

Introduction

Entanglements and entrapments in the law school: Legal education, change and relationality

This book is about contemporary legal education. Its view is international, across geographical boundaries and continents. Its contributions draw lessons from the past and provide predictions (or exhortations) for the future. Its contents vary from pedagogy to skills, from well-being to technology. Each topic contains two companion chapters, one written from the perspective of the United Kingdom (“U.K.”) and one from that of a different country. In places, there are explicit comparisons drawn between jurisdictions, in others there are more implicit questions raised about similarities and differences, commensurability and compatibility. At times, within a chapter, its author (or authors) may seek to capture something of the collective voice of the legal academy within one country in relation to a particular issue. However, the rarity of a unified voice within law schools means that the majority of chapters will only capture one voice of many within the relevant jurisdiction.

Nevertheless, despite this diversity of topics, approaches and comparisons, regardless of the countries involved, the undergraduate or postgraduate nature of the qualification and the different voices included, there is a key unifying feature across all contributions and discussions, namely, the law student. The law student features in every chapter within this volume. This is sometimes as a part of case studies, as in de Vries’ discussion of interdisciplinary initiatives involving law schools (Chapter 4). At other points it is in terms of what legal education is, and should be, providing for students, as in the discussion by Unger in Chapter 1 and Palmer and Zhou in Chapter 2, a theme also found in Bradney’s exploration of “What are University Law Schools for?” (Conclusion). In other contributions, the focus is on specific facets of the law student’s law school experience, from experiential learning as discussed by Grimes and Arthurs (Chapters 7 and 8) to the role and use of skills as considered by Guth and Solomon (Chapters 11 and 12). Without law students, legal education in arguably its most familiar form, that of the university law school, would not exist. That is not to denigrate the vital role of legal academics in shaping the law school in countless ways. It is also not disregarding the fact that there is a myriad of other forms of legal education present in contemporary society, such as public legal education, citizenship (or similar) within compulsory schooling and informal legal learning, through articles, social media and Massive Open Online Courses. However, it is the university law school which is the focus of this collection and at its heart are law students. The student body forms a collection of individuals who have chosen (for whatever reason) to study law and who will spend a sustained period of time engrossed in its rules and norms, its culture and expectations.

The concept of relationality within legal education

In the preceding paragraph, I describe students as being at the “heart” of the law school for a particular reason. Around Valentine’s Day this year (festival of romance, greetings cards and last-minute chocolates), I saw an interesting meme on social media. It was an image of a person labelled “Me”, on bended knee, presenting an engagement ring to a woman labelled “My law degree”. While there are several ways of interpreting this meme, what piqued *my* interest was the notion of the student as being in a relationship with their degree. I found this interesting, because it seemed to challenge some of the commonly held conceptions of the

contemporary law student. As Strevens, in Chapter 9 of this volume, rightly points out, we live in an era where students are often characterised and addressed as consumers. There is an assumption that students are rights-orientated, and employability-focused, perhaps because that reflects so many of the neo-liberal policies and explicit and implicit messages that are now enmeshed in higher education (Zepke, 2015 and 2014). However, what was engaging about this meme was that it suggested something more (at least for some students) than a functional, instrumental form of approach on the part of a law student. It hinted at a deeper engagement, an emotional attachment, to law as a discipline as well as to the law degree as an educational experience and the law school itself.

To suggest or discern an attachment to or engagement with law and legal education on the part of law students should not really be surprising. After all, it is usual for any individual to have their emotional responses and reactions mediated and influenced by their surroundings, their activities and those around them (Feldman Barrett, 2017). If an individual has committed themselves to becoming a law student, in the environs of a university law school, such emotional reactions and responses are inevitable and indeed inescapable. They will shape, and be shaped by, the law students' daily interactions, learning and relationship with both the law and other stakeholders in the law school (Jones, 2019). Such emotions and affect (feelings and preferences) will, in turn, contribute to the web of relationships which the individual creates (or, in some cases, fails to create) throughout their time in legal education. At its broadest this can encapsulate not only relationships with fellow students, legal academics and other staff within the law school and wider university, but it may also encompass the discipline and experience of law itself as the law student's sense of identity develops (see, for example, Sommerlad, 2007). These relationships may be positive in terms of both learning and wellbeing, as when a law teacher provides an appropriately nurturing environment (Bromberger, 2010). However, they may also be negative, as when students fail to develop a sense of belonging or social connectedness (Bergin and Pakenham, 2015; Tani and Vines, 2009). To develop this notion further than its starting point of one individual on bended knee solely addressing a (somewhat glamorous) personification of the law school, it is possible to conceptualise a law student as being at the centre of a web of relationships and connections throughout their legal studies – a form of spider diagram with intricate and interwoven lines and elements. A university law school will provide, and be inextricably enmeshed within, a range of relationships, entanglements and entrapments each with emotional and social facets and influences.

This form of attachment or inter-connectivity can be best encapsulated by terms such as relationship-centred and relational - terms which focus on the concept of relationality. With regard to lawyering, Brooks and Madden have described a relationship-centred approach as one which “includes all approaches that focus on understanding and relating to the client in context, with a narrative that goes beyond the legal controversy and includes the many people and systems with which the client interacts” (2009, p.26). They are creating a vision of the legal profession which acknowledges the complexities of relationships which centre around the client and provide the context within which the more rigid, prescribed procedures and processes of the justice system take place. Brooks has also argued for a form of relational approach to clinical legal education in the context of the United States of America (“U.S.”), defining it as one which explicitly identifies and explores the “relational dynamics” inherent in interactions between students and their supervisors (2006, p.215). The advantages and opportunities (as well as the challenges) provided by clinical legal education programmes are

well-illustrated within this volume through the contributions of Richard Grimes and Sean Arthurs (Chapters 7 and 8). However, there is no reason why such a relational approach should begin and end in quasi-lawyering situations. Indeed, there is a strong argument that, within university law schools, legal education as a whole requires a relational approach. In other words, an approach which acknowledges the relationships and connections within the law school as valuable and important and seeks to factor these into the choices, decisions and conversations that arise both within and about legal education. Discussing the notion of a relational ontology in education more broadly, Lange suggests that it includes:

...the contexts, properties, and patterns of interactions in which an individual is embedded, not just the worldview of an individual. It would address as much of the relational network as possible—geographic place and other non human relations in that place, the myriad of work, personal, and familial relations brought into the room by learners, and the larger cultural, social, economic, and political relations as well as cosmic mythology and spiritual relations that exist at the historical moment. (2018, p.291)

This type of relationality is antithetical to traditional notions of legal education. The law has commonly been presented as the epitome of objective, reasoned rationality, disparaging personal relationships, emotions and the wider affective domain and characterising them as irrational and thus irrelevant (Grossi, 2015; Maroney, 2006). It has failed to acknowledge the importance of such relationships, emotions and affect, despite the over-whelming body of evidence from neuroscience and psychology which demonstrates the ways in which cognition is influenced by (and influences) relationships and affect (Damasio, 2006). Within legal education, it is perhaps unsurprising therefore that the focus has been on ignoring or suppressing the more relational aspects of human life, notably emotion and affect (Jones, 2019; Bromberger, 2010). More broadly, it is individualistic notions such as “thinking like a lawyer” and particular forms of intellectual analysis and reasoning that are commonly prized, even deified, within law schools (James, 2008a). Arguably this results in the normalisation of a specific lexicon of language and behaviour which is rigid, narrow and impoverished (Mertz, 2007). This means that the broader connections and interactions surrounding an individual are disregarded, because they fall outside of that particular, narrow legal prism. In relation to lawyering, Stier (1992) contrasts the notion of a relational approach with that of an “instrumental” approach which is impersonal and focuses on using clients as tools to achieve success (see also Pearce and Wald, 2012). The traditional approach to legal education is arguably similarly instrumental in approach and thus only values the individual student’s intellectual capabilities, those “qualities of the mind” (Quality Assurance Agency, 2015) which law chooses to prize and prioritise. Such an approach denies or excludes the role of relationality within both law and education by rejecting the essence of what makes us human and eschewing the value of relationships and relationality.

To what extent does the traditional approach still dominate law schools? To what extent has the situation changed in contemporary legal education? There are interesting tensions and conflicts at play here, often influenced by wider policy discourses and narratives in higher education. For example, the neo-liberalisation and marketization of universities has led (as Strevens discusses in Chapter 9) to a seeming privileging of the student voice, often through formalised feedback-gather exercises on either an institutional or national scale (such as the National Student Survey within the U.K.). This could be seen as beneficial in terms of

relationality, in as much as it emphasises the viewpoint of the student (including law students), requiring their perspective to be heard (Zepke, 2014a and 2014b). However, at the same time, there is evidence that the results of such feedback can be skewed by other issues; for example, the gender of the academic teaching a course has been found to impact on the types of comments provided, with male academics receiving higher teaching evaluations from male students (Mengel, Sauermann and Zölitz, 2019). At one level, this demonstrates that relationality cannot be interpreted as a one-way flow of information and views. Instead, it needs to involve a process of dialogue and learning by all involved to enable discussion and exploration of wider issues such as gender (Brooks, 2016). At the same time, this example illustrates how one of the reasons for the difficulties that can be found within discourses around the student voice lies within the origins of its development. The neo-liberal academy seeks to use emotional and affective reactions and responses, not to foster relationality but to promote economic productivity (Burke, 2015; Lynch, 2006). For universities to produce appropriately qualified knowledge production workers, and ensure their own survival, they must meet the demands of students and cater to the increasing prevalence of discourses around employability which often dominate discussions of the purpose of higher education (Frankham, 2016). In other words, the purpose of the contemporary emphasis on feedback-gathering is not to foster greater or more open dialogue, and thus nurture closer relationships. Instead, it is part of a broader agenda which focuses on individual productivity and gain, and requires universities to play a full role in facilitating this wider economic prosperity. It does not place the student at the heart of higher education, because it does not acknowledge that there is such a heart.

One of the broader advantages of taking a relational view of higher education is the way in which it challenges such neo-liberal discourses. At the same time, while focusing on the law school and the law student, it is necessary to consider what specific importance and value such relationality has within contemporary legal education. This is particularly the case when a snapshot of legal education across jurisdictions tends to suggest that law schools are already thriving (see, for example, the Legal Education and Training Review, 2013, para. 2.11). Law can be characterised as a discipline with high student numbers and relatively low running costs, making it popular with higher education institutes and (being perceived as) offering a certain status to those who chose to study it (Twining, 1994). Although such a broad-brush summary masks increasing disparities and challenges arising both within and between jurisdictions, overall law schools can be characterised as a success story on a range of measures. However, it is also clear that law schools are facing a range of challenges and demands and being compelled to address a series of changes at present. These mean that continued success cannot be taken for granted or assumed, but it also suggests a potential and ability for a relational conceptualisation to assist in navigating change and uncertainty. This collection itself, with its focus on key directions for legal education, demonstrates a range of these imperatives and pressures and the possible role of a relational approach.

Relationality within the university law school

In Chapter 1, Unger discusses the proposed introduction (in 2021) of the Solicitors Qualifying Examination in England and Wales. This will remove the requirement of a law degree, or its equivalent, for qualification into the solicitors' profession, thus potentially diminishing some of the university law school's appeal for prospective legal professionals. However, at the same time, as Unger argues, it allows for university law schools to develop

distinct, innovative and effective pedagogies for law teaching by freeing themselves of the requirements of the Qualifying Law Degree. What will these new pedagogies be and how will they reframe the current degree? The answer has to be, at least in part, that these will be shaped by the relationships within the law school, with its students, its legal academy, its broader stakeholders in the local community and the wider university. If a layer of regulation and procedure is removed, the gap that remains should be filled with the form of inclusive and open dialogue that is core to a relational approach (Brooks, 2016). Of course, there will be wider imperatives stemming from broader policy agendas and financial pressures in higher education too, but a relational approach can pervade many levels, from that of individual teaching pedagogy (Saevi, 2011) to a broader engagement with external (or broader internal pressures) which includes relationality as an embedded element within decisions and choices and as a marker of progress and success. There is arguably a sentient warning about the dangers of ignoring relationality within Unger's companion chapter, Chapter 2, which focuses on legal education in the Chinese context. In this chapter, Zhou and Palmer discuss the limited relationship between legal education and the legal profession, and the lack of embedding of professional skills that has resulted from this. This is particularly problematic given the Chinese law school's potentially pivotal role in the training of legal professionals. The strong political-legal domination of the state seems to suggest an eschewing of relationality which has perhaps contributed to this lack of dialogue and disregard for the connection between law as an academic discipline and the realities of legal practice. The dictates of the wider system have led to a failure to appreciate the real and potential connections and relationships which exist between different parts of both legal education and the wider legal framework. This provides an indication of the benefits of acknowledging and exploring relationality alongside political-legal concerns.

It is this type of wider connection which is the focus of Burton and Watkin's contribution in Chapter 3 and de Vries' companion discussion in Chapter 4. The focus on interdisciplinary approaches and collaboration illustrates relationality at a conceptual level, demonstrating how university law schools can draw on, work with, and connect to, other disciplines. Burton and Watkins acknowledge that challenges arise in ensuring that such approaches and collaboration are nurtured within law schools, not least because of the tradition of doctrinalism and the influence of market forces. However, their argument is that interdisciplinarity and collaboration are vital components of legal education, regardless of whether a law degree is viewed as having academic or vocational purposes. The contribution of de Vries provides an overview of a number of interdisciplinary initiatives which draw on disciplines such as politics, psychology and economics, as well as placing law in a societal context. Perhaps the most inspirational example given is the use of poetry to encourage students to reflect upon the relationship between the rule of law and authoritarian leadership. For de Vries, such programmes not only facilitate the ability of law students to find their own voice; they also enhance the relationality that can occur between legal education and the legal profession, and contribute to the development of a new type of legal practitioner who possesses greater criticality and openness. De Vries' reference to teams of lecturers suggests that connections can also be fostered between academics within and across disciplines. On some occasions, he notes that such interdisciplinarity may also involve law students working directly with students of other disciplines (for example, law and geography students working together on an environmental law programme). The reflexivity which he urges readers to embed within such approaches can be used to foster a broad appreciation of the relationships and connections surrounding and enmeshing individual students as well as those within both the law school and the discipline of law, an essential quality for navigating change.

Alongside the rise of interdisciplinary approaches and collaboration (however far from linear that has been), in recent years legal education has had to adapt to the proliferation of new technologies within society. The contributions by Ryan and McFaul (Chapter 5) and Halder (Chapter 6) in this volume demonstrate two strands of this phenomenon. Firstly, there are the ways in which law engages with the role and impact of technology within society as a whole. Secondly, there are the ways in which technology can affect the design and delivery of the law degree itself within university law schools. Both of these strands arguably have implications for a relational approach within legal education. With regard to the first, Ryan and McFaul provide a broad-brush overview of how technology and society interact, with a specific focus on the U.K. They refer to the impact of technology on legal services, in particular in relation to dispute resolution. Halder's chapter discusses a number of key legal cases in India which also demonstrate the ways in which technology is interacting with a range of aspects of daily life. Such discussions and examples demonstrate the need to acknowledge the role of technology within human relationships and connections in the contemporary age, from the use of social media for networking and campaigning to the fascinating example of the triple *talaq* (a form of instant divorce) being sent via telephone or other mediums, effectively severing a relationship without any form of face-to-face contact. Halder's exploration of some of both the positive and negative interactions that technology can foster within relationships demonstrates both that any critique of technology needs to consider its impact on human relationships and, conversely, that human relationships and connections cannot be considered without factoring in the role technology now plays (Malpass, 2013).

The second thread, that of technology within legal education, is well illustrated by Ryan and McFaul's case study of The Open University's Open Justice Centre in the U.K. and Halder's discussion of the use of legal databases and other technology within Indian law schools. Both explicitly demonstrate the importance of technology within university law schools. I would also argue that, implicitly, they both illustrate the need to consider the interaction between technology and relationships. As technology alters the way students connect and relate to their peers, their teachers and the wider law school, we need to critically evaluate and reflect upon the impact of this. For example, what does it mean for the wellbeing of those navigating new technological advances? How does the use of new forms of communication influence the types and strength of connections that are formed? What can legal academics do to ameliorate the potential negative impacts and accentuate the positive? Without asking such key questions, there are dangers that technological innovations will be embraced within the law school without questioning whether there is a potential human cost involved, or a need for adaptation to preserve key relationships.

Clinical legal education provides a strong example of the importance of relationality in legal education. It is referred to in a number of chapters in this book (including by Unger in Chapter 1 and Ryan and McFaul in Chapter 5). The contributions of Grimes (Chapter 7) and Arthurs in this volume (Chapter 8) specifically discuss the role of clinical legal education within university law schools. Grimes, with a particular focus on the U.K., traces key definitions, challenges and opportunities, including identifying a number of potential models of clinical legal education and exploring the different balances which can be struck between education and service. In the companion chapter, Arthurs considers the U.S. context and

identifies key trends influencing the development of the field, including the potential for it to be integrated within the wider law school curriculum. It is arguable that much clinical work is, or should be, imbued with relationality (Brooks, 2006). When dealing with clients, in clinic and in legal practice, much of the focus is on communicating, building dialogue and fostering rapport and empathy (Gerdy, 2008). Experiential learning itself is a process which involves not just the cognitive, but the affective, including strong emotional components in individual's response to their experience (see, for example, Abe, 2011). The work and experience of clinical legal education can potentially highlight connections between legal education and the legal profession and enhance law students' understanding of the importance of relational approaches. The pedagogies and practices it will often use can both reveal the importance of relationality and also assist in fostering and developing it further. It is therefore perhaps unsurprising that several authors in this collection suggest that there is the potential for clinical legal education to play a greater, and more embedded, role within law schools. This is not only a valuable response to change, but also a way of fostering change which acknowledges and appreciates relationality.

Given its relational aspects, it is fitting that, after exploring clinical legal education, the subsequent two chapters in this collection move on to explore well-being within legal education. One of the key arguments for the acknowledgement of emotions and affect and the shift towards a relational paradigm within legal education is its potentially beneficial impact on well-being (Jones, 2019; James, 2008b). This is well demonstrated by the increasing recognition in many jurisdictions, particularly the U.S. and Australia, that law schools can be damaging to their students mental and physical wellbeing, often because it has tried so hard to disregard non-cognitive facets of its law students' lives and character (Towness O'Brien et al, 2011; Sheldon and Krieger, 2004). Strevens (Chapter 8) identifies that the current messages being conveyed, intentionally and explicitly, to law students, are likely to diminish intrinsic motivation and foster extrinsic motivation in a way which self-determination theory indicates is detrimental to well-being. The aforementioned neo-liberal notion of the student as a consumer is one of these messages. The characterisation of these discourses as a series of messages illustrates the lack of relational dialogue which this market-driven environment is propagating. The companion chapter, by Field and Meyer (Chapter 8), also draws on self-determination theory in order to explore the interconnection between well-being and the curriculum of the law degree. The focus here is on the way in which threshold concepts can be used to integrate and promote well-being. What is key within these two chapters is the way in which well-being is demonstrated to be influenced by myriad aspects of the law school experience. It thus demonstrates the need for a relational approach to extend beyond one aspect (such as student satisfaction) and imbue the entirety of the university law school, including curriculum and pedagogy. The current issues with well-being have arguably arisen, at least in part, because of a failure to acknowledge and respond to this facet of legal education in the past, and they therefore appear to lend weight to the argument that any change must encompass well-being and relationality.

The final set of companion chapters focus on the role and development of legal skills within university law schools. In the U.K. context, Guth's chapter (Chapter 10) explicitly identifies the affective domain as an area which has been neglected to date within skills development, providing an additional link with other chapters in this collection. It also makes a strong case for the explicit teaching of skills to undergraduates studying Law and explores the way in which the skills debate encompasses a range of influencing factors, including a number

discussed in different contexts in previous chapters, such as technology and the increasing focus on employability. In the Nigerian context, Solomon discusses the issues that have arisen because of (what he perceives as) a lack of integrated and appropriate skills training to date, emphasising the importance of skills teaching to entrants into the legal profession. Together, these chapters illustrate the importance of the skills agenda on an international scale. With regard to relationality, they demonstrate the need to acknowledge this in the skills that are being identified and fostered in a way which will then facilitate a wider awareness and understanding of the need for relational approaches and an acknowledgement and utilisation of emotion and affect.

The final chapter of this collection, the Conclusion, addresses the fundamental question of what a university law school is for. When considering relationality, this is a vital question because it will determine the answer to the equally important question ‘On what basis are we going to evaluate success?’ If university law schools can be viewed as being relatively successful (by most measures) to date, then how are we going to determine whether that continues into the future? Is it sufficient to conclude that law schools are meeting their mission if it can be demonstrated that their numbers and cash flow are buoyant? It is possible that, at an institutional level, this form of metric can and does suffice. However, returning once again to the focus on people and relationships, it seems highly unlikely any law student would ascribe success to these measures. For law students, it may be that a more relevant assessment of success is based on the likelihood of obtaining a career in the legal profession as a result of their studies. In a jurisdiction such as the U.S., where law is a postgraduate, more vocationally orientated programme of study, this may have some feasibility. However, in a jurisdiction such as the U.K., although a majority of law students appear to begin their studies with this aspiration (Hardee, 2012), it is only a minority of law students who will go on into legal practice (see, for example, The Law Society of England and Wales, 2017). Whilst, as Unger illustrates in this volume (Chapter 1), there remain close and complex links between law schools and the legal profession, to measure success on this metric alone would either seem to suggest law schools are unsuccessful (in the U.K. at least) or to disregard the majority of their graduates. As noted in preceding paragraphs, there is a wider emphasis on employability now running through higher education policy and discourse which could suggest that a broader measure of vocational success is appropriate. However, to focus solely on this would arguably diminish the value of the law school. It would give legal education little credence or value for its own sake, but simply position it as a conduit for knowledge production. Therefore, it is hard to see how such a measure can be adequate, let alone sufficient (Guth and Ashford, 2014).

Fung, when exploring the question of what a university is for generally, suggests that:

... There are perceived tensions within universities between those who see education predominantly in terms of training for the benefit of economic success, whether that of the individual or society, and those who conceive of education as being a more rounded set of cultural practices which are fundamentally about human development and ‘becoming’, human relations, and the development of a ‘good’ society. (2017, p.9)

We therefore return to my earlier critique of traditional legal education as focused solely on students' intellectual capabilities or qualities. If employability alone does not suffice, does solely intellectual, cognitive development instead become the measurement of success? Interestingly, on any measure of employability this falls down as disregarding the so-called "soft skills" which have clear emotional and affective components and are increasingly being emphasised by employers, including law firms (Jones, 2018; Andrews and Higson, 2008). However, I would argue that, more importantly, such a wholly cognitive focus is flawed on many other levels too. It ignores the emotional, relational components of law which pervade all aspects of the law school and which can add key insights into our understanding of law students and legal education more generally. Bradney's discussion in this volume's Conclusion argues that a law school's primary duty is towards its university. He suggests that this encompasses not only financial support but, more importantly, a need to ensure that law contributes to the intellectual life at the centre of higher education. His argument is clear and compelling, but I would suggest we need to determine what is perceived and understood as intellectual in a way which encompasses relationality and uses this as a way to identify and navigate to the heart of higher education, a place where cognitive and non-cognitive are valued as legitimate and important parts of a university's mission. From the single law student seeking a closer relationship to her law degree, to the entanglements of law school stakeholders and the entrapments of neo-liberalism, a relational prism is key to navigate the challenges and opportunities that lie ahead.

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