

The Role of Law Schools in Founding and Reviving Legal Professionalism The need for Ethical Leadership

Professor Kim Economides
University of Exeter
United Kingdom

1. What are law schools for?

Two titans of modern legal scholarship, the late Professors Peter Birks and Professor Sir Neil MacCormick, both with strong Scottish connections, shared a common cause of death and, through their writings, made significant contributions not only to legal literature but also to the wider community of legal scholars. Both men boldly asserted the public role and responsibility of the legal scholar and were deeply committed to defending legal values. They left an important legacy to law schools everywhere reminding law teachers of their true mission, through legal education and scholarship, to promote and protect humane professionalism.¹ In the mid-1990s Peter Birks edited two volumes, timed to inform the ACLEC Legal Education Review,² one entitled *What Are Law Schools For?*³ thereafter used editorials in the *SLS Newsletter* to target those who sought to dilute the quality and intellectual rigour of the liberal law degree. Around the same time, Neil MacCormick, in his introduction to the *Society of Legal Scholars (SLS)*⁴ opened with a powerful vision of the role of legal science in modern society and went on to describe the fundamentals of a sound legal education. Few law school mission statements can match the clarity, force and insight of MacCormick's manifesto and his words merit reflection since, in my view, they capture the essence of what any law school should aspire to communicate to - and inspire within - the law student:

A rounded education in law must always include a sound grounding in the basics of legal doctrine: public law, both constitutional and criminal; private law, concerning obligations, persons and property and at least some elements of commercial law; also preferably through special courses dedicated to this, elements of legal history and of the philosophy and sociology of law. More important than the detail of any particular analysis of the texts of the law; understanding of texts in the light of underlying problematic aspects of law; and a readiness to enquire into the contexts in which law operates. Also, there should be a firm awareness of law's character as a practical discipline; this includes an awareness of legal practice and its requirements, but is not exhausted by that. In the broadest sense it requires a grasp of law as a domain of practical reason. The fate of constitutionalism and the Rule of Law is nowhere a matter for complacency. Teachers of law protected by a justly defined academic freedom and imbued with a proper sense of professional self-respect and civic

¹ See appreciations of both academic lawyers at: <http://www.law.ed.ac.uk/neilmaccormick/> and <http://www.guardian.co.uk/news/2004/jul/16/guardianobituaries.obituaries>.

² This specified the following educational outcomes for law degrees: Intellectual integrity and independence of mind; Core knowledge; Contextual knowledge; Legal values; Professional skills. See further ACLEC *First Report on Legal Education and Training* (London, 1996) 21.

³ P. Birks, *Reviewing Legal Education* (Oxford, OUP, 1994); *Pressing Problems in the Law. What Are Law Schools For?* (Oxford, OUP, 1996)

⁴ On the inside cover of each issue of the *SLS Directory* published annually.

responsibility have a special role to play in maintaining critical awareness of the preconditions for law and liberty. The part they play is scarcely less vital than that of an independent judiciary and legal profession.

While today's neo-liberal climate may be hostile to traditional conceptions of 'academic freedom', as legal scholars almost everywhere appear to be subordinated to managerialist tendencies in higher education that risk debasing autonomous scholarship and the currency and true value of law degrees, the ideal of a liberal legal education persists and most law teachers still adhere to the belief that they should aim to produce 'good lawyers'.⁵ But what is a 'good' lawyer and is it still realistic to expect law schools to cultivate integrity, in either lawyers or public institutions, beyond communicating skill in the handling of rules, transactions or clients? Should law schools be involved with developing moral character or ethical instruction and, if so, to what extent? It is perhaps necessary to understand the motivations of law teachers to perform the special 'public' role MacCormick has assigned them, and which he believed was so crucial for both law and liberty.⁶

2. Instilling professional awareness and commitment

Many, but by no means all, law schools in the West accept some responsibilities that reach beyond transmitting technical competence and increasingly promote awareness of public and community interests that transcend servicing the legal needs of fee-paying, private clients. They may achieve this through traditional lectures based in the classroom or through work experience, clinical legal education, pro bono and community legal services outside the physical boundaries of the law school. The point is that a new understanding of the role and responsibilities of the modern law school is emerging but much more can and should be done to raise awareness of individual and social responsibility amongst future lawyers.⁷ Law Schools in the East are also contemplating how they might teach students about justice as well as law.⁸ In this sense law schools accept they have a role - as public institutions - that, at least in part, and despite private funding, involves supporting the integrity of social and political institutions designed to protect and promote the Rule of Law. Other academic commentators have noted the role of the law school in reviving professionalism and it is clear that the law school is a significant site when it comes to encouraging the good in lawyers and discouraging the bad.⁹ But professionalism is an important value to be nurtured regardless of its significance to the legal profession and civil society. Ethical perspectives also matter when it comes to core academic activities such as

⁵ See M. Thornton, "The Law School, The Market and the New Knowledge Economy" (2007) 17 (1-2) *Legal Education Rev.*, 1-26. See also K. Economides, "Cynical legal studies" in Cooper, J. and L. Trubek, L, eds., *Educating for Justice: Social Values and Legal Education*. (Aldershot: Dartmouth, 1997) 26-38.

⁶ See also A. Kronman *The Lost Lawyer: Failing Ideals of the Legal Profession* (Cambridge, Mass: Belknap Press of Harvard University Press, 1993)

⁷ See R. Burrige and J. Webb, "The Values of Common Law Legal Education: Rethinking Rules, Responsibilities, Relationships and Roles in the Law School" (2007) 10:1 *Legal Ethics* 72-97 [See also: "Special Issue – The Values of Common Law Legal Education" (2008) 42:3 *The Law Teacher*]

⁸ See, eg, K. Economides, "Anglo-American conceptions of professional responsibility and the reform of Japanese legal education: creating a virtuous circle?" (2007), 41(2), *Law Teacher* 155-168 (available at: <http://hdl.handle.net/10036/65074>)

⁹ R. Gordon, "Professionalisms old and new, good and bad" (2005) 8 *Legal Ethics* 23 at pp.30-31.

teaching and research if plagiarism is to be discouraged and research subjects protected. In a recent report to the Law Society of England and Wales I argue that ethics should be made mandatory in the undergraduate law curriculum and make a series of recommendations designed to strengthen the professionalism and integrity of future lawyers that should help them better connect with the fundamental values and wider civic responsibilities highlighted by Birks and MacCormick.¹⁰ It is important to state that these values and responsibilities have relevance for professional practice far beyond lawyering and, interestingly, at least within Europe ethics are seen to support the employability of students and relevant to the aims of higher education more generally, regardless of academic field and geographical boundaries.¹¹ So, what is to be done?

3. Promoting ethical leadership

Amongst the recommendations in my report is the idea that young lawyers, at the point of admission, might make some kind of declaration analogous to the medics' Hippocratic oath that could articulate and reinforce their professional commitments as lawyers.¹² I offer the following declaration as a model that could be adapted to individual and local needs:

I promise to use my legal knowledge and skill to the best of my ability and, notwithstanding duties owed to clients and the Court, will at all times serve the interests of justice without fear or favour. As lawyer, I shall work diligently, honestly, with integrity and independence to the highest standards and do my utmost to uphold the core shall uphold the rule of law, the democratic order, human rights, social justice, fair and expeditious process, and work toward the improvement and accessibility of the law, legal institutions and processes.

Some law schools require law students to swear (or affirm) an oath at the point of entry or graduation. Another recommendation is that legal ethics becomes mandatory in the undergraduate law degree. Whether or not this would be appropriate in all legal cultures is debatable but that we should set high expectations of future lawyers, whatever their career path, is something that should command almost universal acceptance for reasons set out by MacCormick and Birks. Unfortunately, many law schools appear to shirk this responsibility and settle for the lowest, not highest, common denominator. Most continue to ignore ethical instruction and the field remains under-developed and under-theorised by the legal academy. Where change takes place invariably this is led by legal practitioners with law schools reluctantly dragging their feet behind. I invite the *International Association of Law Schools* to demonstrate leadership by passing a resolution calling upon all law schools to

¹⁰ K. Economides and J. Rogers, *Preparatory Ethics Training for Future Solicitors* (London, Law Society, 2009) (available at: <http://hdl.handle.net/10036/64973>) For an early assessment see Martin Partington's recent review: <http://www.ukcle.ac.uk/directions/ethics.html>

¹¹ See further the Bologna Process which promotes the idea of an 'engaged university' (http://ec.europa.eu/education/policies/educ/bologna/bologna_en.html). In order to enhance employability European higher education aims to promote research and professional skills by increasing emphasis on a range of areas including: ethics, social responsibility, public awareness of research, multicultural skill, IPR and business skills; and global career competencies/skills.

¹² Economides and Rogers, *supra*, n.10 at pp.34-35. See also the discussion of a legal Hippocratic oath at: <http://law.exeter.ac.uk/friends/HippocraticOathforLawyers.shtml> now published as, Exeter Symposium "Symposium: A Hippocratic Oath for Lawyers?" (2008) 11:1 *Legal Ethics* 41-66. See also: <http://www.timesonline.co.uk/tol/comment/letters/article2871928.ece>

offer their students the opportunity to study ethics and reflect meaningfully on their professional commitments. I am convinced there is a tremendous amount of experience and good practice than can and should be shared.