

The Role of the Law Professor in Legal Education

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Oxford University was about fifteen years old when Marco Polo arrived at Shangtu. The history of the University spans the history of the European fascination with China and the University shares that fascination. In areas as diverse as economics, art, politics, archaeology, medicine, language and literature, it is committed to the study of China and Chinese culture. It is a privilege, therefore, to bring the greetings of the Faculty of Law of the University of Oxford to the celebration of the 50th Anniversary of the China University of Political Science and Law. It is a tribute to the achievement of those 50 years that so many have come from around the world to this forum on legal education and the rule of law.

I have been asked to address role of the legal educator. I believe that this is a very timely topic. I believe that there are three core tasks of the legal educator, that the importance of those tasks is increasingly being challenged, and that the time could not be more ripe to reassert them.

First, the role of the legal educator must be to empower students and to equip them with the skills that they need to teach themselves. The task of a legal educator is not to teach a student the law. It is not even to teach a student ideas about the law. It is to teach a student to teach herself the law and to guide her to ask the most pertinent and pressing questions about it.

At Oxford, we are committed to a tutorial system of teaching for this type of skills training. Our system is one of guided self-instruction. Each week the student is given a reading list and a question on which to write a piece of written work. She must spend her week in the library teaching herself the relevant area of the law and writing a response to the question set. At the end of the week, she meets with her tutor and with one other student. Together they go through her written work and challenge her to consider issues that she has missed or that she has only poorly understood. The tutor suggests new areas for her reading in the week's work, areas that she is expected to take up on her own time, particularly during the University vacations. The tutor merely offers help and direction in the student's own journey through the material.

In one sense our system of tutorial teaching is very inefficient. A student is able to teach herself far less about the law than a student who is presented information and ideas by a teacher. We are increasingly using lecture-based teaching to overcome some of these inefficiencies. But the tutorial remains at the heart of our students' education. This means that our curriculum must focus on the core areas of public and private law and on the taxonomy of the legal system as a whole: our students only learn the shape of the legal map and explore its major territories. But we are committed to our system because we believe that, as a process of guided self-instruction, it develops independence of mind and an ability in the student to think for herself. We believe that these are far more important gifts than a detailed knowledge of a larger number of subjects.

Our system of examinations is also designed to encourage student-led learning. A student is never knowingly examined by the person who has taught her a particular subject and so there can be no strategic advantage to her in reproducing the ideas of her tutor. She may find that the person who marks her paper, an anonymous person from somewhere else in the University, holds quite the opposite view of a particular legal subject to that held by her tutor and so she must decide which of the available views she wants to hold and to defend for herself.

Of course, I am aware that at Oxford we are very privileged in that our student numbers are comparatively low and we are able to operate this system of instruction and examination. Small group teaching, in particular, is a luxury that not all can afford. But whatever the method of teaching and of examining an institution can afford, this first task of the legal educator remains the same. The task is not an easy one. Students everywhere would rather be told the 'right answer' than to work at developing their own understanding. Similarly, law schools are under pressure everywhere to teach an ever expanding range of subjects. We are now expected to acquaint students with more subjects than might once have ever been thought appropriate as a part of a university curriculum. Some universities compete to demonstrate how many courses they offer and students are keen to show potential employers that they understand the latest thinking in many very specialised subjects. Last year we reviewed our curriculum and decided to maintain our commitment to teaching only the more foundational legal materials, giving our students the space in which to grapple with, and to reflect upon, them. The first task of a legal educator is to equip the young to get on with the business of teaching themselves.

The second task of the legal educator must be to encourage the student, not only to be versed in legal doctrine, but to be its constant critic. A law school must operate as a part of the broader University and with a view to its proper role in the legal system as a whole. Students should be taught to ask why the law might have taken a particular course and whether it could have taken a better one. They ought to ask whether the law is coherent and just. It is the task of the legal educator to encourage the student in her critical assessment of the current legal regime.

It is important to emphasise this second role of the legal educator, given the topic of this forum. To encourage a student to weigh and to evaluate the law is not ultimately a destructive task. It is part of the role of the university law school in upholding the rule of law. The more that lawyers are, from their first days at the law school, encouraged to propose ways in which the law could be better and more defensible, the stronger the respect for law in society at large will be. As Professor Peter Birks of our Faculty has put it:

"...the law schools [must discharge] a public and constitutional function essential to a modern democracy. It is a law-making function, continually directed to the improvement of the law and to the underpinning of its authority or, perhaps the more suitable word in a modern society, its legitimacy. The law schools are the guardians of the law in the interest of the public."

Of course, to discharge this function well, students may need to encounter material from other disciplines outside law as well. A student who has a training in economics or moral philosophy maybe able to ask more penetrating questions of the law than one who does not. But even the student whose only discipline is law can work towards building a system that is as rational, as coherent and as justifiable as possible. She can point to anomalies and inconsistencies in the law. She can point to places in which it operates in a way that is arbitrary or unfair. And the legal educator ought constantly to be encouraging her in that task. Indeed, this part of the task is where the work of the legal educator and that of the student come most closely into line. In her research, the jurist herself has a responsibility to maintain the legitimacy of the legal system of which she is part by ensuring that it is a defensible as possible and, as a legal educator, this is a task that she shares with her students and in which she encourages them.

Like the first one, this second role of the legal educator is under threat in many countries. Given that most law graduates go on to practise as lawyers, it is all too easy for those in Government and in the professions to see the law school as a what we would call a 'trade' school, a place in which the apprentices of a particular craft hone their practical skills. In the United Kingdom, the law schools have been under increasing pressure to focus on material which the legal profession regards as useful for the day-to-day practice of law, rather than useful as a part of its critical evaluation. For example, we have been required to demonstrate that our students can use a computer and that they can complete team-work exercises. Some are keen that the law schools should teach practical skills such as legal drafting or advocacy. But I believe that these are skills which are better taught by the professions and on the job. I believe that the law school which sees its role as the training of lawyers, except in the sense of training them to think deeply about the law, has lost its way. The law school is a place to study, to examine, to criticise and to suggest reform to, the body of norms that constitute a given legal system. To affirm that this is its function is not to decry the work of practising lawyers, it is to affirm that the law school has a peculiar and an important role in the shaping of the legal system. As a senior British judge, Lord Goff of Chievely put it:

“If judge and jurist ... can understand and recognise each other's respective functions, if they can regard each other's work with mutual respect and each other's problems with mutual sympathy and understanding, then the future can be bright indeed.”

The legal educator does not have a responsibility to train lawyers except in the crucial sense that she must send them off to the profession with a deep understanding, not only of how the law works, but of how it might work better.

The third role of a legal educator is connected to this second one. The legal educator must be concerned for the moral development of her students. I personally believe that law is a specific type of moral reason for acting. But whatever one's view of the nature of law, it can only be defended if it operates in a way that is just. Unless constrained by a conception of justice, the state has no right to treat individuals as having obligations in virtue of collective community decisions. In a time in which traditional moral values are being questioned in many countries, it is unfashionable to speak of legal education, or indeed any

education, as moral education. But unless we are producing lawyers with a passion for justice and a desire to see the law operate in its service, I believe that we are failing in one of our most important social roles. Our students must leave the law schools with a desire to work to see justice done. The ancient Chinese book of songs pleads that all who are in authority should listen to righteous words and attend to their proper conduct and it is the task of the legal educator to lay that charge upon her students. For this reason the study of legal philosophy remains central to our curriculum at Oxford.

It is a privilege to wish the China University of Political Science and Law, not simply the congratulations of my Faculty on 50 years of achievement, but the best wishes of my Faculty for the 50 years to come. Law schools are a vital part of the maintenance of the rule of law. The legal educator who takes her role seriously, is working towards a society in which law as a whole can fulfil its function in the achievement of the common good. And that is a task that really will be important for the 50 and 500 years to come.

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