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Effective teaching of legal ethics: use an applied ethicist^{*}

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ABSTRACT

Legal ethics, particularly at undergraduate level, should incorporate the expertise and teaching of someone outside traditional legal education and professions. Most appropriately, legal ethics education should involve an applied ethicist. Whilst lawyers are very good at identifying critical legal issues, it is the ethical issues that are of concern here. I therefore propose that because laws often have a deep-rooted ethical foundation and students need to appreciate this to truly understand the aim, nature and objective of the relevant law, legal ethics should be taught in cooperation with an applied ethicist. I begin by creating a foundation for my argument about using an applied ethicist by addressing ethics teaching at undergraduate level. Next, I make a case for ethics teaching beyond professional ethics and teaching to codes of conduct. It is at this juncture, in the third section, where I explain the benefits of involving an applied ethicist in legal education. Finally, I will address possible concerns related to integrating an applied ethicist into Law School teaching.

KEYWORDS

legal ethics; applied ethicist;
effective teaching;
professional ethics

Ellen Klein argued that ‘the one necessary condition for a successful business ethics course is that the ‘teacher must be a philosopher’.¹ She argued that ethics requires specific expertise and philosophers specialising in applied ethics have training in logic necessary for such teaching. Applied ethics (otherwise known as practical ethics or moral philosophy) is ‘a branch of philosophy... [which aims] to examine and define principles for moral behaviour and apply them to real world scenarios’.² Applied ethics is a practical discipline which considers practical decision making, policy making, legal issues, etc. An applied ethicist will usually have a specialism (business, medicine, law, etc.), but there is an overarching

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¹Ellen Klein, ‘The Only Necessary Condition for a Successful Business Ethics Course: The Teacher Must Be a Philosopher’ (1998) 8 *Business Ethics Quarterly* 561.

²The Oxford Uehiro Centre for Practical Ethics, ‘What is Practical Ethics?’ (2024) <www.practicaethics.ox.ac.uk/what-practical-ethics>.

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understanding of ethical principles and theories and how to apply them in practical situations.³

Any applied ethics is and should be an interdisciplinary undertaking because the issues examined transcend discipline boundaries.⁴ Interdisciplinarity breaks down the discipline-specific, siloed learning of knowledge and offers a holistic perspective, incorporating knowledge, systems, approaches, etc. from different disciplines. An issue learned or discussed through interdisciplinary positioning receives the benefit of this un-siloed knowledge.⁵ Applied ethics is fundamentally interdisciplinary because it uses philosophical knowledge, logic and principles to understand a non-philosophy topic, discipline or issue.

I pick up on the ‘interdisciplinarity’ inherent in applied ethics, here, legal ethics, training. Interdisciplinarity is important to legal ethics education because lawyers have constant interaction with work on behalf of and against individuals in professions outside of the law. I argue that legal ethics, particularly at undergraduate level, should be taught incorporating the expertise and teaching of someone outside traditional legal education, and certainly beyond those working/who have worked purely as solicitors or barristers. Most appropriately, legal ethics education should involve an applied ethicist. Ethicists can assume an interdisciplinary space and help address modern day issues.

Further, ‘legal ethics’ is not a mainstream undergraduate module; there is no consensus on how to teach legal ethics or the degree to which it will mitigate professional misconduct and similar.⁶ There is, however, substantial justification made for the teaching of legal ethics. Teaching legal ethics, in general, may very likely ‘increase recognition of ethical issues, enhance skills in ethical analysis, and build awareness of the structural conditions and regulatory failures that contribute to problems in professional life’.⁷ Legal ethics may also provide ‘a counterbalance to the absence of moral enquiry in the law curriculum’ by teaching students to think about ethical dilemmas.⁸ Further, lawyers are in a privileged position and as such must act with the highest ethical standards.⁹

Legal academics can and may apply ethical principles to legal issues with their students, but two problems emerge when we look at this across the sector. First, legal ethics modules are not mandatory on UK LLB programmes. The lack of opportunity to teach legal ethics that this creates exists outside the focus of this article. The second issue relates to the delivery of legal ethics teaching. Law professionals may have a good grounding in legal ethics and practice it well. However, they may not be expert enough to teach it and/or they may lack the applied ethics and interdisciplinary perspectives which would enhance the quality of challenge to laws and systems on ethical grounds. Whilst possibly not the panacea, an applied ethicist would, in these

³B Almond, ‘Applied Ethics’ in *Routledge Encyclopedia of Philosophy* (Routledge 2011) <www.rep.routledge.com/articles/thematic/applied-ethics/v-2>

⁴W Frederick, ‘One Voice? Or Many? A Response to Ellen Klein’ (1998) 8 *Business Ethics Quarterly* 575.

⁵L Traczykowski and others, ‘Introduction to Business Teaching Beyond Silos’ in L Traczykowski, AD Goddard, G Knight and E Vettrano (eds), *Business Teaching Beyond Silos: Interdisciplinary and Multidisciplinary Learning* (EE 2023).

⁶D Rhode, ‘Ethics by the Pervasive Method’ (1992) 42 *Journal of Legal Education*.

⁷Rhode, ‘Ethics by the Pervasive Method’.

⁸J Chapman, ‘Why Teach Legal Ethics to Undergraduates’ (2002) 5 *Legal Ethics* 68.

⁹P Camp, ‘Teaching Ethics to the Legal Profession’ (2000) 3 *Legal Ethics* 25; J Chapman, ‘Why Teach Legal Ethics to Undergraduates?’ (2002) 5 *Legal Ethics* 68; R Pearce, ‘Teaching Ethics Seriously: Legal Ethics as the Most Important Subject in Law School’ (1998) 29 *Loyola University Law Journal* 719; D Webb, ‘Ethics as a Compulsory Element of Qualifying Degrees: Some Modest Expectations’ (2001) 4 *Legal Ethics* 109; J Webb ‘Teaching Ethics to the Legal Profession: Is there a Better Way’ (2000) 3 *Legal Ethics* 128.

circumstances, provide an interdisciplinary and philosophical perspective and with that offer a critical friend perspective to legal ethics as currently taught, thus helping to challenge the status quo of the legal system. I therefore propose that because laws often have a deep-rooted ethical foundation and students need to appreciate this ethical foundation to truly understand the aim, nature and objective of the relevant law, legal ethics should be taught in cooperation with an applied ethicist.

Hence, my contribution to the literature related to teaching legal ethics¹⁰ is the argument for using an applied ethicist in the development and delivery of legal ethics training. Whilst this argument is made in the context of legal education in England and Wales, my arguments that (1) legal ethics should be understood beyond jurisprudence and as more than professionalism and that (2) an applied ethicist should contribute to the teaching will still be relevant to all jurisdictions. Take, for example, that professional responsibility (not legal ethics) is taught in United States legal education and is a core component of the curriculum.¹¹ Professional responsibility, though, does not necessarily challenge a lawyer's understanding of, say, 'rights' and how those 'rights' are embedded in both our legal systems and our places in and expectations of a common humanity. Addressing this gap with an applied ethicist teaching legal ethics will be explained further later.

I present my argument in the following way. First, I create a foundation for my argument about using an applied ethicist to teach ethics to law students by touching upon the idea that ethics should be taught in the first place. I include here discussion of jurisprudence as an insufficient alternative to ethics education. Second, ethics should not be reduced to black and white rules nor questions that can be answered without explanation.¹² I make a case for ethics teaching beyond professional ethics and codes of conduct. It is at this juncture, in the third section, where I explain the benefits of involving an applied ethicist in legal education and how it will ensure the interdisciplinary learning necessary for productive legal ethics education. Then, if my argument for the use of an applied ethicist is accepted, in the fourth section, I address possible issues with hiring an applied ethicist.

1. Why teach ethics

Before I discuss using an applied ethicist, I will explain what ethics and applied ethics are in general terms. Very basically, ethics is the should. We should do x or y because it is the right thing to do, not because we are compelled to by laws or religion. A utilitarian would say that the right thing to do maximises happiness.¹³ A deontologist would say that the right thing is a categorical imperative and we do that which we should do based on our duties to other humans.¹⁴

Peter Singer, in attempting to say what ethics is, instead, explains what ethics is not. He explains that it is not based on religion, it is not purely theoretical (it must work in practise just as much as it does in ideal circumstances), it is not relative to a society, it is not subjective (and by this he means that it can be subjected to reason).¹⁵ He further explains:

¹⁰Pearce, 'Teaching Ethics Seriously' 719.

¹¹N Duncan and S Kay, 'Addressing Lawyer Competence, Ethics, and Professionalism' in F Bloch (ed), *The Global Clinical Movement: Educating Lawyers for Social Justice* (OUP 2010).

¹²Webb 'Teaching Ethics to the Legal Profession'.

¹³JS Mill, *Utilitarianism* (OUP 2011).

¹⁴Kant, *Groundwork for the Metaphysics of Morals* (Yale University Press 2018).

¹⁵Peter Singer, *Practical Ethics* (3rd edn, CUP 2011).

... the justification of an ethical principle cannot be in terms of any partial or sectional group. Ethics takes a universal point of view. This does not mean that a particular ethical judgement must be universally applicable. Circumstances alter cases, as we have seen. What it does mean is that in making ethical judgements, we go beyond our own likes and dislikes.¹⁶

Let's consider the ethical foundation of the RNLI (Royal National Lifeboat Institution) as an example. RNLI asserts that they save human lives – rich, poor, foreign, British. They save people who need saving.¹⁷ In this way, they (reasonably) are not focused on a specific society of people to save because all humans matter. This works in practise too – the rich yacht owner who gets drunk and falls in the ocean will get saved, even if his choices were bad ones and maybe some people think he does not 'deserve' to get saved.

What can we take from this? Ethics is a universal set of moral principles or concepts, separate to religion, that can be reasoned through (and hence subjected to scrutiny), but which can be generally utilised across situations, circumstances and, for the purpose of this article, jurisdictions. Whilst the application may be situation specific, the principles and concepts are universal.

It also suggests that ethics is something beyond personal likes and dislikes. Two points follow from this. First, as Singer notes, personal likes and dislikes are not ethics. Our personal morals are based on, usually, our upbringing, our culture, our religion, etc. and hence are specific to each of us as individuals. At an even more basic level, our preferences, say, of x over y, cannot be understood as ethics as ethics requires us to move beyond our own self-interests and consider 'universalisable judgement'.¹⁸ The distinction between morals and ethics is always a bit hazy as the terms can usefully be used interchangeably. That said, I would suggest that the term 'morals' more closely aligns with personal decisions about what is 'good' or 'right'.

Second, if ethics is broader than individual preferences, and looks toward a more universal understanding of what is 'good' or 'right', then we can also assume that ethics are not specific to a particular society or culture. This point will be elaborated upon when I discuss the difference between law and ethics later in the chapter.

Applied ethicists usually have a speciality – bioethics, nonhuman animal ethics, disaster ethics, legal ethics, etc. What is particular to an applied ethicist is the foundational knowledge and ability to apply normative principles and concepts to relevant situations and circumstances. When applied ethics is taught at university level (or similar), students are provided with ethical fundamentals separate to any religious values, social etiquette or, pertinent to this discussion, legal customs or rules of a particular jurisdiction. As explained above, ethics teaches the universality of these principles across cultures and societies. More importantly, though, and considering the practical side of ethics, when we learn applied ethics, we learn how to go about applying these principles in different scenarios because 'circumstances alter cases'.¹⁹

Returning to some of Singer's points about ethics, and in one manner of speaking, all of ethics should be applied – it is not good enough for something to work in theory but not in practise. However, we distinguish *applied* ethics from *normative* ethics when we

¹⁶Singer, *Practical Ethics*.

¹⁷R Hall, 'RNLI Hits Out at 'Migrant Taxi Service' Accusations' *The Guardian*, 28 July 2021.

¹⁸Singer, *Practical Ethics*,

¹⁹Singer, *Practical Ethics*.

want to talk about how or where it is being used or implemented. So, for example, much of British legal or professional ethics has foundations in virtue ethics which is a normative ethical theory, in this case, applied to the legal profession.²⁰ The decisions of a ‘wise’ person (a judge, perhaps) are followed and used as precedent. Legal ethics is a specific way of implementing virtue ethics (and other ethical theories) that account for circumstances and situations of law and legal practice. The virtue ethics of a specific judge are not necessarily applicable in every situation or case and hence legal ethics must incorporate the application of normative ethical theories.

1.1. Ethics vs law

Having established the position that legal ethics is a form of applied ethics, I now move to the additional overlapping nature of law and ethics. Ethics and law are obviously different – different disciplines and different professions. However, they are often bunched together – sometimes helpfully, sometimes not so helpfully. Let’s consider these separate disciplines.

First, Law is – very simply – ‘a collection of rules that seek to govern behaviours, relationships and disputes’.²¹ I am not attempting to enter into any debates about ‘What is law?’ or ‘What is the purpose of Law?’ etc. I am using law in the sense of the particular type of rules that govern our society and which are implemented in legal systems at local, national, and international levels. Laws, as are being discussed here, are situated in particular or overlapping jurisdictions.

Ethics is, as explained above, a universal set of principles and concepts that guide us humans in deciding what we should do separate to religion or personal morals. Ethics are philosophical in nature. They require our critical examination and practise. With that philosophical grounding, though, ethics covers everything. Ethics applies in all scenarios and can, if we are able and willing to engage, provide us rules and instructions in how to live a ‘happy’ life or a ‘good’ life. These ethical foundations supersede and transverse laws and legal jurisdictions. They guide all of humanity (in ideal terms) in how to lead a good life in co-humanity with others. I say ‘if we are able and willing to engage’ because ethics – living an ethical life – is quite difficult. The ‘rules’ need to be understood, examined, questioned, critiqued and made manifest for them to form part of our daily practise and be adapted based on circumstances.

Lawyers and ethicists use the word ‘norm’ to mean how we should do something, the *ought*. However, in law, norms are ‘a command, permission or authorization’.²² Legal norms are enforceable with law. Ethical norms are ideals which guide our actions based on reason; they are objective goals for all humans.²³ Aiming at the good (even if we do not achieve it) could be considered ethical; likewise, the ethical action may simply be the lesser of two evils (and may still be a violation of a law).

It can be said that ethics is therefore impractical. People often excuse their own unethical action citing impracticality when really, ethical action is quite often simply very difficult. It is important for legal educators to foster ‘... a tolerance of ambiguity’.²⁴

²⁰Chapman, ‘Why Teach Legal Ethics to Undergraduates?’ 68.

²¹Ryan Murphy and Frances Burton, *English Legal System* (Routledge 2020).

²²H Kelsen, *Pure Theory of Law* (The Law Book Exchange, Ltd 2005).

²³Kant, *Groundwork for the Metaphysics*.

²⁴Chapman, ‘Why Teach Legal Ethics to Undergraduates?’ 86.

With that, we must teach our students to navigate that grey area and in doing so we must teach students how to do the most good (consequentialism) or fulfil their basic human duties (deontology). Learning about ethical norms instead of only legal norms will help law students understand how to practise within ambiguity.

Whilst some normative theories of ethics (deontology, for example) have rules, those rules are not legislated or used as a form of coercion for a population. Instead, the principles guide how one lives. In this way, laws can be more useful than ethics because they are established and agreed rules for which people can be officially praised or punished. Despite personal morals, codes of conduct or societal expectations, those present or operating within a jurisdiction are bound by the rules that a specific jurisdiction has established. One expects punishment for breaking the (legal) rules of the jurisdiction.

One would hope that laws are ethical and that we create societies based on our shared ethical principles. In this way, the overlap of 'law' and 'ethics' is quite sensible. To say something is legal we are – hopefully – also saying that it is the 'right' or the 'good' thing. Regardless, Webb suggests that lawyers must learn ethics as a form of professional preparation for those situations in which regulation and professional guides do not provide the necessary answer. Learning ethics will, undoubtedly provide individuals with an ability to critically examine situations and take steps in the direction consistent with their moral and ethical positioning.²⁵

However, once again, whilst laws are applicable in a certain jurisdiction, ethics are universal and so do not necessarily reflect all the (personal) values of a given population; they should be fundamental to humanity, of course, but do not necessarily represent the rules and shared understanding of a given community or society. For example, a certain population might decide (vote, agree, legislate for) a rule (law) on the appropriate age for getting married. This will be determined by the shared values of the society for which the law is made. Let's say it is 20. Another country may legislate that people should be free to get married at 16. Each country is free to make their own laws because the laws of each country establish formal rules of that particular society. If the specific law is ethical or not will be reasoned by matter of ability to make autonomous decisions, autonomy being an ethical principle. Hence, both ages may be ethically acceptable for getting married, but each is only legal in its own jurisdiction. I would argue from this example that ethics is fundamental and underpins our law making. An applied ethics understanding of autonomy helps us situate the concept of autonomous decision making in a context. In this way, critically engaging with the law becomes possible. The ethical justification around autonomous decision making, for example, is consistent across all jurisdictions – it is simply a matter of circumstances altering the situation, i.e. how autonomy is understood, respected, and supported within that jurisdiction.

Taking this law versus ethics discussion one step further, there are situations in which serving a client's ends may require challenging the legal status quo of society and the associated institutions.²⁶ Take desegregation in the American South as an example.

²⁵Webb, 'Ethics as a Compulsory Element of Qualifying Degrees'.

²⁶I recognise that this analysis does not comment on those ethics embedded or absent from our governments, institutions, courts, firms, etc. That is too broad of a topic to cover here as it would require application of applied ethics to the teaching of many different professions which make up governments, institutions and the like. Similarly, assessing whether it is justified for lawyers to discuss moral ends with clients is not necessary for me to do here. It is sufficient to say that some lawyers may support their clients who suggest that laws are unjust.

We may want lawyers to support their clients who suggest that laws are unjust. If we take Martin Luther King Jr's interpretation of Aquinas – 'Any law that uplifts human personality is just. Any law that degrades human personality is unjust' – then we see that the ethics of a law are fundamental to the existence of a law.²⁷ The law should not be devoid of ethics and ethics is not as practicable as when it is ensconced in law. In this way '... law schools convey ethical messages whether they intend to or not'.²⁸

However, there is more to teaching ethics, even legal ethics, than messages. Students must understand the fundamental nature of ethics and their individual role in humanity before they can be expected to engage with the law and the ethical reasoning that may or may not make up those laws which they use in their legal careers. Hence, teaching ethics is a fundamental component of law.

1.2. Ethics vs jurisprudence

Now consider specifically jurisprudence and how it is sometimes relied upon for ethical understanding of the law. It is often assumed that when we talk about jurisprudence, we are not just talking about the nature of law but also the ethical reasoning behind law; that is not necessarily the case. The following is an oversimplification, but I hope to show where ethics is missing from legal education, even when we consider the teaching of jurisprudence.

We start, first, with religion. Anyone who follows a religion follows the rules set out by a deity. God(s) decide what is good or bad and we follow in line. Normative ethics is not about religion; it puts humanity at its core and articulates rules or normative (read this as ideal) expectations about how humans should act or be.

Many societies develop laws based on the religious underpinnings of their society. So, here we might think about natural lawyers. Man-made laws are only valid if they do not violate a higher law of God, gods, or nature. An unjust law is not a valid law because that is not something that God would have mandated. So, the law should not be followed.

Other societies have laws based on what people have agreed to and which are able to be enforced. We abide by laws because we live in that society; Positivists suggest that laws are followed because they help with ordering society and hence deserve our 'moral appreciation'.²⁹ There can be unjust laws because maybe society made errors in establishing that law.³⁰ Dworkin's legal theory brings us somewhere in the middle of this positivist/natural law debate. He suggests that laws are not rules (as a natural lawyer would suggest) but rather principles.³¹ Hence, judges get to make decisions informed by principles, but not necessarily following specific rules. This brings us to a variation of Singer's position that 'circumstances alter cases'.

Here is the problem. Consider the Nuremberg defendants; they said they were just following the law. But clearly, or so the natural lawyers would argue, those laws were invalid because they went against some higher law. However, justifying laws based on some

²⁷Letter from Martin Luther King, Jr to Fellow Clergymen (16 April 1963) 'Letter from a Birmingham Jail'.

²⁸Chapman, 'Why Teach Legal Ethics to Undergraduates?' 84.

²⁹A Marmor and A Sarch 'The Natural Law' (2019) Fall *The Stanford Encyclopaedia of Philosophy* <<https://plato.stanford.edu/entries/lawphil-nature/>> accessed 14 August 2021.

³⁰D Lyons, 'The Connection Between Law and Morality: Comments on Dworkin' (1986) 36 *Journal of Legal Education* 485.

³¹A Marmor and A Sarch 'The Natural Law' (2019) Fall *The Stanford Encyclopaedia of Philosophy* <<https://plato.stanford.edu/entries/lawphil-nature/>> accessed 14 August 2021.

higher power assumes that there is some higher power or that we all agree that that higher power is the same for everyone and/or that we agree what the higher power would profess/defend in a given circumstance. If instead we follow a positivist perspective, the defendants followed the laws, as they should – but the problem was the laws themselves as they should not have been brought into being. With that, we must take issue with the law developers.

My point here is not to take sides in the ‘what is law’ discussion, it is to point out that we actually do not feel comfortable with laws that are unjust or lead to what we see as immoral or unethical outcomes. Separate to your position (natural law, positivist, or otherwise), how do we know what is ethical? We cannot rely on the laws or lawmakers to be ethical and consistent with societal values – as the Nuremburg example shows. We must understand and study ethics *separate* to jurisprudence’s ‘what is law’ so that we know what we are actually asking/looking for in ethical laws. Ethics leads, the law follows.

Additionally, jurisprudence is not a required module in the UK. Even if everything I have explained about the teaching of jurisprudence not being sufficient for ethics education is wrong, it is not a required component on the soon-to-be outdated QLD nor a priority for the new SQE. The one module relied upon or at least referenced in response to the query – where is the ethics in this degree – is not going to be required of all law students.

Whilst a student may benefit from learning legal theory through jurisprudence, it is not a central component of legal education (at least in England and Wales). If students are not trained in ethics (or at least aware of the ethical reasoning), then they are not well prepared to do what is in the interest of their clients, society, is faithful to justice, etc.

2. Professional ethics & codes of conduct

There is more to be said about the role of ethics in the education of undergraduate law students. I will return to applied ethics in Section 3. For now, I want to briefly discuss legal ethics as it relates to professional ethics and codes of conduct being insufficient on their own for creating ethical law students and, later, legal professionals.

Legal ethics as a discipline is an important component in legal education. In the aftermath of the Watergate scandal, the American Bar Association required that legal ethics was taught in American law schools.³² In Australia, legal ethics within legal education was to be ‘upgraded’ as mandated in the Australian Law Reform Commission’s 2000 Report, *Managing Justice*.³³ Within the new SQE in the UK, ethics are pervasively examined across all components of the exams.³⁴

Some legal ethics training focus only on how legal practitioners practise law. This is consistent with what Luban and Wendel describe as the Second Wave of legal ethics theory where we understand the lawyer’s role as being grounded in the political

³²H Hayes, ‘Professional Ethics Compliance: From Watergate to Today’ *American Bar Association* <www.americanbar.org/groups/diversity/women/publications/perspectives/2015/summer/professional_ethics_compliance_watergate_today/> accessed 6 April 2024.

³³D Weisbrot, ‘Taking Skills Seriously: Reforming Australian Legal Education’ (2004) 29 *Alternative Law Journal*.

³⁴Solicitors Regulation Authority, ‘Assessment topics’ *SQE* <<https://sqa.sra.org.uk/about-sqe/what-is-the-sqe/assessment-topics>> accessed 6 April 2024.

institutions she serves.³⁵ However, this kind of legal ethics ‘requires lawyers to abstain from moral judgement about their clients, understand their role of serving as agents of their clients, and follow the positive legal obligations in the code of ethics’.³⁶ A lawyer’s role, and hence the ethics she practises, is, arguably, specific to that profession’s code and may not be consistent with the everyday morality of the rest of us. Aligning to this type of legal ethics opens the lawyer and clients to scandal where cases are argued without critical engagement with the facts of the case.

Further, certain legal ethics approaches do not allow for the unpacking of the ethical foundations of those laws or critiquing of aspects of social justice inherent in/missing from the laws and legal system in general. Only moral activists would likely take up such causes and that is not a dominant approach to legal ethics.³⁷ I am not suggesting that all lawyers be moral activists. Rather, understanding aspects of social justice and being able to account for them in legal arguments is a relevant aspect of legal ethics training.

For example, the Post Office Scandal in the UK has seen hundreds of (Sub-) Postmasters wrongly convicted of crimes like theft and false accounting. Lawyers have been, at best, bystanders, fulfilling their obligations to their clients.³⁸ They may have, alternatively, offered ‘client-friendly spin on the law’ which violates a lawyer’s duty to the legal system within which she works.³⁹ Either way, there are possible scandalous outcomes when full understanding of legal ethics is lacking, whether you are a moral activist or not.⁴⁰

Jonathan Herring, in his textbook on *Legal Ethics*, is specific that the teaching of legal ethics is particular to the practise of law and focuses on “lawyers’ ethics rather than general ethics’.⁴¹ But when do law students learn what is ethical from a normal human perspective? How do they understand and engage with these ‘extra obligations’ if they have not been taught the baseline ethical requirements of any adult human?

He continues that ‘a lawyer in throes of the ethical dilemma cannot be expected to undertake an analysis of that depth’, and by that depth he means the depth that a philosopher would.⁴² This is true and valid. Then law students should have an ethical underpinning in their training that means they have some philosophical savvy to pull from, such that they are not making ethical decisions based on regulations alone.

From this, I make two points. I first argue that being a ‘lawyer’ is more than your professional ethics; second, and related, codes of conduct are not sufficient mechanisms for understanding ethical duties and acting ethically. I do this to establish the grounding upon which I can make my argument that engaging an applied ethicist to support legal ethics teaching will benefit law students, firms, legal proceedings, etc.

³⁵D Luban and WB Wendel, ‘Philosophical Legal Ethics: An Affectionate History’ (2017) 30 *Georgetown Journal of Legal Ethics* 337.

³⁶D Luban, *Legal Ethics and Human Dignity* (CUP 2007).

³⁷C Parker, ‘A Critical Morality for Lawyers: Four Approaches to Lawyers’ Ethics’ (2004) 30 *Monash University Law Review* 49.

³⁸J Hyde, ‘News focus: Lawyers in the crosshairs at Post Office Inquiry’ (*Law Gazette*, 10 July 2023) <www.lawgazette.co.uk/news-focus/news-focus-lawyers-in-the-crosshairs-at-post-office-inquiry/5116597.article> accessed 8 February 2024.

³⁹*Ibid.*

⁴⁰Parker, ‘A Critical Morality for Lawyers’.

⁴¹J Herring, *Legal Ethics* (OUP 2017).

⁴²Herring, *Legal Ethics*.

2.1. Professional ethics

First, being a lawyer (solicitor, barrister, lawyer, judge) requires practical and theoretical engagement of the professional ethics of the profession. On ‘vocational teaching’, legal ethics often (though not exclusively) focuses on duties to clients (advocacy), to the profession, and to the legal system in which they are practicing. Indeed, legal ethics textbooks suggest that this subject applies to one’s role as advocate or administrator of law.⁴³ However, as Chapman explains, ‘... vocational teaching of ethics focuses on responses to practical ethical dilemmas and not the theoretical frameworks that underpin them. It is by providing an exploration of these theoretical foundations that law schools could make an important and unique contribution’.⁴⁴

On the issue of practical ethical dilemmas vs theoretical frameworks, clinical legal education allows for the application of theory to practice. Clinics – as possible locations for teaching practical elements of ethics – are incredibly valuable as they provide students with the opportunity to learn ethics in the abstract and then practice applying those ethics in a supportive environment.⁴⁵ Further, clinics are an opportunity to engage with an integrative approach to legal education which highlights the importance of ethical and social issues.⁴⁶ However, they cannot be relied upon to have aspiring lawyers understand the ethical reasoning underneath the making of such choices.⁴⁷ For that, I argue, students must be taught the fundamentals of legal ethics.

Let us consider an example: a disagreement between a landlord and tenant. As a professional solicitor, barrister or judge in England and Wales, the general rules of professional ethics assert that the professional must act:

- in a way that upholds the constitutional principle of the rule of law, and the proper administration of justice,
- in a way that upholds public trust and confidence in the solicitors’ profession and in legal services provided by authorised persons,
- with independence,
- with honesty,
- with integrity,
- in a way that encourages equality, diversity and inclusion,
- in the best interests of each client’.⁴⁸

These are useful principles, but there are ethical principles that underpin these that need to be unpacked in order to be able to make full use of the legal principles and be an appropriate advocate for clients. ‘Best interests of each client’ is relevant in this case because best interest assumes rational decisionmakers, autonomous decision

⁴³Luban, *Legal Ethics and Human Dignity*.

⁴⁴Chapman, ‘Why Teach Legal Ethics to Undergraduates?’ 80.

⁴⁵N Duncan and S Kay, ‘Addressing Lawyer Competence, Ethics, and Professionalism’ in F Bloch (ed), *The Global Clinical Movement: Educating Lawyers for Social Justice* (OUP 2010).

⁴⁶W Sullivan and others, *Educating Lawyers: Preparation for the Profession of Law* (The Carnegie Endowment for the Advancement of Teaching 2007).

⁴⁷D Rhode, ‘Into the Valley of Ethics: Professional Responsibility and Ethical Reform’ (1995) 58 *Law and Contemporary Problems* 139.

⁴⁸The Law Society, ‘Ethics in Law’ (2020). <www.lawsociety.org.uk/en/topics/regulation/ethics-in-law> accessed 9 September 2021.

making and, at the same time, freedom to make choices. Solicitors will work to understand the specifics of ‘best interest’ in each particular case, I have no doubt. In the case of a tenant vs a landlord, there are overlapping and competing ethical issues that must be weighed, for example, rights of property (landlord), rights to privacy (tenant), non-discrimination rights (tenant). Even when lawyers act within the ‘spirit of the law’, there may not be enough understanding of what ethical values and considerations drive the ‘spirit’ in question. Likewise, what is owed to a client and the legal system may raise conflicting duties, or at least duties not easily carried out concomitantly. A lawyer, particularly a junior professional, will not necessarily know what to question or why the legal position they are being asked to challenge may likewise be unethical. For example, why do tenants – or any human for that matter – have rights to privacy? What does this mean beyond what the law says? We may understand what this means from a natural law perspective, but applied ethics will help to explain how rights play out in practical, real-world situations beyond the legal situation in question.

With this in mind, how does one properly advise a client if she does not know or understand the client’s ethical position and reason for challenging the law? I suggest that the professional principles that underpin the legal profession are necessary and appropriate, but not sufficient for developing an ethical understanding of the cases presented to that professional.

Indeed, those professional ethics for the legal profession – act for your client, do not do anything illegal or against the code of ethics – are simply not sufficient without some wider applied ethics context. Instead, it is important that law students understand that the law, ‘is not the ultimate criterion of justice’ and that a law is usually seen to be ‘unjust’ when it violates someone’s (moral/ethical) rights.⁴⁹

2.2. Codes of conduct

There are established codes of conduct of legal professionals in Great Britain. For example, according to the Bar Standards Board Handbook, Part 2, Code of Conduct, the Barrister’s Code of Conduct applies ‘when practising or otherwise providing legal services’.⁵⁰ The SRA’s Code of Conduct is a bit broader: ‘they apply to conduct and behaviour relating to your practice, and comprise a framework for ethical and competent practice which applies irrespective of your role or the environment or organisation in which you work (subject to the Overseas Rules which apply to your practice overseas)’.⁵¹

Webb argues learning a minimum standard of ethics during vocation, such as with codes of conduct-learning, may result in some ethics learning. However, when studying codes of conduct only, ethics can be reduced to black and white answers which deny learners the opportunity to contextually problematise and apply ethics in the nuanced way that will be required in real world settings.⁵² A legal practitioner should understand which, why and how to take certain actions in carrying out her role. I contend that a

⁴⁹Mill, *Utilitarianism*.

⁵⁰Bar Standards Board, ‘BSB Handbook’ (2020) <www.barstandardsboard.org.uk/the-bsb-handbook.html> accessed 12 April 2023.

⁵¹Solicitors Regulation Authority, ‘SRA Code of Conduct for Solicitors, RELs and RFLs’ (2022) <www.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/> accessed 12 April 2023.

⁵²Camp, ‘Teaching Ethics to the Legal Profession’ 25; Webb ‘Teaching Ethics to the Legal Profession’.

lawyer's rightful role may be serving the client's ends, challenging the law and changing legal institutions, possibly at the same time. From an applied ethics position, these cannot be distinctly separate ways of lawyering. They may overlap, and a legal professional must be prepared to ethically act. When the application of ethics goes unpractised or untested through the action of lawyering, true legal ethics learning is undermined.⁵³

Likewise, concerning oneself with issues that are of concern to your profession only is myopic and hinders the full and critical analysis of a case or issue.⁵⁴ Consider that the BSB instructs Barristers to 'observe your duty to the court in the administration of justice' and 'act in the best interests of each client'. But what is a 'best interest'? How is that decided? If we think about the tenant/landlord case discussed previously, understanding the ethical components and the varying factors that contribute to what is ethical, 'best interest of each client' is ethically complicated. Likewise, rights – what we owe to other humans and what we can claim from other humans – are fundamental to the development and enforcement of law. If we think about rights being common to humanity, then learning about rights should not be done from a profession-specific position, void of a general ethical grounding.

Camp suggests that the 'circumstances' of a case will determine the actions to be taken; we can therefore assume, as Singer explains, that circumstances alter cases and hence ethical training is important.⁵⁵ So, Webb argues, that students must also be sensitised to the spirit of the code.⁵⁶ This is where I believe an applied ethicist may have some value.

Consider the kind of ethical dilemmas students will face in the coming decades. Climate change, artificial intelligence, and all matter of social issues were not originally accounted for in codes of conduct nor are they the type of issue to be incorporated as that is not the function of a code of conduct. Likewise, we do not know what ethical issues our future lawyers will face: we cannot possibly account for all of what is to come. Professional ethics and codes of conduct must be supplemented with applied ethics learning – thinking ethically. We need to prepare aspiring lawyers for the unknown and to be responsive to questioning or critique as future issues will likely create.

Being sensitised to that 'spirit of the code' that Webb suggests, alongside teaching to a code of conduct does provide students with awareness of what is ethically expected of them. Webb further argues, though, that legal ethics training must include a 'critical/reflective dimension'.⁵⁷ Legal academics are well-suited to teach critical/reflective practise. However, it is possible that this aspect of legal ethics education would be better suited to someone who is well-versed in the ethical and not just the legal arguments and who can support the 'critical/reflective dimension' of ethical analysis. Engaging with criticisms of ethically based decisions may be more appropriately done by those who have studied and work on the ethical aspects specifically – they are more likely to know and/or be able to navigate the literature – and will have a nuance to their answers that will give students a better ability to critically engage with the issue at hand.

⁵³Webb 'Teaching Ethics to the Legal Profession'.

⁵⁴Chapman, 'Why Teach Legal Ethics to Undergraduates?' 78.

⁵⁵Camp, 'Teaching Ethics to the Legal Profession' 25.

⁵⁶Webb 'Teaching Ethics to the Legal Profession'.

⁵⁷Webb 'Teaching Ethics to the Legal Profession'.

3. Benefit of an applied ethicist

I have explained that there is often an overlap of ethics and laws and that a deeper, reflexive understanding of the ethical underpinnings of laws is necessary if we are to produce ethical legal graduates – and not just legal graduates who understand how to be a legal professional. I turn now to the benefit of using an applied ethicist to teach legal ethics to achieve that end.

In general, an applied ethicist relies on a community of practice, across disciplines, to move the conversation on current ethical issues forward. They articulate the norms of society, ethically understood. Lawyers should know the latest research, arguments, and movement of those arguments. Ethicists should be the ones creating/developing that ethical discussion within their community.

Integrating an applied ethicist into legal ethics teaching will provide the next generation of legally-educated professionals a fundamental understanding and predisposition to ethical, not simply legal or legal ethics, decision making. In this section I offer several reasons why it is beneficial to hire an applied ethicist.

3.1. Ethical teaching

Learning ethics on the job from those who pay your salary and/or influence your promotion and success is ethically problematic. For those within a UK education system where legal ethics is not required at undergraduate level, work placements or similar may be the first time they engage with ethical dilemmas beyond those regarding professional conduct. Undergraduate legal ethics training with the assistance of an ethicist would provide individuals with an ethics base from which they can be discerning in their ethical point of reference once in the professional world.

For many UK law students, their first exposure to legal ethics will be on a Legal Practice Course. Legal Practice Courses are now focused on preparing students to pass the new Solicitors Qualifying Exam (SQE). The SQE is a two-phase exam assessment for which applicants must first obtain a degree in any subject and obtain two years of qualifying work experience. They must also fulfil certain character and suitability requirements as established by the SRA.⁵⁸ Ethical theory and applying that theory to practice are not accounted for in this part of their education. For students under this SQE system⁵⁹, exposure to ethics will therefore likely occur during their period of qualifying working experience. Trainees are often given mentors or are encouraged to watch the activities of more senior members of staff for this ethical guidance.

Hence legal ethics is often based on a virtue ethics perspective – the building of virtuous character.⁶⁰ Virtue ethics explains that through *phroensis* (practise) we achieve

⁵⁸Solicitors Regulation Authority 'Solicitors Qualifying Exam (SQE) Route' (SQE, September 2021) <www.sra.org.uk/become-solicitor/sqe/> accessed 17 February 2024. In order to earn qualification as a solicitor before the SQE, students had to obtain a law degree which met SRA requirements and was hence labelled a 'qualifying law degree'.

⁵⁹The new SQE is a two-phase exam assessment for which applicants must first obtain a degree in any subject and obtain two years of qualifying work experience. They must also fulfil certain character and suitability requirements as established by the SRA. In order to earn qualification as a solicitor before the SQE, students had to obtain a law degree which met SRA requirements and was hence labelled a 'qualifying law degree'.

⁶⁰T Dare, 'Virtue Ethics and Legal Ethics' (1998) 28 *Victoria University of Wellington Law Review* 141; M McGinniss, 'Virtue Ethics, Earnestness and the Deciding Lawyer: Human Flourishing in a Legal Community' (2011) 87 *North Dakota Law Review* 19.

eudemonia (wisdom). Students learn by experiencing the virtuous character of other lawyers, say, through placements, shadowing, and work experience. When we practise law, we are also practising our virtues. If we look at the Solicitor's Code of Conduct (UK) we see that maintaining trust and acting fairly is listed first; this is ultimately about acting with the virtue of integrity.⁶¹ We ask ourselves what the wise person would do in each situation and aim to repeat that action or response. Virtuous character building and individual identity may also develop through Communities of Practice where leaders, networks, educators, etc. together feed the learning journey.⁶²

Considering the need for humanity based ethical understanding instead of individualist alone, there is something ethically problematic with relying on the virtues of an individual from the same company within which one expects to work and progress (think training contracts).⁶³ If we have no humanity-based ethical training with which to pull from, how do we assess the 'wisdom' of other individuals and decide whose character to follow? Further, what if the person to be followed or community of practice within which an individual begins to practice law is also responsible for that individual's payment and future career? We will likely be encouraged to follow the ethos of a partner in our firm or a mentor, however the decision of which 'wise' person to follow in this scenario is limited and biased.

Virtuous character building should continue in this way within the legal profession, but not alone. Legal ethics are a 'public endeavour' and as such the individual and particularist nature of virtue ethics on its own is inadequate.⁶⁴ Ethics training within the legal profession should instead be paired with ethical training of fundamental principles found in deontological or consequentialist ethical traditions (possibly among others such as feminist positions). In this way, the ethically 'wise' person will have been suitably exposed to a complete ethics training.

I then argue that ethics should be taught by someone separate to the legal profession (at undergraduate level, or postgraduate level in jurisdictions where this is relevant) so that it can be interpreted and applied separate to one's employment. It should also entail various aspects included in applied ethics so that students of law have a grounding in their responsibilities, the possible consequences of their actions as well as the virtuous character they should possess. Allowing workplace mentorship to be the main location of ethical learning is not sufficient.

Consider further that the 'wise person' of the legal profession may also be found in the role of 'judge' and hence reinforces a 'preferred set of values'.⁶⁵ The judge has extensive experience and has 'practised' their craft for years. A judge has also benefitted from the wisdom of those who came before. If we assume that these 'wise' people are also setting the standard for virtuous action then our young and/or early career professionals are being cornered into reinforcing and reiterating values from a particular (likely) gendered, social, economic, cultural, situated viewpoint. They take on the 'preferred' set of values – and have not necessarily unpacked and logically worked through the *ethical* values.

⁶¹Solicitors Regulation Authority, 'SRA Code of Conduct for Solicitors, RELs and RFLs' (2022) <www.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/> accessed 12 April 2023.

⁶²J Rodgers, 'Legal Ethics Education: Seeking – and Creating – a Stronger Community of Practice' (2023) 36 *Georgetown Journal of Legal Ethics*.

⁶³Chapman, 'Why Teach Legal Ethics to Undergraduates?' 68.

⁶⁴Dare, 'Virtue Ethics and Legal Ethics'.

⁶⁵Chapman, 'Why Teach Legal Ethics to Undergraduates?' 80.

This is worrying and ethically problematic when we start to look at the current (England and Wales) judicial system. 92% are white (81.7% of the England and Wales population is white); 35% of court judges (50% of tribunal judges) are female (51% of the population is female); and a disproportionate percentage of individuals who went to private schools were successful in joining the judiciary.⁶⁶ The Courts are improving their gender and ethnic representation, but it is a slow process. As well, many of the current judges have practised in very different environments and circumstances than the regular population and hence may not have developed their moral reasoning to deal with the situations before them in court or in virtuously inspiring the next generation of judges.

I am in no way suggesting that judges are unethical or unable to make ethical judgments. Instead, I am suggesting that following the example of those already in practice is not enough to ensure that we have developed the ethical decision-making skills of those in our charge. Instead, we must also ensure that there is ethics education at the undergraduate level so that moral reasoning is taught as part of a curriculum and students develop their own ethical practice.⁶⁷ Therefore, I am suggesting that we use an applied ethicist with other legal academics to teach ethics – and not just rely on self-experience or mimicking wise people who may not be wise or may not be privy to the same lived experiences as will affect our students and the public.

Students may well prefer codes of conduct. Learn the rules, follow them. However, a full legal education should encourage deep thought, unpacking a dilemma and deciding what to consider, an ability to critically analyse and come to one's own understanding of a topic, to critically evaluate 'received wisdom' that can then be applied when necessary.⁶⁸ It makes sense to have a non-lawyer do this so as to account for the multi-discipline (and multi-cultural) considerations inherent in legal problems.

Let us take 'maintaining trust and acting fairly' in the Solicitor's Code of Conduct. What does 'fairness' mean and how does it present itself in complex situations? There is a famous ethics example of equality, equity and justice. Imagine there are three people trying to watch a sports match over a fence; each person is a different height. If only one is tall enough to see over the fence, we say that there is no equality, equity or justice. If everyone is given a single box to stand on, we say this is equality – equal distribution of support. In this example, though, the shortest person still cannot see over the fence. If, instead, everyone is given enough boxes such that they can see over the fence, we say it is equitable – the goal is equality of outcome, not equality of action. Finally, if we want true justice for these people, we take down the fence; now no one has an impediment to watching the game. Which of these examples, though, is fair, particularly given

⁶⁶Lord Chief Justice of England and Wales & Senior President of Tribunals, 'Judicial Diversity Statistics 2019' (2019) Criminal Justice System Statistics Quarterly; Gov.UK Official Statistics, 'Diversity of the Judiciary: Legal Professions, New Appointments and Current Post-Holders - 2022 Statistics' (2022) <www.gov.uk/government/statistics/diversity-of-the-judiciary-2022-statistics/diversity-of-the-judiciary-legal-professions-new-appointments-and-current-post-holders-2022-statistics#other-characteristics> accessed 13 April 2023; Gov.UK, 'Population of England and Wales' (2023) <[www.ethnicity-facts-figures.service.gov.uk/uk-population-by-ethnicity/national-and-regional-populations/population-of-england-and-wales/latest#:~:text=The%202021%20Census%20data%20shows,other%20ethnic%20group%20\(6.2%25\)](http://www.ethnicity-facts-figures.service.gov.uk/uk-population-by-ethnicity/national-and-regional-populations/population-of-england-and-wales/latest#:~:text=The%202021%20Census%20data%20shows,other%20ethnic%20group%20(6.2%25)>)> accessed 13 April 2023; Gov.UK, 'Male and Female Populations' (2023) <[www.ethnicity-facts-figures.service.gov.uk/uk-population-by-ethnicity/demographics/male-and-female-populations/latest#:~:text=The%20data%20shows%20that%3A,up%209.2%20million%20\(49.0%25\)](http://www.ethnicity-facts-figures.service.gov.uk/uk-population-by-ethnicity/demographics/male-and-female-populations/latest#:~:text=The%20data%20shows%20that%3A,up%209.2%20million%20(49.0%25)>)> accessed 13 April 2023.

⁶⁷Chapman, 'Why Teach Legal Ethics to Undergraduates?' 68.

⁶⁸Webb, 'Teaching Ethics to the Legal Profession'; Chapman, 'Why Teach Legal Ethics to Undergraduates?' 71.

the competing constraints on resources? How can we unpack ‘fairness’ from a standard reading of the law? It is difficult to ‘exercise your judgement’ if these concepts and non-legal experiences have not been worked through, questioned, criticised and, finally, understood. Having passed the SQE and relevant qualifying work experience, it is not clear that you have ‘practised’ judgement and with that, following the code of conduct is not very useful.

Indeed, I would argue that it is imperative for lawyers to learn professional ethics and be up to date with codes of conduct/ethics as pertain to their branch of service. Lawyers should also, though, be able to engage with the ethical underpinning of laws, and, using their ability to reason (as taught to them on law degrees and by an applied ethicist), unpack and repack laws ethically.

3.2. Addressing a lack of willing

Legal ethics may be undermined by a lack of willing on the part of legal academics.⁶⁹ Support, or at least refraining from negative commentary around the inclusion of ethics, will help to reinforce to students that ethics is important.⁷⁰ With that, students will have a greater impetus to believe that it is important. An applied ethicist may be able to help in this regard.

In citing her experience of legal ethics integration into a US university curriculum, Rhode explains it might be more effective for ‘willing’ teachers to take on the ethics teaching.⁷¹ Lawyers may struggle with integrating ethics having not learned it, not enjoyed it or they simply may be nervous that they will get it wrong.⁷² Chapman argues that ‘to be effective, classes need the commitment of teachers’.⁷³ Struggling to teach a subject will not serve the academic or the students and hence support from an Ethicist may be valuable.

Rhode suggests that if a law academic does not have expertise in legal ethics, they could simply acquire it.⁷⁴ I absolutely agree that legal academics could learn and teach legal ethics. However, the type of deep learning by academics that would be beneficial to teaching students would not be acquired in our current HE environment – there simply is not the time or space.⁷⁵ In an era of dynamic changes, overloading already over-worked staff, and the need for flexible learning, it makes sense to have an applied ethicist cooperating with and providing confidence for the development of a legal ethics module.

As my proposal is for an applied ethicist to teach *with* another member of the Law School staff, relying on two module tutors for legal ethics (or any) teaching will enhance student learning as well as spread the workload and build in continuity of operations planning. Collaborative teaching will help minimise the stress for legal academics teaching a new subject and, at the same time, reduce the stress for ethicists who may not have niche legal expertise. For example, a company lawyer giving the niche aspects of

⁶⁹Rhode, ‘Into the Valley of Ethics’ 139.

⁷⁰Rhode, ‘Into the Valley of Ethics’ 139.

⁷¹Rhode, ‘Into the Valley of Ethics’ 139.

⁷²M Robertson, ‘Providing Ethics Learning Opportunities Throughout the Legal Curriculum’ (2009) 12 Legal Ethics pp. 59–76.

⁷³Chapman, ‘Why Teach Legal Ethics to Undergraduates?’ 87.

⁷⁴Rhode, ‘Into the Valley of Ethics’ 150.

⁷⁵Biggs and Tang, Teaching for Quality Learning.

business practises and practical, legal expectations and an applied ethicist focusing on business ethics might be able to support each other well in the classroom. Hence, hiring someone who already knows/understands ethics and can integrate it with excitement and passion is appropriate.

3.3. New areas of law

The wider, ethical expertise of an applied ethicist is invaluable in supporting ethical understanding in new and emerging areas of law. Issues of social justice are, for example, entwined in all aspects of applied ethics. Consider crisis lawyering for example. With Climate Change, the increase in severity of natural hazards, increased migration and refugee scenarios, crisis lawyering is a huge sub-discipline of law. However, these lawyers are working in uncharted territory. Often, necessary laws to ensure ‘equitable and efficient recovery’ do not exist for the type of emergency the community faces.⁷⁶ Equity and efficiency, in this example, are ethical terms; they are the normative (read this as ideal, considering the laws do not yet exist) objectives around which lawyers begin to develop regulations and procedures for towns and national governments to enforce upon businesses and the population at large. This is a prime example of when ethics leads the development of laws. It would be wise to have some understanding of what is truly equitable and how to determine that based on ethical training if we have any hope of developing laws that are consistent with ethical ideals.

The same kind of logic can be applied in emerging areas of law related to CSR, environment, and bias. The point here is that the ethical issues lawyers will face are not limited to those relating to interaction with clients and following the laws themselves. Instead, lawyers are asked to contribute to the ethical development and maintenance of our legal system and society. An applied ethicist will be prepared to interpret and contextualise ethical norms separate to legal argument. Applied ethicists can and do discuss issues which may be ethical but illegal; this may be more difficult terrain for someone who has only studied law. It is not possible within the space of this article to discuss *how* an applied ethicist will teach ethical concepts within applied legal scenarios or the specific frameworks they would provide to students. Instead, I herein offer *why* an applied ethicist is an appropriate addition to a legal ethics teaching team.

3.4. Integration into curricula

In addition to working on the legal ethics module, an applied ethicist may be in a position to offer suggestions and guidance on the integration of applied ethics principles across the legal curriculum. My argument in this article is for the use of an applied ethicist in a legal ethics module. In this section I provide opportunities for legal ethics to be taught beyond one module, though this discussion does not need to be accepted for my argument for hiring an applied ethicist to stand.

Much has been written on what should be included in the ethics training of lawyers at the undergraduate level, postgraduate level, on Legal Practice Courses and through to

⁷⁶J Marshall, ‘Key Considerations for Lawyers Shepherding Communities through Long-Term Recovery from Major Disasters’ in R Brescia and E Stern (eds), *Crisis Lawyering* (NYU Press 2021).

Continuing Professional Development courses.⁷⁷ Discussion of *what* to include and where is hugely valuable to the better understanding of ethical training. In this article, though, my focus is on *who* should be involved in developing and delivering that ethics training and *why* that person/field is necessary.

Pervasive teaching is a way of integrating a subject across a curriculum instead of as a bespoke module. Legal ethics is a viable option for this pedagogical approach to curriculum design because ethics ‘pervades’ all areas of a legal education.⁷⁸ Further, this type of curriculum design helps to ensure that students are engaged with it at all junctures of their education. Otherwise, ethics is simply left out of learning outcomes, teaching, assessment, etc.

In Robertson’s ‘whole-of-curriculum’ suggestion, he explains how he envisages the integration of ethics to play out. Learning legal ethics should be a ‘curriculum goal’ spanning the whole curriculum. Ethics should feature in core courses.⁷⁹ However it is Robertson’s suggestion of the vertical curriculum that particularly demonstrates the utility of an applied ethicist. If Law Schools were to appoint a legal ethics convenor, someone who ‘implements the subject across the curriculum’, works with module leaders, and helps identify suitable learning objectives and related assignments which drive the ‘deep’ understanding of legal ethics, an applied ethicist would be invaluable. They will be working with the legal academics and teachers in coordination.

Chapman meanwhile argues that if ethics is to be taught in one module, a Clinic module is not necessarily the best choice (again, on its own). ‘... clinical educational experience would still be dependent on a theoretical foundation that is yet to be provided by law schools’.⁸⁰ As discussed, though, circumstances alter cases; a Clinic module on its own only provides students with a particular legal context to analyse and ethically evaluate and does not provide opportunities for students to test their ethics, challenge their understanding of those ethics and thus learn how to act well on duty (deontology) or mitigate harm (utilitarianism) as they move forward in their profession.

Whilst the vertical curriculum may suggest that ethics is ‘not important enough to be its own module’,⁸¹ a consistent, cross-curriculum reinforcement of the subject may make inroads into the reinforcement of ethics as fundamental to learning. Regardless of how or where ethics is taught in an LLB curriculum, though, it should encourage a broad understanding and ability to apply normative ethics to various real-world issues. For what is most important is that students are exposed to the relevant knowledge and are encouraged to think in ethical and not just legal ways.⁸² Using an applied ethicist would thus be beneficial.

3.5. Not all law students become lawyers

From 2011–2019, roughly 40% of students taking the Legal Practice Course (LPC) did not get a training contract.⁸³ These statistics only speak to those students who enter onto the

⁷⁷Rhode, ‘Into the Valley of Ethics’ 139; Camp, ‘Teaching Ethics to the Legal Profession’ 25; Webb ‘Teaching Ethics to the Legal Profession’; Robertson, ‘Providing Ethics Learning Opportunities’ 59.

⁷⁸Rhode, ‘Into the Valley of Ethics’ 139.

⁷⁹Robertson, ‘Providing Ethics Learning Opportunities’ 59.

⁸⁰Chapman, ‘Why Teach Legal Ethics to Undergraduates?’ 83.

⁸¹Chapman, ‘Why Teach Legal Ethics to Undergraduates?’ 82.

⁸²Chapman, ‘Why Teach Legal Ethics to Undergraduates?’ 86.

⁸³J Slingo, ‘40% of LPC students not getting training contracts’ *The Law Society Gazette* (31 July 2020) <www.lawgazette.co.uk/news/40-of-lpc-students-not-getting-training-contracts/5105248.article> accessed 13 April 2023.

LPC, not the total number of students who graduate with a law degree from a British university. That would put the statistics into even starker contrast. Consider now the Solicitors Qualifying Exam (SQE), the passing of which is required (in England and Wales) to be eligible for employment as a solicitor. Only 53% of students who took both parts of the SQE exam in 2023 passed overall.⁸⁴ Whilst the percentage of students becoming eligible for entrance into the profession has increased, there is still a large number of individuals who will not become solicitors.

With these statistics in mind, it is arguably unethical of us to prepare law students for careers as solicitors and barristers only by teaching a purely professional ethics/code of conduct-based curriculum. By not preparing students for the myriad of jobs that they are qualified for, we are not giving students relevant information.⁸⁵ This does not fairly prepare them for the prospect of not entering the profession. Likewise, students who go on to non-legal careers would benefit from wider ethical training: they do not need regulator or practise-based ethics, but rather, wider, ethical decision-making training to prepare them for working in the world.⁸⁶ It is therefore imperative that we teach students ethics, which pertain to legal issues, but from a wider viewpoint which an applied ethicist can provide.

4. Practical issues with using an applied ethicist

Please remember that I am not suggesting that an Applied Ethicist, separate to any legal training and/or without the help of law colleagues, is necessarily commissioned to teach ethics on their own. It would be acceptable, but I am not arguing for ‘subject purity’.⁸⁷ Teaching (legal) ethics should be a collective process. Bringing in an applied ethicist may instead help to limit the degree of difficulty one is likely to find when integrating ethics into the LLB curriculum.

We should not assume that lawyers inherently know the ethical justifications for laws and will be well-versed in the ethical aspects inherent in certain situations. Ethicists are not experts in the law; likewise, lawyers are not experts in what is ethical. Considering this, it makes sense for the two disciplines – Law and Applied Ethics – to work together.⁸⁸ Applied ethicists are hence in the best place to help students ‘appreciate the idea, purpose and operation of the ethics’ being taught.⁸⁹ Lawyers are best placed to explain how these ethical principles are or are not represented in our laws and what that means for professionalism and more importantly justice.

This being said, there are practical issues with using an applied ethicist which need to be addressed. Each institution will have to make individual hiring decisions which weigh the economic versus pedagogical demands of their Law Schools. It could reasonably be argued that hiring an applied ethicist to teach one module (maybe two if legal ethics is taught at postgraduate level as well) and to help develop a more ethical curriculum is not economically prudent. If hiring an applied ethicist for the Law School’s sole use, then the ethicist should be used to integrate and teach ethics across the curriculum

⁸⁴Solicitors Regulation Authority, ‘SQE1 July 2023 Statistical Report’ (21 September 2023) <https://sqa.sra.org.uk/docs/default-source/pdfs/reports/sqe1-statistical-report-july-2023.pdf?sfvrsn=1d4dab68_2> accessed 6 April 2024.

⁸⁵Chapman, ‘Why Teach Legal Ethics to Undergraduates?’ 78.

⁸⁶Chapman, ‘Why Teach Legal Ethics to Undergraduates?’ 86.

⁸⁷Klein, ‘The Only Necessary Condition for a Successful Business Ethics Course’ 561.

⁸⁸Robertson, ‘Providing Ethics Learning Opportunities’ 59–76; Biggs and Tang, *Teaching for Quality Learning*.

⁸⁹Robertson, ‘Providing Ethics Learning Opportunities’ 59–76.

and to undergraduate, postgraduate taught and postgraduate research students as well as support the legal ethics module. Depending on their own areas of interest or specialisms, they may be useful and obvious contributors to medical law and ethics modules, human rights law, and modules which cover theory and/or social justice issues.

Understandably, many universities will struggle to fund an applied ethicist, even if teaching across the curriculum. With increasing student numbers in the UK and school fees remaining constant, resources are a challenge. Perhaps to possibly mitigate the economic utility concern, an applied ethicist may be otherwise useful across the School, College or University. Law Schools exist within a university and so there may be an applied ethicist on staff somewhere within the university. It is not uncommon for those teaching interdisciplinary subjects to teach across Schools or Colleges. Further, an individual hired as an Associate Dean or similar will likely have reduced teaching requirements. Hiring an applied ethicist in this role means that their salary will come out of different pots. Hence, there are ways to use an applied ethicist to make this an economically viable way of improving legal ethics education.

5. Conclusion

When academics do not sufficiently learn ethics to teach to their students or remove it from curricula entirely, this suggests that ethics is for someone else to worry about.⁹⁰ However, students will not have an ethicist in practice with them at a law firm. They will only have what they have learned along the way. Ethics, like law, is for all of us to consider in our day-to-day activities – here the day-to-day activities of legal professionals.

In sum, if a Higher Education Institution truly takes legal ethics seriously, then it must show that it is important. Hire an applied ethicist. Having a lawyer teach ethics would be like bringing in a doctor to talk about how medical law affects their work. Experts and professionals will do a wonderful job – but the law is not their specialty. Bring in an ethics specialist to teach legal ethics, work with the legal academics to round out the material and ensure that ethics has pride of place both within education and within the practice of future legal professionals. In addition to being able to do legal ethics, an applied ethicist brings a broader understanding of socio-political-economic issues that intersect with the law which benefits student education and the ethical practise and implementation of the law.

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⁹⁰Rhode, 'Into the Valley of Ethics' 139.