctrinal approach to legal education<sup>21</sup>. This analysis of the foundations also serves to suggest the persistence of a belief that some subjects are doctrinal or black-letter, whilst other subjects can be seen as socio-legal. This would contradict the previous finding of Cownie who has suggested that ‘we are all socio-legal now’ as academia cuts its closest ties with the profession and the discipline of law has left behind its pure doctrinal analysis of law.<sup>22</sup> This analysis suggests that the way we look at all subjects has evolved, with a socio-legal approach being taken to a range of subjects.

However, this apparent dominance by socio-legal studies does not appear *prima facie* to resonate with the professions. The LETR report makes the confusing mistake of categorising ‘socio-legal studies’ as a subject along with legal areas such as Land Law, Human Rights or European Union Law. Simply consulting the table set out in the LETR report<sup>23</sup> indicating the knowledge that the profession believe to be important, would suggest that socio-legal studies has no place at all within a new world of legal education for legal services as most branches of the profession ranked it as the least important area of knowledge out of sixteen possible ‘subjects’. As should be clear from our understanding of socio-legal studies outlined above, we do not accept that socio-legal studies is a subject in itself but would instead submit that all of the areas listed in the LETR report table could, and indeed often are, subject to socio-legal inquiry, research, teaching and learning<sup>24</sup>. Moreover, legal and professional ethics – which scored top – arguably necessitates a socio-legal analysis.

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<sup>18</sup> There has however been considerable mythology around this area, with many lecturers believing that the content of QLD modules are prescribed in the same way as the CPE/GDL. This prompted Joint Academic Stage Board Chair, Steven Vaughan, to write to all law schools in October 2012 clarifying the position. In November 2013, the abolition of JASB was announced.

<sup>19</sup> LETR report Recommendation 10

<sup>20</sup> Bar Standards Board and Solicitors’ Regulation Authority, “A Joint Statement issued by the Law Society and the General Council of the Bar on the completion of the initial or academic stage of training by obtaining an undergraduate degree” available at <https://www.barstandardsboard.org.uk/qualifying-as-a-barrister/academic-stage/joint-academic-stage-board/> (last accessed 3<sup>rd</sup> December 2013)

<sup>21</sup> C. Hunter, “Integrating Socio-Legal Studies into the Law Curriculum” (Basingstoke: Palgrave MacMillan, 2012) 7.

<sup>22</sup> F. Cownie, “Legal Academics: Culture and Identities” (Oxford: Hart Publishing, 2004) 198.

<sup>23</sup> LETR report, *supra* n. 1 at 34.

<sup>24</sup> The LETR findings are divided (and weighted, and averaged) between barristers, solicitors and CILEx members. There was remarkable consensus with legal and professional ethics, and procedure dominating, followed by contract law and tort law. Socio-legal studies, psychology and international law were consistently ranked in the bottom three ‘subjects’. No indication is provided within LETR as to how (if at all) these subjects were defined.

A further complication is the continued and longstanding debate about the nature and form of socio-legal studies<sup>25</sup>. It can be seen as encompassing a limitless range of legal topics, analysed through a 'law in context' lens, and it can also be viewed in the narrow terms of analysing the law from a social science perspective<sup>26</sup>. For some legal scholars socio-legal work has a strong link to empirical work and social science methodologies rather than encompassing non-doctrinal work more broadly.<sup>27</sup> The uncertainty over what exactly socio-legal means may further compound the temptation to believe that socio-legal studies is irrelevant for the purposes of the foundation subjects. Why, for example, offer alternative perspectives of contract law, feminist perspectives on Land Law or consider the lived experience of migrants when teaching EU free movement law? Why integrating socio-legal studies into the law curriculum is a worthwhile endeavour and how it can be done is very ably set out in Hunter's recent volume which considers the incorporation of socio-legal studies in the core subjects.<sup>28</sup> If, as has been suggested, regulation is limited in scope and effect, and does not prescribe content, innovation in learning and teaching and the inclusion of socio-legal material into whatever the foundations will be should continue to be possible. O'Brien, in the context of EU law for example notes 'the origins and organs of law are garishly on display, and explicit legal power dynamics dispense with the myth of objectivity and blast aside fig leaves of rationality'.<sup>29</sup> By setting up EU law as a 'perfect site for asking big socio-legal questions'<sup>30</sup> and at the same time acknowledging that this would certainly meet the Joint Statement requirement of introducing students to the key elements and general principles of EU Law<sup>31</sup>, O'Brien shows that professional body regulation and socio-legal studies are not mutually exclusive. In addition she hints at the merits of a socio-legal approach in terms of a liberal education as it, more so than 'abstract doctrinalism' and 'case cramming'<sup>32</sup> allows for the asking of questions, the development of analytical skills and critical thought.

O'Brien's approach also serves to provide a practical response that regards the present system of legal education in England and Wales as having a contradictory mission. On the one hand, law schools are tasked with providing vocational training, and on the other, they are universities, and as members of the Academy, provide a liberal experience. It is the university-based and liberal philosophy of the Academy that has, Berard<sup>33</sup> suggests, pulled law towards the social sciences as it moves from mere professional training to an academic endeavour. Writing a decade ago, Thomas suggested that 'doctrinal law is no longer the sole and unchallenged orthodoxy though it continues to retain considerable influence'<sup>34</sup>. Cownie, drawing upon her own empirical work, suggested in

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<sup>25</sup> See for example, P.Thomas, "Socio-Legal Studies: The Case of Disappearing Fleas and Bustards", in P.A.Thomas (ed.), *Socio-Legal Studies* (Aldershot, Dartmouth Publishing, 1997).

<sup>26</sup> D.R.Harris, "The Development of Socio-Legal Studies in the United Kingdom" (1983) 3 *Legal Studies* 315.

<sup>27</sup> Cownie, *supra* n. 22

<sup>28</sup> Hunter, *supra* n. 21

<sup>29</sup> C. O'Brien, "European Union Law" in C. Hunter, *Integrating Socio-Legal Studies Into the Law Curriculum* (Basingstoke: Palgrave MacMillan, 2012) 184.

<sup>30</sup> *ibid*

<sup>31</sup> Joint Statement

<sup>32</sup> O'Brien, *supra* n.29 p 184

<sup>33</sup> T.J.Berard, "The Relevance of the Social Sciences for Legal Education" (2009) 19 *Legal Education Review* 189.

<sup>34</sup> P.Thomas, "Legal Education: Then and Now" (2006) 40 *The Law Teacher: The International Journal of Legal Education* 239.

2004 that even the influence of doctrinal law is in decline.<sup>35</sup> The LETR may offer the opportunity – in perhaps a surprising way – to assert with greater intellectual confidence<sup>36</sup> the importance of socio-legal scholarship in responding to the new challenges set out by a legal services marketplace.

Collier has previously suggested<sup>37</sup> that whilst the term ‘liberal legal education’ might ‘continue to have a rhetorical power across many universities’, for many legal academics, the purpose of the law school has, and continues to be, the training of legal professionals. Yet, the LETR - and the rapidly evolving economic, technological, and regulatory landscape it seeks to respond to – offers a glimpse of a world in which the training of legal professionals can, and arguably should, be done in more creative and innovative ways, outside the traditional QLD-focused approach to legal education which has dominated in recent decades. This creates scope for O’Brien’s ‘perfect site for asking big-socio-legal questions’ to be expanded to encompass a broader agenda. Rather than viewing issues such as legal and professional ethics or even familiar topics such as contract and tort as agendas imposed by the profession, the rhetorical power of ‘liberal legal education’ can be unleashed to take ownership of legal education within the Academy, (re)drawing boundaries and (re)defining the legal education experience and product as part of a (re)negotiation of legal education which sees socio-legal scholars acting with greater confidence.

The problem for those pursuing the ideals of a liberal legal education is not so much the recommendations in the LETR report but what happens next and how a review would impact on the general organisation of a degree programme and the intellectual atmosphere within which it is taught. If the foundation subjects are more focused towards the key subjects which are considered important for practice it would logically follow that they will, for the most part, be taught in a way which focuses on professional knowledge and skills rather than in ways which considers the subjects in a more general way in order to enhance education and encourage critical exploration. Given that this debate is likely to be had in the context of education and training for legal services provision, it seems unlikely that voices of those outside the sector will be sufficiently heard.

The implications of this are that if there is a change in foundations subjects that change will be driven by the legal professions and the foundation subjects will then be even less concerned with what is fundamental to the study of law but instead focus on what is currently considered as important in legal practice. Students will therefore be robbed of the opportunity to engage with the rich socio-legal writing on a wide variety of topics and will not be pushed to explore the variety of angles and stories which are influenced by law and indeed influence law. This would be a shame for the future of socio-legal studies but it would be a disaster for liberal law degrees

Law students are already known for studying their degree because they want to be lawyers rather than because they are interested in studying law.<sup>38</sup> Ilgunas notes: *And when students go to school*

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<sup>35</sup> Cownie, *suora* n.22 at 198. See also, T.Becher, *Academic tribes and Territories: Intellectual Enquiry and the Culture of Disciplines* (Milton Keynes, SRHE & Open University Press, 1989).

<sup>36</sup> A barrier to such change may be the very lack of intellectual self confidence that Cownie identified amongst law teachers. See Cownie, *suora* n.22 at 198.

<sup>37</sup> R.Collier, “We’re All Socio-Legal Now? Legal Education, Scholarship and the Global Knowledge Economy: Reflection on the UK Experience” (2004) 26 *Sydney Law Review* 503.

<sup>38</sup> See for example K Purcell and J Pitcher, *Great Expectations: The New Diversity of Graduate Skills and Aspirations*, (Manchester: CSU Ltd 1996); D Halpern, *Entry into the Legal Profession: The Law Student Cohort Study Years 1 and 2*, (London: The Law Society 1994) or more recently BONE, ALISON (2009) [The twenty-first](#)

*for the sole purpose of getting careers and making fortunes, the degrees they leave with may no longer be flimsy rolls of parchment but dangerous weapons*<sup>39</sup> because *'If a man is a fool, you don't train him out of being a fool by sending him to university. You merely turn him into a trained fool, ten times more dangerous'*.<sup>40</sup> The role of a liberal law degree must then be to make sure that even those students who are intent on entering the legal profession and are studying law for only that reason, are not merely trained fools but are compelled to engage with theoretical questions, forced to think about, discuss, write about and explore a variety of legal issues. In that sense it makes little difference what legal subjects are studied for a law degree, the key question is how those subjects are taught and socio-legal approaches offer a plethora of relevant, engaging and thought provoking materials.

### **Defining (Day One) Learning Outcomes**

As seen above, we would argue that all subjects can and should be taught from a socio-legal perspective because they provide students with a much broader and often nuanced understanding of what the law is, how it works and what impacts it may have. However there is already significant demand from students for options which they perceive as being practice relevant.<sup>41</sup> Socio-legal options or modules which take a more theoretical or even explicitly non-vocational approach are side-lined. A re-balancing of the foundation subjects may further compound this problem but the impact of recommendations 3-5 of the LETR report on learning outcomes may actually be far more serious for a liberal legal education and socio-legal studies than recommendation 10.

Whatever the foundation subjects are, it is unlikely that the precise content and teaching approach will be set in stone leaving open the possibility for socio-legal teaching and non-practice focused teaching. However, the creation of a set or framework of learning outcomes for those providing legal services has the potential to ensure that socio-legal content is pushed out and knowledge for knowledge's sake becomes a luxury law schools cannot afford. If the day one learning outcomes for paralegal positions for example relate to certain knowledge and skills employers would expect law graduates to possess, it will not be long before law schools explicitly market their programmes as providing students with the 'day one learning outcomes' required by the profession. Learning outcomes for programmes and modules will have to be set and written in such a way as to satisfy regulators and content and teaching aligned accordingly. Suddenly, on the vocational versus liberal, UG law degrees swing very much towards the former at the expense of the latter because the focus of the degree becomes the meeting of learning outcomes set by the profession, albeit with possible involvement of the academic learned societies and wider consultation.

Depending on the exact nature of the learning outcomes and the framework overall, it may also be more difficult to justify socio-legal approaches and subjects which are perceived to not explicitly contribute to the achieving of the day one outcomes. Even where they can be offered, students may not opt for them because they will need to ensure they keep all career doors open and modules may

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[century law student](#) Law Teacher, 43 (3). pp. 222-245; Thornton, M. "Privatising the Public University: The Case of Law" London: Routledge, 2012)

<sup>39</sup> Ilgunas, *supra* n.12 at 243

<sup>40</sup> Bagley, D. quoted in Ilgunas, *supra* n.12 at 243

<sup>41</sup> See for example Thornton, *supra* n. 38 at 34 ff. In addition there is significant anecdotal evidence that students are opting for corporate/commercial or popular high street options such as family law and employment law rather than courses that they see as having no relevance to practice.

therefore not run because they are not viable. In a student body which is more vocationally focused than many other cohorts and in an economic climate in which graduate jobs are scarce, it is hard to see how students would not opt for those courses and modules which they perceive to give them the best chance at securing a job.

This may however have a profound impact on the intellectual atmosphere of law schools. As Cownie has laid out, the discipline of law is often portrayed as anti-intellectual and uncritical. She also acknowledges however that the discipline is in transition and continues to move towards a discipline which can in fact call itself intellectual.<sup>42</sup> Socio-legal approaches have contributed significantly law's increased critical awareness of itself and has put legal studies as a serious, intellectual and academic activity on the map. The concern here is that the imposition of learning outcomes which are specifically linked to the professions will force law teachers to stop pushing forward in this critical endeavour, that the progress towards law as an intellectual discipline will stall and that the focus of what law schools do will not be on the pursuit of knowledge but on the training of lawyers. There is a risk that research, or at least certain types of research will be side-lined, not supported or actively stopped and that teaching will be similarly limited to subjects perceived as useful with usefulness being defined in relation to the professions.<sup>43</sup>

This is a bleak picture indeed. However it is also worth remembering that law schools will also contain pockets of resistance. There will, we hope, always be legal academics who will defend their ideals of liberal law degrees and socio-legal teaching. While a full discussion of this is outside the scope of the paper it is worth pointing out the possibility of resistance at least. Unfortunately thought, a change in the intellectual atmosphere of law schools may make it harder for legal academics particularly if they already feel isolated.<sup>44</sup>

### **Law, Morality, and Ethics**

The inclusion of the teaching of ethics or values within LSET makes considerable sense. However, it is important to be clear exactly what is meant by ethics in this context. Recommendation 6 refers to professional ethics whereas recommendation 7 suggests there should be learning outcomes which make reference to *an understanding of the relationship between morality and law, the values underpinning the legal system, and the role of lawyers in relation to those values*. From our perspective these seem focused mostly on professional knowledge and skills. However from a liberal legal education perspective, we would argue that the learning and teaching of law cannot be done in a way which is value free. This is not an uncontroversial statement. Law has a reputation for being neutral, objective and value free and indeed Newman argued that a

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<sup>42</sup> Cownie, *supra* n. 22

<sup>43</sup> In the US context Brian Tamanaha has recently of course argued for the reduction in research in law schools blaming non-practice relevant research in part for the high cost of legal education in the US. See B.Tamanaha, "The Failing Law School" (Chicago: University of Chicago Press, 2012). For a critique of his ideas and their application in the UK context see S. Wheeler, "'Dangerously, Outrageously, Elitist' – A Solution to Law Graduate Unemployment?" (2013) 40 *Journal of Law and Society* 670.

<sup>44</sup> See for example Bradney, *supra* n.3. A Bradney, "Speaking Truth to Power" *Paper presented at the annual meeting of the The Law and Society Association, Berlin, Germany, Jul 25, 2007*

liberal education should be value free<sup>45</sup> - it should teach critical thought which in turn allows students to come to their own conclusions as to meaning and value. Stryker disagrees stating that ' [g]iven the close connection between knowledge and power...liberal education's disavowal of all moral responsibility seems an illegitimate move.'<sup>46</sup> More recently Rochette has written about values in legal education stating that 'giving students opportunities for critical assessment and reflection on the values encountered in law and in law school and how they conflict (or not) with their own values is key to their moral development'.<sup>47</sup> This is clearly in line with the ideals of liberal education and something which can be facilitated by socio-legal explorations of issues arising in all legal topics. As the inclusion of ethics and values is dealt with extensively in other contributions to this volume, we do not intend to say anything further here.<sup>48</sup>

### **Research Skills and Legal Writing**

An increased focus on writing and research skills in legal education sounds, for socio-legal studies and liberal education, quite uncontroversial. In fact it sounds promising. If a liberal education is focused on the pursuit of knowledge and the ability to defend ones thoughts and ideas, clarity of expression is important. Equally important are the skills to discover and locate relevant material and analyse and critique it. However, recommendation 11 which states '*There should be a distinct assessment of legal research, writing and critical thinking skills at level 5 or above in the Qualifying Law Degree and in the Graduate Diploma in Law*'<sup>49</sup> throws up potential problems. The first is what exactly regulators understand by legal research, the second is what sort of writing they have in mind and the third relates to the underlying assumption that critical thinking is not assessed across every module studied but needs a distinct assessment to allow students to demonstrate competence.

For a liberal legal education, critical thinking is at the core, it must be pervasive throughout and cannot be confined to a particular subject, course, skills unit or assessment. Students must be encouraged to think critically about all aspects of law. Socio-legal studies, by offering an alternative approach to doctrinal law can help with framing interesting questions to be thought about. Having a critical thinking assessment runs the risk of students (and teachers) considering that learning outcome met on passing of the module and relegating its importance in relation to all other aspects of study and assessment. This, surely would be a backward step. Equally dangerous would be a focus on writing for legal professional purposes rather than on writing generally. It would be all too easy for law schools to set their writing assessment based on writing letters, legal advice or other professional documents at the expense of the inclusion of writing for academic purposes or other audiences. The focus,

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<sup>45</sup> J. Newman, *The Idea of a University* (1852) available at <http://www.newmanreader.org/works/idea/> {last accessed 3<sup>rd</sup> December 2013} For a fuller discussion in the context of what a liberal legal education might be see Bradney, A. (2003)

<sup>46</sup> L. Stryker. 'The Holocaust and Liberal Education' in B. Brecher, O. Fleischmann, and J. Halliday, *The University in a Liberal State*. (Avebury: Aldershot, 1996).

<sup>47</sup> A Rochette, "Values in Canadian Legal Education" (2011) *Web Journal of Current Legal Issues*. <http://webjcli.ncl.ac.uk/2011/issue2/rochette2.html> See also Cownie, F. (2008) "(Re)Evaluating Values: A Response to Burrigge and Webb" 42:3 *The Law Teacher* 302. Cownie, F. (2003) "Alternative Values in Legal Education" 6 *Legal Ethics* 159

<sup>48</sup> See Dagilyte and Coe and in particular Ferris in this volume

<sup>49</sup> LETR report Recommendation 11

we would argue, needs to be on students learning how to express themselves clearly and accurately and be exposed to a variety of writing tasks.

The inclusion of legal research as a specific objective is something we welcome but again we are cautious. Doctrinal legal scholars carry out legal research, professional lawyers carry out legal research; including it in the UG curriculum more explicitly than it currently is does not necessarily mean that there will be an increased focus on socio-legal work or on exploring areas of law for their own sake.

Let us take for example the dissertation, which has previously been identified as the obvious point at which legal research skills can be thoroughly addressed within the QLD structure, and arguably provides scope for law students to undertake empirical work.<sup>50</sup> However, students may be discouraged from engaging with empirical work at UG level for all sorts of reasons. They have usually had no empirical methods training, universities have increasingly complex ethics panel procedures which may be concerned about students undertaking work without adequate training, supervisors may be unwilling or unable to guide students through the process and most of all, there is an expectation of what a law dissertation at UG level is and mostly this does not include empirical work<sup>51</sup> Hutchinson and Duncan<sup>52</sup>, seeking to define legal research terminology in the context of the Australian and UK legal research landscape, do not even include socio-legal research or empirical research, reflecting a similar neglect in the Australian *Pearce Committee* in 1987<sup>53</sup>, and similar bias in the *Arthurs Report*<sup>54</sup> from Canada in 1983. In seeking to define 'legal research', the emphasis has therefore been placed upon a doctrinal understanding rather than an empirical one, and one rooted in practice – assembling relevant facts, identifying the legal issues, locating primary material in the form of legislation and case law, and so on. Yet, the key aspect of understanding the issues in context is arguably one that both the doctrinal and socio-legal research communities would identify as theirs, although the meaning may vary. For socio-legal researchers, empirical work has a clear and important role in achieving the goal of understanding the subject in context. As Bradney has previously noted, 'to ignore empirical legal research is thus to ignore some of the things that can be

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<sup>50</sup> Hunter, *supra* n.21 at 5.

<sup>51</sup> See Nuffield Inquiry for a more detailed discussion of some of these issues which are also taken up Hunter, *supra* n.21. See, also A. Bradney, "The Place of Empirical Legal research in the Law School Curriculum", in P.Cane and H.M.Kritzer (eds.) *The Oxford Handbook of Empirical Legal research* (Oxford, Oxford University Press, 2012).

<sup>52</sup> T.Hutchinson and N.Duncan, "Defining and Describing What We Do: Doctrinal Legal research" (2012) 17 *Deakin Law Review* 83.

<sup>53</sup> D.Pearce, E.Campbell and D.Harding ('Pearce Committee) *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission* (Canberra, Australian Government Publishing Service, 1987). See, also: G.Wickham, 'Interdisciplinarity and Australian Legal Education' (1992) 7 *Socio-Legal Bulletin* 11.

<sup>54</sup> Consultative Group on Research and Education in Law, *Law and Learning: Report to the Social Sciences and humanities Research Council of Canada* (Ottawa, Minister of Supply & Services, 1983). The report was controversial upon publication but highlighted a failure to attract research grants in law, the 'fragile nature' of scholarly enterprise in Canadian law schools and – significantly from a contemporary LETR perspective – noted that legal scholarship was disconnected from the university, and that an anti-intellectual legal profession had come to dominate the understanding of the shape of legal careers. Arthurs highlights the dangers of reaching narrow, practice-led understanding of legal research for scholarly endeavor in law schools. See, C.B.Backhouse, 'Revisiting the Arthurs Report Twenty years Later' (2003) 18 *Canadian Journal of Law and Society* 33.

said about law and thereby decrease our potential knowledge of law'.<sup>55</sup> In seeking to respond to the LETR, it is therefore important that the complexities surrounding the meaning of legal research is also addressed.

However, even if reservations about empirical work have some foundation and there is a need for empirical research skills to be introduced to students much earlier, socio-legal studies also offers a richness of debate when it comes to appropriate evidence. Such evidence often engages beyond empirical work and notably addressed issues of historical perspectives<sup>56</sup>, and theory<sup>57</sup> and provides an opportunity for engagement with key emergent agendas such as globalisation<sup>58</sup> and gender & sexuality<sup>59</sup>. This richness of methodology typically requires engagement with those methods described above as 'doctrinal' but crucially applies them in a 'real-world' setting.

However, dissertations are often not compulsory and where they are having a socio-legal element is not and may in fact be problematic as stated above. The LETR's call for an increased focus on research skills is an opportunity for us to shape the way students should be introduced to a variety of research methods, methodologies and outputs so that they are able to at least assess and critique material and evidence they come across if not carry out empirical work themselves. The introduction of socio-legal material with some discussion of methodologies across all levels and a variety of subjects would go some way to achieving this. A wider conceptualisation of what legal research is in Legal Skills teaching or legal research modules would also help students understand and think about different types of data, material and evidence and the meanings we assign to them. This does however presume that the debate about what exactly should be assessed and how is not dominated by the professions.

## Conclusion

Of course one can legitimately ask the question whether there is still a place for liberal education in today's higher education landscape. Ilgunas, in response to discovering that many liberal arts graduates seek work in big corporate organisations and many environmental science graduates seek work in oil companies, asks '*What's the point of schools like Duke if they're merely funnelling grads into careers that – excuse the colloquialism –fuck shit up?*' The same question can be asked about the point of a liberal law degree. Ilgunas further states that '[t]he university today is not a place where we go to question the dominant institutions; it is a place where we learn to support them'.<sup>60</sup> If this is true across the board, then we are in trouble as surely what we need is graduates who are

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<sup>55</sup> Bradney, *supra* n.51 at 1033.

<sup>56</sup> J.Rowbotham and K.Stevenson, "Editorial: Answering Baker: Utilising – Best Evidence. The Challenge for Socio-Legal Studies" (2007) 28 *Liverpool Law Review* 319. The debate is not limited to the UK; see also, K.Burns and T.Hutchinson, "The Impact of "Empirical Facts" on Legal Scholarship and Legal Research Training", (2009) 43 *The Law Teacher: The International Journal of Legal Education* 153.

<sup>57</sup> See for example, A.Norrie, "From Critical to Socio-Legal Studies: Three Dialectics in Search of a Subject" (2000) 9 *Social & Legal Studies* 85; and T.Murphy and N.Whitty, "A Question of Definition: Feminist Legal Scholarship, Socio-Legal Studies and Debate about Law & politics" (2006) 57 *Northern Ireland Legal Quarterly* 539.

<sup>58</sup> A.Voiculescu, "Editorial: Mind the Gap: Socio-Legal Scholarship For a Runaway World" (2008) 6 *Journal of Commonwealth Law and Legal Education* 1.

<sup>59</sup> C.Ashford, "Socio-Legal Perspectives on Gender, Sexuality and Law: Editorial" (2010) 31 *Liverpool Law Review* 1.

<sup>60</sup> Ilgunas, *supra* n.12 at 244

willing to question the dominant institutions and dominant thinking to ensure that solutions to current and future crises can be found.

The lack of confidence which has arguably characterised socio-legal scholars to-date, sits at odds with public displays of celebration at the persistence and growth of socio-legal studies. Whilst the socio-legal community may feel celebratory at the development of socio-legal studies in recent years<sup>61</sup>, there has been a relative silence when it comes to translating those research agenda triumphs into strategic decisions about the direction of the law school. Moreover, whilst Cownie has suggested that socio-legal studies 'forms an important part of the academic legal scene, and certainly deserves a mention in any analysis of contemporary legal academic culture'<sup>62</sup>, there appears less willingness to marshal those identities into a determined effort to seize the post LETR agenda.

In the Australian context Goldsmith and Bamford suggest that *Legal educators can either meet the challenge of engaging the realm of practice, thereby helping not just to shape the doctrinal content of the law but also the ways in which it is practiced, and the ends being pursued. Or they can relinquish their influence and authority over these issues by leaving them to 'market' and other (typically) uncritical stakeholder forces.*<sup>63</sup> However, we think there is another way. The LETR contains much which is of concern and which needs careful consideration in the context of undergraduate law degrees. The potential impacts are not fully understood by legal academics and law schools generally and we have only been able to give a small snapshot here. It is tempting, perhaps even comforting, to regard the LETR as a 'quarrel in a far away land', something that does not affect the undergraduate offer, or the lives of those focused upon what they might regard as more academic endeavours. We would suggest that to do so would be a mistake. Those who believe in a liberal legal education and socio-legal enquiry have an important opportunity to have our voices heard and to play an active part in shaping the future of legal education, our futures and our students' futures. Nothing in the LETR precludes a liberal education and nothing in it suggests socio-legal studies have no place, but the report has the potential to be taken as a starting point for regulation of UG degrees which is based on an incomplete picture. It is based predominantly on the views of those in the profession or with an interest in teaching on vocational courses. The voices of other stakeholders in legal education have not sufficiently been heard but they need to be – before it is too late.

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<sup>61</sup> See, R. Collier, "Privatizing the University and the New Political Economy of Socio-Legal Studies: Remaking the (Legal) Academic Subject" (2013) 40 *Journal of Law and Society* 450.

<sup>62</sup> Cownie, *supra* n.22 at 51

<sup>63</sup> A Goldsmith and D Bamford, "The Value of Practice in Legal Education", in F Cownie, *Stakeholder in the Law School*, (Oxford: Hart Publishing, 2010) 184