

## **ONE SIZE FITS ALL? MULTIPLE INTELLIGENCES AND LEGAL EDUCATION**

This article argues that teaching and learning methodologies used in undergraduate law degrees are gradually shifting. The traditional model relied on a largely standardised, “one size fits all” approach which assumed that developing legal reasoning through attendance at lectures and participation in tutorials and seminars would produce a successful lawyer. However, today’s law schools are adapting to a large and diverse body of law students, many of whom will move on to careers outside the legal profession. This is being recognised by an increasing plurality of approach within undergraduate legal education, aided in no small measure by an increasing focus on skills. This article will discuss the theory of multiple intelligences, which rejects the idea of a single measure of intelligence and instead identifies a number of different intelligences with both biological and cultural underpinnings. It is argued that acknowledging these multiple intelligences and using them as an organizing concept to vary and diversify teaching and learning methodologies could help to further avoid the “one size fits all” approach and enhance the student experience.

### **Introduction**

There is a need to break free from the extraordinarily rigid stereotyped thinking that has come to dominate most discussions of legal education: that the cosmos is irrevocably divided into fields of law such as contract and torts; that the only mode of classification to be used in curriculum planning is that of fields of law; that examinations must be three hours in length; that examinations can only test knowledge of

legal doctrines and ability to apply rules to hypothetical fact situations; that all courses must be given equal weight; that every course must have a textbook; that every textbook must conform to a standard pattern...<sup>1</sup>

In recent years there have been shifts in the content of many undergraduate law courses in the United Kingdom (UK), with a particular emphasis on the introduction of socio-legal themes and scholarship. In her 2004 survey of legal academics, Cownie reports that half of all respondents unequivocally described themselves as taking a socio-legal or critical legal studies approach to teaching while the other half saw themselves as taking a black letter (doctrinal) approach.<sup>2</sup> However, of the half who described themselves as black letter, only a fifth described themselves as black letter without qualification.<sup>3</sup> This finding is supported by Siems et al's 2012 work which concluded that "most" academics use mixed research methods.<sup>4</sup> More than ten years after Cownie's survey, there remains considerable debate over the significance and longevity of these shifts, but they are clearly present.<sup>5</sup> Thomas

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<sup>1</sup> W. Twining, "Pericles and the Plumber" in *Law in Context: Enlarging a Discipline* (Oxford, Oxford University Press, 1997) at p.396

<sup>2</sup> F. Cownie, *Legal Academics: Cultures and Identities* (Oxford, Hart Publishing, 2004) at p.54.

<sup>3</sup> *Ibid*, p.54.

<sup>4</sup> M. M. Siems and D. Mac Sithigh "Mapping Legal Research" (2012) 71(3) *Cambridge Law Journal* 651-676 at p.670.

<sup>5</sup> For examples of differing views, see A. Bradney, "Law as a Parasitic Discipline" (1998) 25(1) *Journal of Law and Society*, 71-84 at p.71 and Bartie,

refers to the development of socio-legal studies as the most significant of a number of “interpretive communities” with others including feminist and critical legal studies, law and literature and queer law.<sup>6</sup>

The body of undergraduate law students has also become increasingly large and diverse. The recent Legal Education and Training Review (“LETR”) highlighted the impact of widening participation policies in changing law student demographics. This includes an increase in female students, an over-proportionate representation of black and ethnic minorities (relative to population norms) and, since 2012, an increase in young, disadvantaged groups.<sup>7</sup> As Thomas succinctly explains “The student body has been both supersized and simultaneously diversified”.<sup>8</sup> This diversification is not evenly spread between law schools. For example, in 2010, Sullivan highlighted the fact a majority of students from lower socio-economic backgrounds and ethnic

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“The Lingering Core of Legal Scholarship” (2010) 30(3) *Legal Studies* 345-369 at p.348.

<sup>6</sup> P. Thomas, “Legal education: Then and now” (2006) 40(3) *The Law Teacher* 239-253 at p.245.

<sup>7</sup> Legal Education and Training Review (2013) *Setting Standards: The future of legal services education and training regulation in England and Wales* (<http://letr.org.uk/the-report/index.html>, 2013, ch.6, para. 6.6 and 6.7) (accessed 14<sup>th</sup> January 2015).

<sup>8</sup> *Supra* n. 6, p.243.

minority students attend new (post-1992) universities rather than Russell Group members or other old universities.<sup>9</sup> However, the LETR concluded that two decades of widening participation policies had “undoubtedly changed the composition of the undergraduate population”.<sup>10</sup>

This article will examine the current pedagogy employed by law schools providing undergraduate law degrees. Traditionally, this has consisted largely of a “one size fits all” standardised approach. This is a phrase that was used largely in the US context, but which arguably also applied in the UK.<sup>11</sup> However, the shift towards more socio-legal content, and the changes to the student body, have led to many law schools adopting a variety of new teaching and learning strategies (for example, the flipped classroom).<sup>12</sup> Drawing on relevant educational literature this article will consider the potential for a multiple intelligences approach to be used as a vehicle to cater for the above shifts within the law school curriculum and student population.

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<sup>9</sup> R. Sullivan, “*Barriers to the Legal Profession*” (2010) Legal Services Board, <https://research.legalservicesboard.org.uk/wp-content/media/2010-Diversity-literature-review.pdf> (accessed 20th July 2015).

<sup>10</sup> *Supra* n.7.

<sup>11</sup> L. Guinier, M Fine and J. Balin, “*Becoming Gentlemen. Women, Law School and Institutional Change*” (Boston, Beacon Press, 1997).

<sup>12</sup> See, for example, <http://blogs.gre.ac.uk/greenwichconnect/2015/02/02/flipped-classroom-lecturers-discuss/> (accessed 27<sup>th</sup> July 2015).

Although this article focuses largely on the provision of undergraduate law degrees in UK law schools, a lack of empirical research on aspects of the UK law student experience means that literature from the United States (US) and elsewhere will also be drawn upon. This is with the caveat that the US literature is focused on law as a postgraduate, professional qualification in sharp contrast to the liberal leanings of many UK law schools.<sup>13</sup>

### **A singular approach – traditional law school pedagogy**

The pedagogy traditionally used by law schools in undergraduate law degrees has involved a focus on developing a particular form of analytical thought process in students. This is commonly associated with the doctrinal tradition. The focus of the doctrinal tradition is on a positivist neutral and objective discernment of a coherent body of legal principles with “exposition and ‘neutral’ analysis usually given pride of place over criticism and suggestions for reform”.<sup>14</sup> This form of analysis has generally focused on an

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<sup>13</sup> See, for example, the statement that a law degree “should stand as an independent legal education in the discipline of law, not tied to any specific vocation” in The Lord Chancellor’s Advisory Committee on Legal Education and Conduct, *“First Report on Legal Education and Training”*, (London, ACLEC, 1996) at p.57.

<sup>14</sup> W. Twining, *“Law in Context Enlarging a Discipline”*, (Oxford, Oxford University Press, 1997) at p.39.

inwards-looking approach to law, which perceives law as largely autonomous body of principles with an internal logic of its own. Legal principles (as created by cases and legislation) are analysed to extrapolate logical conclusions within its existing framework.<sup>15</sup>

This particular process of thinking has commonly been described as “thinking like a lawyer”. This term does not necessarily imply a vocational purpose to its use; instead it encapsulates the process of doctrinal analysis that has been traditionally celebrated within both law and legal education. It revolves around what it deems to be a rational, dispassionate, objective assessment of material facts.<sup>16</sup> A recent study of first year undergraduate law students in Australia highlighted as a prominent theme (in discussion exercises) the fact law school was making them “more rational, objectifying, analytical and logical”.<sup>17</sup>

For some, this idea of “thinking like a lawyer” is still at the very core of the law school – it provides law students with a solid basis

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<sup>15</sup> C. McCrudden “Legal Research and the Social Sciences” (2006) 122 *Law Quarterly Review*, 632-650 at p.634.

<sup>16</sup> A. P. Harris and M. P. Shultz, “‘A(nother) Critique of Pure Reason’: Toward Civic Virtue in Legal Education” (1993) 45 *Stanford Law Review*, 1773-1805 at p.1773.

<sup>17</sup> M. T. O'Brien *et al*, “Changing our thinking: Empirical research on law student well-being, thinking styles and the law curriculum” (2011) 21 *Legal Education Review*, 149-182 at p.177.

for understanding the law and is at the heart of legal studies.<sup>18</sup> In the US, it is also seen as providing a sound basis for moving into legal practice.<sup>19</sup> However, others have highlighted the limitations of this approach. Critiques of the doctrinal tradition as a whole have raised many issues from its flawed “scientific” basis, to its hidden partiality and assumptions to its impact on the well-being of law students.<sup>20</sup> James suggests that within law schools the concept of “thinking like a lawyer” is “usually conveyed, and understood, as a superior way of thinking, rather than an important but strictly limited legal tool”.<sup>21</sup>

The form of analytical thought process which the doctrinal tradition and “thinking like a lawyer” demands is akin to what Gardener and other proponents of multiple intelligences have termed as “linguistic and logical intelligences”<sup>22</sup>. It prizes a certain form of “legal reasoning” in a manner which arguably

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<sup>18</sup> Hutchinson, T. and Duncan, N., “Defining and Describing What We Do: Doctrinal Legal Research” (2012) 17(1) *Deakin Law Review*, 83-119 at p.85.

<sup>19</sup> R. K. Stropus, “Mend it, bend it and extend it: The fate of traditional law school methodology in the 21<sup>st</sup> century” (1996) 46 *Loyola University Chicago Law Journal* 449-489 at p.450.

<sup>20</sup> See, for example, A. Bradney (*supra* n.5) and R. Cottrell “Subverting Orthodoxy, Making Law Central: A View of Sociolegal Studies” (2002) 29(4) *Journal of Law and Society*, 632-44.

<sup>21</sup> C. James, “Lawyers’ wellbeing and professional legal education” (2008) 42(1) *The Law Teacher*, pp.85-97 at p.91.

<sup>22</sup> H. Gardner, *MI after twenty years*, <https://howardgardner01.files.wordpress.com/2012/06/mi-after-twenty-years2.pdf> (accessed 13th February 2015).

excludes, or at least denigrates the importance of, other approaches. It is transmitted to students within lectures and reinforced with relatively narrow forms of questioning within a seminar or tutorial setting.<sup>23</sup>

There has been considerable work carried out in documenting the effects of imposing this particular, “one size fits all” way of thinking onto law students and their law school experience. Kennedy’s classic US polemic emphasises the passivizing classroom experience and the surrender to the content of the legal system that this in turn ingrains.<sup>24</sup> More recently, Fitzgerald’s empirical research in Canada suggested that first year teaching methods left “many students to feel isolated, disoriented, disengaged, and ultimately resigned to having no control”.<sup>25</sup> The impact on students’ future careers has also been raised with Dauphinais (amongst others) arguing that students are not fully equipped with the “broad spectrum of relevant cognitive

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<sup>23</sup> I. Weinstein, “Testing Multiple Intelligences: Comparing Evaluation by Simulation and Written Exam” (2002) 8 *Clinical Law Review*, 247-286.

<sup>24</sup> D. Kennedy, “Legal Education and the Reproduction of Hierarchy” (1982) 32 *Journal of Legal Education* 591 at p.595.

<sup>25</sup> M. F. Fitzgerald, “Rite of passage: The impact of teaching methods on first year law students” (2008) 42(1) *The Law Teacher*, 60-84 at p.60.



processes” they will require to succeed as lawyers.<sup>26</sup> The same could easily be said for careers outside the legal profession too.

### **A singular concept – “g”**

There are a number of parallels between the law schools’ traditional “one size fits all” approach to pedagogy and the scientific community’s approach to the concept of intelligence. Traditionally, intelligence has been defined as “g”. This refers to a general, unitary faculty of intelligence. Accredited to Spearman, “g” is based on the theorem that: “Whenever branches of intellectual activity are at all dissimilar, then their correlations with one another appear wholly due to their being all variously saturated with some common fundamental Function (or group of Functions)”.<sup>27</sup>

This idea of a common function or functions has been developed in various forms, but Howe suggests that they commonly view intelligence as an “underlying quality” which is biological in origin

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<sup>26</sup> K. A. Dauphinais, “Valuing and nurturing multiple intelligences in legal education: A paradigm shift” (2005) 11(1) *Washington & Lee Race & Ethnic Anc Law Journal* 1-41 at p.1.

<sup>27</sup> C. Spearman, “‘General Intelligence,’ Objectively Explained and Measured” (1904) 15(2) *The American Journal of Psychology* 273.

and mostly inherited and unchangeable.<sup>28</sup> This singular view of intelligence provided the foundation for the Intelligence Quotient (“IQ”) tests popularized by the US military in World War 1 and now commonly found in Western society.<sup>29</sup> A more recent definition, agreed by 52 theorists working in intelligence and allied fields, emphasises the value of these tests and described intelligence or “g” as:

... a very general mental capability that, among other things, involves the ability to reason, plan, solve problems, think abstractly, comprehend complex ideas, learn quickly and learn from experience.<sup>30</sup>

The notion of a singular function which lies at the base of everything is akin to the traditional focus of law schools on coherency of the doctrinal tradition and the concept of “thinking like a lawyer” as the basis for exploring all facets of the law. In addition, the attributes prized by this singular intelligence resonate with the forms of logic, rationality and reason that legal analysis is commonly seen as entailing.<sup>31</sup>

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<sup>28</sup> M. J. A. Howe, *IQ in Question. The Truth about Intelligence*, (London, Sage Publications Ltd, 1997), p.viii.

<sup>29</sup> N. J. Mackintosh, *IQ and Human Intelligence*, (Oxford, Oxford University Press, 1998), p.7).

<sup>30</sup> Gottfredson, L. S. (1997) “Editorial. Mainstream science on intelligence: An Editorial with 52 Signatories, History and Bibliography”, *Intelligence*, Vol. 24, No. 1, pp.13-23 at p.13.

<sup>31</sup> H. Gardener, M. L. Kornhaber and W. K. Wake, *Intelligence. Multiple Perspectives* (Florida, Harcourt Brace College Publishers, 1996).

## **A pluralistic approach – contemporary law school pedagogy**

In recent years, a range of different teaching and learning methodologies have been introduced into the undergraduate law degree, shifting some of the focus away from the doctrinal tradition and “thinking like a lawyer”. One of these methodologies is problem-based learning, where the problem itself is used to direct students’ learning of the law. This differs from traditional problem-style exercises in law, where the information is supplied, and students apply it to a set of facts. Instead the students themselves must find and interpret the information before they can apply it.<sup>32</sup> Another innovation includes a variety of uses of blended and online learning environments, ranging from the creation of “Second Life” type vehicles for problem-solving to the use of “Turnitin” software for peer-review purposes.<sup>33</sup> In addition, the methodology used for assessing law students has begun to move away from traditional, closed book examinations to include oral assessments, multiple choice questions and a variety of uses of open-book exams.<sup>34</sup>

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<sup>32</sup> Y. J. Wong “Harnessing the Potential of Problem Based Learning in Legal Education” (2003) 37(2) *The Law Teacher* 157-173.

<sup>33</sup> See, for example, Steventon, B., Panesar, S. and Wood, J., “Moving the law school into the twenty first century – embedding technology into teaching and learning” (2014) 38(1) *Journal of Further and Higher Education* 107-128.

<sup>34</sup> See, for example, Cahill-Ripley, A. “Innovative methods of assessment in law: the value of open-book exams as a catalyst for improving teaching and learning in the law school” (2015) 49(2) *The Law Teacher* 206-218.

The development of a greater focus on legal skills at undergraduate level, including the growth of clinical legal education within the UK, has further contributed to this plurality of approach with a recognition that it enhances the “creativity and vitality” of legal studies.<sup>35</sup> A focus on practical and professional skills that enhance employability throughout higher education has highlighted the need for a wider range of skills than pure doctrinal analysis.<sup>36</sup>

This shift towards a pluralistic approach is arguably still incomplete. This is partly due to restraints on the legal academy imposed by the wider university environment, including the increasing corporatisation of universities.<sup>37</sup> Thornton argues the university has become a form of knowledge industry, left to “the vagaries of the market”.<sup>38</sup> She suggests legal academics are now sought after as new knowledge workers who must serve the state and produce other new knowledge workers (lawyers) to facilitate the market economy.<sup>39</sup> As a result, she argues that socio-legal

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<sup>35</sup> J. Hall and K. Kerrigan, “Clinic and the Wider Law Curriculum” (2011) 16(1) *International Journal of Clinical Legal Education*, 25-37.

<sup>36</sup> See, for example, S.K. Ragavan “Acquiring skills for a globalised world through a peer mentoring scheme: A UK law school experience” 46(1) *The Law Teacher* 15-37.

<sup>37</sup> R. Collier, “‘We’re All Socio-Legal Now?’ Legal Education, Scholarship and the ‘Global Knowledge Economy’ - Reflections on the UK Experience” (2004) 26 *Sydney Law Review* 503-536.

<sup>38</sup> M. Thornton (2001) “Among the Ruins: Law in the Neo-Liberal Academy”, 20 *Windsor Yearbook of Access to Justice*, 3-23 at pp. 4-5.

<sup>39</sup> *Ibid* p.5.

topics have become dispensable as “technocratic, skills-based” courses are required. This heralds a return to the doctrinal tradition and a danger of returning to the “trade school” mentality of the past.<sup>40</sup>

Cownie and Bradney have argued that this picture is too stark and that resistance to such corporatisation characterises the work of many academics in UK law schools.<sup>41</sup> More recently, Guth et al, discussing the LETR, suggest that this has the potential to encompass liberal and socio-legal forms of legal education, although they sound a warning over its predominant focus on vocationalism and training.<sup>42</sup> It is noticeable that the recent QAA Benchmark Statement on Law begins by stating “Studying law at undergraduate level is an academic matter”, suggesting a liberal approach.<sup>43</sup>

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<sup>40</sup> *Ibid* p.10.

<sup>41</sup> F. Cownie and A. Bradney “Gothic Horror? A Response to Margaret Thornton” (2005) 14(2) *Social & Legal Studies*, 277-285 at p278.

<sup>42</sup> J. Guth and C. Ashford, “The Legal Education and Training Review: regulating socio-legal and liberal education?” (2014) 48(1) *The Law Teacher* 5-19.

<sup>43</sup> QAA, “Subject Benchmark Statement Law” (July 2015) <http://www.qaa.ac.uk/en/Publications/Documents/SBS-Law-15.pdf> (accessed 30th July 2015).

In addition to pressures on the legal academy, there is evidence that law students have a largely instrumentalist approach to their studies.<sup>44</sup> Goldsmith argues that greater student awareness of employment prospects and a move towards a more conservative cohort (through socio-economic pressures) “threaten to increase” levels of vocationalism in law schools, although he acknowledges that this may be in broader terms than simply an interest in the legal profession.<sup>45</sup>

More recently, Bone’s 2009 survey of undergraduate law students found that 81% of respondents (1156 of 1428 from across nine UK universities) agreed or agreed strongly with the statement “Lectures are the most important part of my learning experience at university”.<sup>46</sup> 93% of respondents agreed or strongly agreed with the statement “Seminars are an effective way of improving my understanding”.<sup>47</sup> Therefore, Bone concludes lectures and seminars are seen as of “fundamental importance” to students’

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<sup>44</sup> See, for example, K. Purcell and J. Pitcher, “*Great expectations: the new diversity of graduate skills and aspirations*” (1996) Institute for Employment Research/Association of Graduate Careers Advisory Services/Higher Education Central Services Unit.

<sup>45</sup> A. Goldsmith, *Standing at the Crossroads: Law Schools, Universities, Markets and the Future of Legal Scholarship* in F. Cownie (Ed.), *The Law School - Global Issues, Local Questions* (Aldershot, Dartmouth Publishing Company Ltd., 1999) at p.70.

<sup>46</sup> A. Bone, “The twenty-first century law student” (2009) 43(3) *The Law Teacher* 222-245 at p.231

<sup>47</sup> *Ibid*, p.231.

learning.<sup>48</sup> The students' clear focus on a traditional pattern of legal education with a transmissional lecture-format of teaching suggests that they still highly prize the "relatively narrow range of intellectual capacities and activities" that have traditionally been developed and valued in law schools".<sup>49</sup>

### **A pluralistic concept – multiple intelligences**

In a manner akin to the durability of the doctrinal tradition in legal education, the conventional definition of intelligence discussed above has remained remarkably stable "withstanding the test of time" for over 100 years.<sup>50</sup> However, it has been critiqued by a number of theorists. It was the subject of fierce debate in the first decades of the 20<sup>th</sup> century.<sup>51</sup> More recently, it has been challenged by theorists such as Sternberg with his triarchic theory of intelligence which separates out analytic, creative and practical intelligences.<sup>52</sup>

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<sup>48</sup> *Ibid*, p.244.

<sup>49</sup> *Supra* n.26.

<sup>50</sup> D. Lubinski, "Introduction to the Special Section on Cognitive Abilities: 100 Years After Spearman's (1904) "General Intelligence, Objectively Determined and Measured"" (2004) 86(1) *Journal of Personality and Social Psychology* 96.

<sup>51</sup> See, for example, L. L. Thurstone, "Theories of intelligence" (1946) 62(2) *The Scientific Monthly* 110.

<sup>52</sup> R. J. Sternberg, G. B. Forsythe, J. Hedlund, J. A. Horvath, R. K. Wagner, W. D. Williams, S. A. Snook, and E. L. Grigorenko, *Practical Intelligence in Everyday Life* (Cambridge, Cambridge University Press, 2000).

However, the theory of intelligence which has had the most significant educational impact is Gardner's multiple intelligences. This has resulted in a wide range of educational projects across the globe, from multiple intelligence elementary schools in the US,<sup>53</sup> to its integration into "mainstream education policy" in Ireland<sup>54</sup> to a science museum in Denmark structured according to Gardner's principles.<sup>55</sup>

Gardner seeks a wider definition of intelligence as a "biopsychological potential to process information that can be activated in a cultural setting to solve problems or create products that are of value in a culture".<sup>56</sup> He suggests that identifying a number of independent, but interacting, intelligences provides a better understanding of humans' cognitive abilities than the focus on "g".<sup>57</sup> Using the above definition he has devised eight criteria to apply to decide whether a particular ability is in fact an

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<sup>53</sup> See, for example, <http://www.ncrel.org/sdrs/areas/issues/methods/assment/as7key.htm> (accessed 6th March 2015).

<sup>54</sup> J. Hanafin, Multiple intelligences theory, action research and teacher professional development: The Irish MI project (2014) 39(4) *Australian Journal of Teacher Education* 126-141.

<sup>55</sup> See [www.danfossuniverse.com](http://www.danfossuniverse.com).

<sup>56</sup> H. Gardner, *Intelligence Reframed. Multiple Intelligences for the 21<sup>st</sup> Century* (New York: Basic Books, 1999) at p.34.

<sup>57</sup> H. Gardner and S. Moran, "The Science of Multiple Intelligences Theory: A Response to Lynn Waterhouse" (2006) 41(4) *Educational Psychologist* 237-242.



intelligence.<sup>58</sup> These range from its potential isolation in the case of a brain injury to its ability to be encoded in a symbol system (such as language or music).<sup>59</sup> Based on this he has identified what he claims are eight different types of intelligences; linguistic, logical-mathematical, musical, bodily-kinesthetic, spatial, intrapersonal and interpersonal and naturalist. Originally, Gardner identified seven intelligences.<sup>60</sup> He subsequently revised this to include naturalist intelligence but rejected spiritual and existential intelligence as candidates.<sup>61</sup> In more recent work, he once again considered the notion of existential intelligence and suggests it is possible to speak of “81/2 intelligences”.<sup>62</sup> Using this pluralistic approach, for Gardener, the athlete and lawyer may be displaying equally high levels of intelligence.<sup>63</sup>

This concept of intelligence has attracted much criticism. For example, Waterhouse summarises recent research findings on general intelligence and suggests there are “many lines of evidence” supporting it in contrast to a lack of empirical evidence

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<sup>58</sup> H. Gardner, *Frames of Mind. The Theory of Multiple Intelligences* (2<sup>nd</sup> Ed.) (London, Fontana Press, 1993).

<sup>59</sup> *Ibid*, chapter 4.

<sup>60</sup> *Ibid*, p.73 onwards.

<sup>61</sup> *Supra* n.55, p.34.

<sup>62</sup> H. Gardner, *Multiple Intelligences - New Horizons* (2<sup>nd</sup> Ed.) (New York, Basic Books, 2006) at p.21.

<sup>63</sup> *Supra* n.55, p.36

favouring multiple intelligences.<sup>64</sup> Sternberg views Gardner's approach as unsuccessful in terms of a theory of intelligence but successful if viewed as presenting "a taxonomy of talents".<sup>65</sup> Similarly despite dismissing Gardner's treatment of "g" as impressing only those with "little or no accurate knowledge" of it, Jenson suggests that a theory of "multiple abilities" could in any event have value in education if its' worth was proved empirically.<sup>66</sup>

Gardner himself suggests that there is "nothing magical" about the use of the term "intelligence" but suggests that he used it to challenge the pre-eminence of "logic and language" in Western culture and its intelligence tests.<sup>67</sup> The simple fact is that there is no single, definitive answer to the question of whether intelligence is a single, unitary ability or a "loose confederation of independent abilities".<sup>68</sup>

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<sup>64</sup> L. Waterhouse, "Multiple Intelligences, the Mozart Effect and Emotional Intelligence: A Critical Review" (2006) 41(4) *Educational Psychologist* 207-225 at p.210.

<sup>65</sup> R. J. Sternberg, "Frames of Mind: The Theory of Multiple Intelligences by H. Gardner. Review by Robert J. Sternberg" (1984) 72(4) *American Scientist*, 394 at p.394.

<sup>66</sup> A. R. Jenson, "Book Review. Howard Gardener under fire: The rebel psychologist faces his critics" (2008) 36 *Intelligence*, 96-97 at p.97.

<sup>67</sup> *Supra* n 57, p.35

<sup>68</sup> N. J. Mackintosh, *IQ and Human Intelligence*: (Oxford: Oxford University Press, 1988) at p.201.

Despite this scientific controversy, and somewhat to Gardener's surprise, there has been considerable take-up of multiple intelligence theory within all levels of education.<sup>69</sup> Reported benefits have included assisting in developing programmes for gifted and talented students and those with special educational needs, further personalization of the learning experience and the narrowing of achievement gaps.<sup>70</sup> Less tangibly, the literature on multiple intelligences also identifies what Hanafin refers to as the "ah ha" factor, explaining "there was often a strong, almost intuitive, recognition that MI theory told an important story about learners in these teachers' classrooms, particularly about learners who may have been marginalised in classrooms".<sup>71</sup>

Within higher education generally there have been suggestions that multiple intelligences could challenge the notion that students with linguistic or mathematical intelligence are most like to benefit from higher education and equip a more diverse student body with a range of talents to meet societal needs.<sup>72</sup> Mirroring criticism

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<sup>69</sup> *Supra* n.61 at p.53.

<sup>70</sup> See, for example, L. Campbell and B. Campbell, *Multiple Intelligences and Student Achievement: Success Stories from Six Schools* (Alexandria, ASCD, 1999) and T. Armstrong, *Multiple Intelligences in the Classroom* (Alexandria, ASCD, 2009).

<sup>71</sup> *Supra* n.53, p.131.

<sup>72</sup> A. Kezar, "Theory of Multiple Intelligences: Implications for Higher Education" (2001) 26(2) *Innovations in Higher Education*, 141-154 at p.146/148.

often levelled at traditional law school pedagogy, Barrington (referring to higher education generally) suggests that “Teaching and learning in Western higher educational institutions still privileges certain ways of knowing and focuses on a narrow view of the intellect – and does not always allow for socio-cultural differences”.<sup>73</sup> He argues that multiple intelligences offer an “inclusive pedagogy” which allows students to work to their own strengths. In this way, it also ties in with constructivist theories by focusing on “where the student is at”.<sup>74</sup>

Perhaps the appeal and potential of multiple intelligences in education overall is best summed up by Craft who states that:

“MI is an optimistic theory that recognizes rich patterns of competence and expertise in each learner”<sup>75</sup>

Multiple intelligences can identify the fundamental capacities present in each individual student. Adjusting teaching and learning methodologies to ensure that the breadth of capacities are acknowledged and enhanced enables multiple intelligences to be

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<sup>73</sup> E. Barrington, “Teaching to student diversity in higher education: how Multiple Intelligence Theory can help” (2004) 9(4) *Teaching in Higher Education*, 421-434 at p.421-422.

<sup>74</sup> *Ibid*, p.423.

<sup>75</sup> A. Craft, “An English Translation? Multiple intelligences in England” in J.-Q. Chen, S. Moran and H. Gardner (eds.), *Multiple Intelligences Around the World* (San Francisco, John Wiley & Sons, 2009) at p.192.

used as a tool to generate “intellectual versatility” within each student.<sup>76</sup>

### **A new pedagogy for law schools?**

As discussed above, the teaching and learning methodologies of law schools and lawyers have traditionally been strongly identified with linguistic-logical intelligences which focus on “thinking like a lawyer”. The pluralistic approach to undergraduate legal education has been arguably encompassed some movement to acknowledge other forms of intelligence (although not usually labelled as such) in recent years. However, a more explicit acknowledgment of, and focus on, multiple intelligences could provide a coherent focus to these attempts and offer an organizing concept to develop a new pedagogy for law schools, drawing on the good work already being done.<sup>77</sup>

As an illustration of this, even though linguistic intelligence is already viewed as closely aligned with legal education, there is potential room to widen its scope further. Gardener defines linguistic intelligence as having four key aspects. The ability to

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<sup>76</sup> P.C. Davis and A. B. Francois, “Thinking like a Lawyer” (2005) 81 *North Dakota Law Review*, 795-805 at p.795.

<sup>77</sup> For an example of a practical attempt to construct such a pedagogy see <http://www.law.nyu.edu/workways> (accessed 6th March 2015).

use language to persuade others (as rhetoric), the potential to assist in memorizing information, the ability to explain using language and the ability to use language to reflect on language, in other words, “metalinguistic” analysis.<sup>78</sup> He suggests that lawyers have developed the skill of rhetoric “to the highest degree”.<sup>79</sup>

It is probable that Gardener is referring the type of courtroom rhetoric commonly associated with lawyers and developed through mootings. Linguistic intelligence is also arguably currently involved in the types of discussions which occur in seminars and tutorials. However, it could also be used to explicitly critique this type of analytical thought process. Students could be encouraged to engage in “metalinguistic” analysis which challenges traditional doctrinal categorisations:<sup>80</sup>

“The logical pedagogy of law school requires students to create myriad discrete categories of information based on causes of action, elements, rules, exceptions, etc. The linguistic student who finds connection and difference among many things will

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<sup>78</sup> *Supra* n.55, p.78-79.

<sup>79</sup> *Supra* n.55, p.78.

<sup>80</sup> *Supra* n.55, p.78.

have a hard time reining in her divergent thinking to enforce/conform to those rigid boundaries.”<sup>81</sup>

Another way linguistic intelligence could arguably be developed is by the use of narrative in legal education. This involves structuring facts in the context of stories, rather than in the context of legal rules (typically legislation and cases) to determine or show the meaning of the situation.<sup>82</sup> DeGroff et al refers to the need for law students to understand how language "poses, defines, structures, and connects (or isolates) issues and the ways in which language averts, blurs, prompts, and conceals issues".<sup>83</sup> Doing this, they argue, gives students the ability to see the bigger picture and draw on a variety of contextual information and viewpoints to gain a more rounded understanding of a situation.<sup>84</sup>

Amongst the more neglected of the multiple intelligences in legal education, a fruitful area for investigation is that of the personal intelligences. These are described by Gardener as “access to one’s own feeling life” (intrapersonal) and “the ability to notice and

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<sup>81</sup> A. K. Kaufman, “The logician versus the linguist – an empirical tale of functional discrimination in the legal academy” (2002) 8 *Michigan Journal of Gender & Law*, 247-268 at p.266.

<sup>82</sup> A. O. Barton, “Cultivating ethical, socially responsible lawyer judgment: Introducing the multiple lawyering intelligences paradigm into the clinical setting” (2004) 11 *Clinical Law Review*, 15-47 at p.27.

<sup>83</sup> *Ibid*, p.35.

<sup>84</sup> *Ibid*, p.37.

make distinctions among other individuals” (interpersonal).<sup>85</sup>

The idea of “thinking like a lawyer” mirrors a Cartesian dualism which views reason and emotions as separate and incompatible – the former being required to impose rationality on the latter.

Therefore, it is not surprising that “By the time one graduates from law school the skills that have been validated rarely include emotional, empathetic intelligence”.<sup>86</sup> This dualism does not reflect the view of emotions of a number of the scientific community who view them as intertwined with reason:

“Nature appears to have built the apparatus of rationality not just on top of the apparatus of biological regulation but also *from* it and *with* it.”<sup>87</sup>

This offers another critique of the traditional conception of “thinking like a lawyer” which requires the suppression of any form of emotion. It also suggests there may be a significant value to incorporating intra and interpersonal intelligences in legal education.

The legal skills movement has seen an acknowledgment of some so-called “soft-skills” such as empathy and the management of

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<sup>85</sup> *Supra* n.55, p.239.

<sup>86</sup> M. Silver, “Emotional intelligence and legal education”, *Psychology, Public Policy, and Law* (1999) 5(4), 1173-1203 at p.1174.

<sup>87</sup> A. Damasio, *Descartes’ Error: Emotion, Reason and the Human Brain* (New York: Harper Collins, 2006) at p.128.



emotion when dealing with clients.<sup>88</sup> There is also a considerable body of literature on law and emotion.<sup>89</sup> Therefore, there is already potential to incorporate these intelligences into teaching and learning methodologies. For example, rather than being taught to suppress their emotions in their studies, students could be asked to analyse the role of emotions within their response to a particular scenario or case. The emotions of other legal-actors and the impact of these could also be discussed (for example, the effect of a traumatic case on both the judiciary and the jury).

At first glance, possibly the most challenging three forms of intelligence to incorporate would be spatial, musical and bodily-kinaesthetic intelligence. However, interpreted creatively, these still have resonance within the law school environment. Gardener defines key aspects of spatial intelligence as the ability to accurately perceive the visual world, to “perform transformations and modifications upon one’s initial perceptions and to “recreate aspects of one’s visual experience”.<sup>90</sup> An acknowledgment of spatial intelligence could involve students creating artwork,

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<sup>88</sup> See, for example, I. Gallacher, “Thinking Like Nonlawyers: Why Empathy Is a Core Lawyering Skill and Why Legal Education Should Change to Reflect Its Importance” (2011) 8 *Legal Communication & Rhetoric: JALWD*, 109-152.

<sup>89</sup> See T. A. Maroney, “Law and Emotion: A Proposed Taxonomy of an Emerging Field”(2006) 13(2) *Law and Human Behaviour*, 119-142.

<sup>90</sup> *Supra* n.55, p.173.

sculpture, games and even mobile phone applications to provide visual representations of legal issues.<sup>91</sup> Students are already encouraged to use diagrams in their note taking, but why not create pictures, posters, photographs or even models instead?

At a practical level, the layout of the classroom or lecture theatre itself could be configurated to enhance learning.<sup>92</sup> At a more conceptual level, Philippopoulos-Mihalopoulos argues that:

“Law’s discovering its spatiality is perhaps the single most important theoretical development in law since the linguistic turn in its fully deconstructive form.”<sup>93</sup>

Using the example of a Law of the Environment Class, he discusses how the students were “immersing themselves in a performativity that involves their body, the space of the classroom and, in some ways, the world at large.”<sup>94</sup> This involved walking and mapping routes to explore connections between the body, law and space.

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<sup>91</sup> For examples in the US context see [www.legaltechdesign.com/visual-law-library](http://www.legaltechdesign.com/visual-law-library). An example in the UK context is the introduction of poster competitions at key conferences, such as the Socio-Legal Studies Association annual event.

<sup>92</sup> See, for example, D. Burke, “Scale-Up! Classroom design and use can facilitate learning” (2015) 49(2) *The Law Teacher* 189-205.

<sup>93</sup> A. Philippopoulos-Mihalopoulos, “Mapping the Lawscape: Spatial Law and the Body” (2012) *University of Westminster School of Law Research Paper No. 12-06*, [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2041210](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2041210) (accessed 23<sup>rd</sup> February 2015).

<sup>94</sup> *Ibid*, p.5.

Musical intelligence, involving pitch, tone, rhythm and cadence is perhaps most clearly discernible in the use of oral rhetoric by lawyers. This could arguably be mimicked during moots and debating. A few somewhat painful examples to be found on the internet do hint at the potential to further incorporate music through using songs to explain key concepts and Dauphinais suggests that this intelligence could be used to facilitate “the use of mnemonics, or memorizing legal materials by rote”.<sup>95</sup>

Bodily-kinaesthetic intelligence is defined by Gardener as “...control of one’s bodily motions and capacity to handle objects skillfully”<sup>96</sup> This could arguably range from appropriate use of body language to depicting legal concepts through mime, role plays, dance and other forms of acting and movement. It could also incorporate the use of more kinaesthetic materials, for example, models or props to physically manipulate.

The newer naturalist intelligence identified by Gardener is initially defined by him as relating to the identification and categorisation

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<sup>95</sup> *Supra* n.26, p.11.

<sup>96</sup> *Supra* n.57, p.206.

of different species.<sup>97</sup> It is possible that transferring such skills to the law school could be of help in ordering and arranging facts and legal concepts. The idea of existential intelligence which deals with “the Big Questions”<sup>98</sup> is perhaps easier to fit within our current conceptions of legal education. The shifts in content discussed above arguably make a more philosophical approach to law almost a given.

## **Conclusion**

The above discussion demonstrates the potential for the use of multiple intelligences as an organising concept to inform teaching and learning methodologies within law schools. At a basic level, it could act as a “checklist” for those developing the curriculum, to ensure they encompass the full range of cognitive abilities. More ambitiously, it can act a form of auditing tool, enabling an assessment of to what extent a pluralistic approach has been adopted, and how successfully it has been. It also provides a guide when selecting and implementing innovations. Rather than choosing and implementing new methodologies in a piecemeal manner their correlation with a multiple intelligences perspective

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<sup>97</sup> *Supra* n.55, pp.18-19.

<sup>98</sup> *Supra* n.55, p.21.

offers a pedagogically-sound way to correlate and organise changes.

For the legal academy, this will require not only an understanding of student profiles, but will also require members of the legal academy themselves to acknowledge and assess their “comfort zones”<sup>99</sup> and actively identify and utilise opportunities to connect with, and develop, intelligences.<sup>100</sup> This may well take more planning and preparation than the traditional model of law school teaching. However, the potential benefits in the development of a more pluralistic pedagogy could be great. Kezar also suggests that using such an organizing concept could be less overwhelming for a faculty or department than a range of disjointed change initiatives.<sup>101</sup>

For the student body, the use of multiple intelligences has the potential to make a significant impact on both student well-being and their learning experience. Lustbader also suggests that taking account of diverse forms of intelligence could “broaden our definition of diversity and enrich our understanding of the

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<sup>99</sup> *Supra* n.53, p.132.

<sup>100</sup> *Supra* n.53, p.132.

<sup>101</sup> *Supra* n.61, p.153.

complexities involved in addressing diversity”.<sup>102</sup> This potential to reflect the diversity and complexity of today’s student body and challenge the dominance of a single, narrow concept of intelligence offers legal education both a challenge and a potential solution.

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<sup>102</sup> P. Lustbader, “Principle 7: Good practice respects diverse talents and ways of learning” (1999) 49 *Journal of Legal Education*, pp.448-458 at p.449.

