FIRST INTERNATIONAL CONFERENCE ON LAWYERS' ETHICS
New Perspectives on Professionalism: Educating and Regulating Lawyers for the 21st Century

Abstracts

1. Kevin Bampton, Tony Wragg (University of Derby, UK)

Title of Abstract: *Billing for time: A Lesson in Applied Ethics for Second Year Law Students*

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For the last eight years, all second year law students at the University of Derby have been required to submit and maintain timesheets for billing purposes, related to their work in Skills. Each is subjected to audit and critical interviewing half way through and at the end of the year. Over the last two years this has been directly integrated with the management of full case studies including client interviewing, negotiation and representation.

This paper examines the theoretical basis for this applied approach to teaching legal ethics at this level, examines the reflections of staff and students and draws some conclusions about the latent messages in traditional substantive teaching about ethics and legal profession. It suggests that some aspects of doctrinal legal education are not casuistic, but instead may desensitise students to basic ethical issues.

It goes on to suggest that the latent claims of ethical neutrality or liberalism within traditional legal education may undermine the development of ethical judgement in students.

2. Gregory Cooper (Washington and Lee University, USA)

Title of Abstract: *Legal Ethics and the Ends of Law*

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Theories of legal ethics tend toward normative monism. The ethical responsibilities of the professional role are grounded in a single value, whether it be due process (Luban), autonomy (Pepper), just outcomes (Simon), or democratic legitimacy (Wendel). Each of these approaches is based on the sound insight that " the law" is a complex set of institutions and professional roles that seeks to achieve particular normative ends, and the normative contours of the professional roles of lawyer and judge should be shaped with an eye toward achieving these ends. What tends to get ignored in debates over the ethical responsibilities of lawyers and judges is the fact that the legal system aims at a plurality of ends, and that furthermore, these ends are typically in tension with one another. This pluralism has the consequence that for any dimension of lawyerly or judicial virtue that one chooses, there will always be situations were the proper course of action would be to trade off that virtue for other ends. Viewing the matter this way raises a number of questions, three of which are examined. The consequences of professional decisions and their bearing on the ends of law are complex. How are the tradeoffs negotiated? The tradeoffs that must be made among professional obligations often generates a kind of ethical burden. There are also tradeoffs between role obligations and the requirements of ordinary morality. This creates an

additional set of "moral remainders." What are the implications for professional education? Finally, both the manner of negotiating tradeoffs, and the normative tensions generated thereby, obviously depend on the structure of legal institutions and the ways in which professional roles are incorporated within them. The paper closes with a comparison along these lines between the adversarial legalism of the U.S. and the legal systems of several other developed democracies in Europe and Asia.

3. **Lillian Corbin (Griffith University, Australia)**

Title of Abstract: *How "Firm" are lawyers' perceptions about their work?*

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A number of leading theorists including Luban and Rhode refer to psychological theories to suggest that market and organisational pressures have an effect on the decisions made by lawyers. They argue that over time lawyers adjust their value system to that of the firm. This hypothesis will be discussed in reference to empirical data that I have gathered through qualitative interviews with members of the legal profession in Queensland, Australia.

This research reveals that experienced practitioners view the world of the law firm quite differently to graduates who have only been practising for two years.

4. **Anthony Mark Cutter (University of Lancaster, UK)**

Title of Abstract: *Demarcation: Crossing Boundaries Between Lawyers and Ethicists*

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The legal profession's perspective on the nature of ethics might be considered to be different from that of other professions. Solicitors and Barristers both have a codified system of ethics, in a way that differs from those of other professions. Equally, the way ethics is taught during the professional stages of legal education is different to the philosophical approach taken by traditional ethicists.

Despite this members of the professions are often considered to be in a position to comment or adjudicate not only on that which is legally right, but also on that which is considered morally correct. This is exemplified by the appointment of lawyers to ethics and associated oversight committees in a range of industries.

This paper explores the nature of ethical oversight and regulation, and the relationship that appears to exist between ethics and law, and differing perspectives on each. Structurally, in drawing on a range of examples of the methods and problems of ethical governance and oversight used in other professions – specifically highlighting examples from Biotechnology and Medical sectors, it underlines the difficulties faced by other industries that have similar problems balancing professionalism with commercial demands.

In conclusion, this paper seeks to explore and reconcile the relationship between law and ethics, and therefore the role of the "ethical" lawyer.

5. **Tim Dare (University of Auckland, NZ)**

Title of Abstract: *Morality and Professional Distance*

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'Professional distance' or detachment is morally puzzling. It is often seen as necessary and perhaps even desirable. Professionals such as nurses and social workers are advised to maintain professional distance from their patients and clients lest they 'burn out'. Lawyers argue that they should not be identified with the causes or clients they defend. But detachment is also said to hinder judgment within professional roles and assessment of professional conduct, making professionals 'mere spectators' of events in which they are, qua professionals, crucially involved. Detachment, the criticism goes, threatens both personal integrity and professional competence. More specifically, some commentators have suggested that the 'problem of detachment' give us reason to reject deontological models of professional obligation. Two have recently written "[it is an indictment of Kantian accounts of moral character that they encourage professionals to regard the habituated conventional demands of their roles ... as heteronomous influences that are irrelevant to a true estimation of their character". In this paper I look at the issue of professional detachment and defend a deontological, role differentiated perspective.

6. **Adrian Evans (Monash University, Australia)**

Title of Abstract: *Values-Aware Legal Ethics Education: Implications from Focus Group Reflections*

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In focus group discussions over two years with first and then second-year Australian lawyers, considerable variation is evident in motivating values affecting responses to hypothetical scenarios from legal practice. Subtle changes in respondent opinions were evident over the period, with a number indicating that they had oscillated over the survey process in their decisions on some scenarios. Many respondents' decisions were 'situationally dependent', in the sense that their decisions on which way to go (or jump) in response to a particular conflict of values, are finely differentiated according to their sense of what is personally safe *v* what might be noble or, in some cases, financially lucrative. This conclusion might be expected but is also sanguine. Whether it is unfortunate or just realistic, there can be little general confidence in the proposition that lawyers' values development can be left to 'experience' or will reflect over time any greater understanding among lawyers of wider social and ethical obligations.

Can values education 'transform' legal ethics education to make it more effective? Transformation is most unlikely, but a 'values awareness process' (where the teacher expresses their own views at the end of the process and then only in the context of respect for divergent views) can, I think, improve the chances of law students and lawyers understanding their own values base and their potential choices, before they are under too much pressure to make quick decisions that might be ethically suspect.

7. **Randal N. M. Graham (University of Western Ontario, Canada)**

Title of Abstract: *The Economics of Lawyer Regulation: Market Failure vs. Morality*

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Note: this paper is based on chapter 4 of my recent book, entitled "Legal Ethics: Theories, Cases and Professional Regulation" (Emond Montgomery Publications, forthcoming 2004).

The regulation of lawyers typically focuses on 'morality'. Lawyers are penalized for breaching professional norms where they are found to lack integrity, act in a dishonourable manner, or otherwise show a lack of "morals" or "ethics". Unfortunately, concepts such as integrity, honour and morality can do little to help us design workable regulatory regimes: indeed, the language of morality is sufficiently indeterminate that it provides little guidance to those who are charged with the task of setting (and enforcing) professional norms.

This paper posits that the notion of market failure is the optimal touchstone for the regulation of lawyers' ethics. Focussing on causes of market failures that are readily observed in the market for legal services, this paper explores competing models of regulation, assessing their ability to erase market failures flowing from lawyers' ethical breaches. Included in this paper are (a) examples of the ways in which compensatory and punishment based models of regulation can address the concerns of the public, of regulatory bodies and of lawyers who are faced with ethical quandaries, and (b) economic models which determine the optimal sanction for particular ethical breaches. The overall goal of the paper is to show that, through the application of economic principles, regulatory bodies can develop a more principled approach to the regulation of lawyers' conduct.

8. **Linda Haller (University of Queensland, Australia)**

Title of Abstract: *Smoke and Mirrors: public health or hazard?*

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The second purpose [of professional discipline] is the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth....Otherwise, the whole profession, and the public as a whole, is injured. A profession's most valuable asset is its collective reputation and the confidence which that inspires.... The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price.'

Bolton v Law Society [1994] 2 All ER 486, 492-3.

This paper examines the extent to which disciplinary proceedings are used to enhance the reputation of the legal profession. While it is important that the public maintains faith in the legal profession, care must be exercised that disciplinary processes are not triggered merely to enhance the reputation of the profession. Not only may this be an abuse of publicly funded disciplinary processes in pursuing a private interest, but too much emphasis on reputation rather than actual fitness to practise, on smoke and mirrors rather than substance, may harm clients by portraying an unrealistic view of the capacities of any disciplinary system and of lawyers as superhuman 'paragons of virtue'.

9. Alwyn Jones (De Montfort University, Leicester, UK)

Title of Abstract: *Teaching Legal Ethics in Context*

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This paper will explore questions relating to the teaching, learning and assessment of legal ethics in undergraduate legal education in England and Wales. What is the justification for teaching this subject at undergraduate level? Does teaching legal ethics involve a departure from our proper role? What is the nature and content of the subject? How, if at all, do our choices about the nature and content of legal ethics affect our answers to questions about teaching, learning and assessment?

This paper aims to present a justification for teaching legal ethics at undergraduate level. There is a menu of options for teaching legal ethics including a black letter approach as well as clinical, empirical, historical and philosophical contexts of ethics. The paper takes account of approaches to teaching ethics and professional responsibility in the United States as well as the experience in England and Wales, with a particular focus on connections between teaching legal ethics and the teaching of legal skills.

The paper reports preliminary observations from a mini-project supported by the Project Development Fund of the UK Centre for Legal Education, see http://www.ukcle.ac.uk/research/jones.html

10. Richard Moorhead (University of Cardiff, UK)

Title of Abstract: *Judicial Ethics and Unrepresented Litigants*

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This paper will discuss the ethical issues raised by the presence of unrepresented litigants in civil and family cases. Challenges to traditional judicial paradigms will be discussed alongside uncertainties in new interventionist models of judicial working. The paper will draw on the author's conduct of a significant, forthcoming empirical study into unrepresented litigants conducted for the Department of Constitutional Affairs.

11. Donald Nicolson (University of Strathclyde, UK)

Title of Abstract: *Making Lawyers Moral? Moral Character and Ethical Education*

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This paper argues that, unless lawyers develop the sort of instinctive and spontaneous responses to ethical problems in practice which characterise moral character in general, ethical behaviour by lawyers is always going to be difficult to guarantee. In other words, it is not enough that ethical rules tell lawyers how to behave and that lawyers are aware of and understand these rules, lawyers must also be (a) motivated to follow the rules and also to follow their moral conscience when the rules run out or themselves fall short of high ethical standards, and (b) sufficiently committed to acting morally in the face of the many counter pressures that characterise

contemporary legal practice. If true, the question arises as to how to help the development and sustenance of such a professional moral character. The paper explores the extent to which legal education both at university and beyond may play a role in this regard and how legal education needs to be designed in order to best play this role. In particular, it will look at the impact of exposing students to ethical theory, role-playing and law clinical work.

12. Anna Odby (University of Westminster, UK)

Title of Abstract: *The implications for legal ethics of imposing gatekeeper liability on lawyers*

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This presentation is a comparative study of two recent gatekeeper regimes: U.S. regulation of securities lawyers under corporate governance legislation (the Sarbanes-Oxley Act of 2002), and the obligations imposed on U.K. lawyers under the new anti-money laundering legislation (the Proceeds of Crime Act 2002 and the Money Laundering Regulations 2003).
Gatekeeper theory, imposing liability on actors who control access to services or products, is by no means a novel phenomenon and has been applied to a variety of contexts. What is novel is its application to lawyers. The implications of this are potentially far-reaching, and raise rather different considerations than those identified by critics of gatekeeper liability generally (not least as a 'second-best' response, which fails to address the real problem). Specifically, the impact of these two initiatives requires consideration from the point of view of their impact on legal ethics and professional conduct regulation.
The U.S. Securities and Exchange Commission, now authorised to regulate attorneys appearing before it, famously issued regulations requiring lawyers to report corporate wrongdoing 'up-the-ladder'. The prospect of SEC regulation triggered reconsideration of the Model Rules by the American Bar Association, resulting in the relaxation of the restrictions on the confidentiality obligation. Does this resolve the conflict?
A considerably more severe gatekeeper regime operates in the U.K., where the new anti-money laundering regime effectively expands obligations to report suspected money laundering to all lawyers, in respect of all criminal offences. Here the impact is not limited to creating yet another exception to confidentiality, but can also be seen to significantly weaken the protection afforded by legal professional privilege in practice.
Where professional obligations conflict with gatekeeper obligations, the latter take precedence. But the apparent clarity of this resolution masks considerable confusion. Do lawyers now owe their primary allegiance to the State, rather than to their clients (or to the administration of justice, and the rule of law)?

13. Peter Sanderson (Huddersfield University, UK) & Hilary Sommerlad (Leeds Metropolitan University, UK)

Title of Abstract: *Knowledge, culture and ethos in the construction of professionalism: contrasts in training and development in the new Community Legal Services sector.*

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This paper explores aspects of the development of the Community Legal Service (CLS) sector in England and Wales in the light of conflicts arising around the concept of professionalism. Specifically, we will be concerned with the juxtaposition of two occupational groupings with distinct approaches to knowledge culture and ethos: the law firms involved in publicly funded

legal advice, and the Not for Profit (NfP) advice sector, including Citizens' Advice Bureaux (CABx) and specialist agencies such as Shelter and Mind.

The paper briefly discusses this development, and other alternative models of service provision suggested in the Clementi Review, in the context of the costs pressures of the legal aid budget, and the adoption by the Department of Constitutional affairs of an economic model which em braces the market control critique of the legal profession. Illich's more radical variant of this critique is reviewed, alongside his prediction that 'learning nets', facilitated by new technology, offered a radical challenge to professional monopolies over expert knowledge. The contrasting models of training and development in the NfP and firm sector are then discussed: the NfP sector characterised by an emphasis on collective learning and maintaining organisational culture and ethos, the firm sector by an emphasis on accredited, individually portable human capital. The paper then speculates as to whether this contrast offers the prospect of a more pluralist model of educating and training legal service providers, or whether the pressures of quality regimes will erode these differences.

14. Syahirah Abdul Shukor (KUIM, Kuala Lumpur)

Title of Abstract: *Ethical Issues of the Lawyers in the Advance of Information & Technology – Malaysian Perspective.*

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In facing the 21st century, the legal profession faces challenges in maintaining the legal ethics of the practising lawyers. The impact of globalization and the evolution of Information and Technology have had a great influence in the legal profession. Legal ethics of the lawyers has been the concern of the society as a lawyer holds a noble task in the court of law to uphold justice. In the Malaysian scenario the legal profession is divided into two, the civil lawyer who is known as advocate and solicitor, and the syariah lawyers who appear in Syariah Court. Advocates & solicitors are under the supervision of the professional body, the Malaysian Bar Council under the Legal Profession Act 1976, whereas the Syariah lawyer is subject to various states legislation. The objective of this paper is to highlight the importance of ethical issues of the lawyers in the advance of Information & Technology including the issue of using the Internet in the legal profession. Compared to civil lawyers, the syariah lawyers are subject to different types of rules and regulations issued by the local authorities of every state in Malaysia. This paper suggests that the existing legal education in the higher learning institutions plays a crucial role in shaping the future ethics of these lawyers.

15. Robert K.Vischer (St. John's University, NY, USA)

Title of Abstract: *Pluralism and Professionalism: The Question of Authority Contact Details*

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In my paper, I argue that many of the problems with professionalism emanate from the fundamental problem of authority – exhorting lawyers to elevate their standards of conduct, or even to take an interest in the conversation regarding those standards, is often pointless absent the threat of legal coercion. I argue that the professionalism movement will find more success if we expand our conceptions of authority to encompass non-legal sources of authority that particular lawyers find meaningfully authoritative, whether "cause lawyering" agendas, politics, or especially religious devotion. In other words, the professionalism movement should recognize

and embrace the fact that lawyers are motivated by values that are not shared by the entire profession, and they should be encouraged to explore those values within communities of like-minded lawyers, even if those communities shape their members' professional identities in ways that the surrounding profession finds disagreeable (subject to certain limitations). The article will build on / respond to work by Raz, Nancy Rosenblum, and Brad Wendel, among others.

16. Rose Voyvodic (University of Windsor, Canada)

Title of Abstract: *Change is Pain: Ethical Legal Discourse and Cultural Competence*

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The complex network of overlapping and connected stories and myths found in ethical legal discourse reflects the values and attitudes of a distinct culture. Only rarely, however, does this discourse admit any sort of critical self-evaluation, as occurred in 1993, when the location and status of women within the legal profession was studied by the Canadian Bar Association's "Gender Equality Task Force" in its *Touchstones for Change* report. While its main focus was on gender equality, the task force also documented incidents of systemic discrimination based on race, disability and sexual orientation, and formulated recommendations for change, aimed at law schools, law societies, firms, government and judiciary. In the years that followed, some recommendations have been acted upon, although the capability of these institutions to significantly curb discriminatory behaviour remains contentious and key recommendations that would establish conditions precedent to progress being achieved have failed to garner sufficient attention to see the light of day. In this paper, I probe the role that the culture of the legal profession plays in the glacial pace of its progress toward equality, discussing some of the political and organizational challenges facing the profession, and arguing for recognition of "cultural competence" as an emerging norm in the practice of law.

17. Duncan Webb (University of Canterbury, NZ)

Title of Abstract: *The Ethic of Adversarialism*

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The literature and cases are replete with passages of eloquent prose in which commentators and judges state the tenets of the practice of advocacy. However articulated, there is a common thread. Frequently such articulations refer to the importance of the honour of the profession, the quest for justice, the duty to the tribunal, the free availability of the advocate to all, and the duty of loyalty to the client. However, on examination each of these can be viewed as a manifestation of the dogma of adversarialism.

At the surface this may appear to be changing. Certainly the new Civil Procedure Rules are premised on a less adversarial approach to litigation. It has been suggested that those reforms form the basis of a "new ethos" of litigation. However, those rules will not be able to achieve their desired affect as long as the foundational ethic of the advocate remains that of adversarialism.

This paper looks at some of the salient duties of advocates and examines their underpinning and application. In so doing it argues that until there is a fundamental change in the way in which the litigation process is viewed by lawyer, litigant, and judge, amendments to procedural rules are

likely to effect only superficial changes. This paper seeks to critique the gap between the way in which an advocate's duties are articulated and the way in which they are in fact applied.

18. Brad Wendel (Cornell Law School, NY, USA)

Title of Abstract: *Professionalism as an Interpretive Attitude*

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Consideration of the recent corporate scandals in the U.S., particularly the Enron case, suggests that interpretive attitudes are the most critical aspect of professional regulation. For a variety of jurisprudential reasons relating to the inevitable open texture of legal rules, it will ultimately be impossible to prevent all abusive conduct by lawyers through stepped-up enforcement of existing rules or changes in the law governing lawyers. These formal responses neglect the attitude that created the problem in the first place – namely, what we can call the "Holmesian bad man" interpretive stance. Taking a Holmesian bad man attitude seems to be an aspect of a particular theory of lawyering, in which the client's interests are the only extra-legal source of constraint on lawyers' actions. I defend, by contrast, a principle that would require lawyers to interpret legal norms with due regard to their substantive meaning, not merely their formal expression.

This paper fits in not only with several of the conference themes, but with the work of keynote speaker Robert Gordon, whose work has influenced my own scholarship tremendously. This paper may be understood as an attempt to provide a defense, in the idiom of analytic jurisprudence, for Gordon's approach to the legal profession.

19. Norhashimah Mohd. Yasin (International Islamic University Malaysia, Kuala Lumpur)

Title of Abstract: *Lawyers and Money Laundering: Between Regulation and Professional Ethics*

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The paper will examine the conflicts that can face lawyers from money laundering regulations on the one hand, and professional ethics on the other. The paper will concentrate on the position in common law jurisdictions such as the United Kingdom, Australia, Canada and Malaysia. The dilemma of what is ethically correct for a lawyer who has suspicions that a client may be engaged in money laundering will be examined. Money laundering regulations covering the legal profession may state one thing, but invoking legal professional privilege may be at odds with those regulations. The paper will also cover instances where lawyers have successfully challenged regulations that, it was felt, forced them to reveal information considered to be covered by lawyer-client privilege. Lessons will be drawn from cases such as *P v. P* in the UK, and in Canada where the legal profession as a whole successfully caused the repeal of money laundering regulations relating to lawyers. In this paper, an attempt will be made to conclude whether a balance can be struck between the requirements of law enforcement and well-entrenched common law legal privileges, and whether such a balance can be made ethically acceptable.

20. Sue Prince (University of Exeter, UK)

Title of Abstract *Forced Out of the Shadows: The Ethics of Court-Based Mediation*

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Recent developments in the civil justice system have promoted the use of mediation as an alternative method of resolving disputes. The Civil Procedure Rules (CPR) have encouraged parties to at least consider mediation before a trial takes place.

The CPR also place an emphasis on the court to encourage the parties to consider the use of alternative dispute resolution methods. This has led to cost penalties being placed upon those parties who refuse to mediate (eg *Dunnett v Railtrack* [2002] CP Rep 35 and *Hurst v Leeming* [2002] CP Rep 59) as well as to the establishment of court-based mediation schemes. On such schemes the parties are invited to mediate their dispute, within the precincts of the Court, with a mediator usually appointed by a provider approved by the Court. Such schemes are now established in a number of courts including London, Birmingham, Guildford, and Exeter. A new scheme has been launched at Central London County Court in April this year whereby parties will be automatically referred to mediation which they will be required to pay for. They may be liable to costs if they refuse to mediate and their reasons for refusal do not satisfy a judge. It appears that if successful this type of scheme may be rolled out to other courts.

This paper considers whether this type of court-based mediation provides an effective, efficient and proportionate method of dispute resolution. It analyses the most recent authoritative Court of Appeal decision, *Halsey v Milton Keynes General NHS Trust* [2004] EWCA (Civ) 576 on this subject and asks whether such a process, linked so closely to the courts, fulfils the principles underpinning the rule of law.

***21.* Julian Webb (University of Westminster, UK)**

Title of Abstract: *Regulating the English Legal Professions: Reflections on the Clementi Review*

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The appointment of Sir David Clementi to lead a review of the regulatory framework for legal services represents very serious challenge to the (remaining) regulatory autonomy enjoyed by the English legal professions. In this paper I will advance the case for an ideal-type co-regulatory approach to regulation drawing on principles of deliberative democracy and so-called institutional theories of regulation. This model will be used to explore the problems of regulatory failure that are said to characterise the existing regime, and to evaluate the regulatory objectives and alternative models advanced by the Clementi Review in its March 2004 Consultation Paper: http://www.legal-services-review.org.uk/content/consult/review.htm

22. Kim Economides (University of Exeter, UK)

Title of Abstract: *Constructing Ethical Citizenship?*

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This paper examines how ethical perspectives might best be taught to future lawyers and citizens in the light of current developments regarding the embedding of ethics and values in both law and national curricula. I examine resources that draw upon the arts (eg film, literature rather than legal texts) that might be used to expose students to ethical dilemmas and also consider the limitations of these resources. Who is competent to teach values outside the family and which public values need to be taught in a pluralist society? Should we see lawyers as students or teachers in this enterprise?

23. Richard Tur (Oriel College, Oxford, UK)

Title of Abstract: *The Missionary Position in Lawyers' Ethics*

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SYNOPSIS

What is the relationship, if any, between legal ethics and general ethics? The thesis that I seek to defend is that legal ethics may have something to teach general ethics

One view is that "Most of what American lawyers and law teachers call legal ethics is not ethics. Most of what is called legal ethics is similar to rules made by administrative agencies. It is regulatory". [Thomas Shaffer "The Legal Ethics of Radical Individualism"]. This de-ethicises legal ethics.

A second view ("the missionary position") proposes the primacy of general ethics in the sense that lawyers' codes and conduct should conform to general ethics. But lawyers' ethics cannot conform fully with general ethics and that has led to a third view that because lawyers' circumstances are special they have a special role-differentiated ethics which somehow exempts them from the requirements of general ethics. This move is problematic in that it calls into question the status of legal ethics as *ethics* and takes us back towards mere regulation.

The issue is brilliantly introduced in the following observation about moral philosophers who : "... find nothing of general value in the way lawyers address their ethical problems" [Ted Schneyer, "Moral Philosophy's Standard Misconception of Legal Ethics"]. This is "curious [and] regrettable ... because law practice so frequently involves moral risks [and] lawyers' reflections on ethics might just contain, like law itself, a vein of hard won understanding that philosophers could mine for the benefit of non-lawyers. But mining cannot be expected from those who come to new territory as missionaries rather than as prospectors. And missionaries bent on converting the bar are what philosophers mostly have been". A similar point has been made by Alasdair MacIntyre in "What Has Ethics to Learn from Medical Ethics" where he criticises moral philosophers as "... a kind of intellectual peace corps, treating the medical profession as a morally underdeveloped country".

Lawyers, especially academic lawyers, need not accept as intellectually sound and theoretically compelling the top-down conception of ethics promoted by mainstream moral philosophy. Indeed, following MacIntyre, arguably the abstract agent does not exist. Legal ethicists ought to concentrate, and encourage moral philosophers similarly to concentrate, on real roles, like nurse, doctor, parent, friend, lover, and lawyer. As MacIntyre observes, "The moral agent turns out to be no more and no less than both the sum and unity of his roles embodied in a single person. The abstract ghost of conventional ethics, man as such ...has to be replaced by this much more interesting figure".

The counter suggestion ("not the missionary position") is that legal ethics, with it emphasis on roles and relationships, and its deeply pragmatic, real, and concrete approach, may have more to contribute to moral philosophy than moral philosophy (which, within the Western intellectual tradition, is Kantianism or Utilitarianism and variants on these two themes) than moral philosophy has to contribute to legal ethics. I submit that this is a promising inversion. Schneyer agrees: "... it often seems difficult to discern the principles that would or should govern one's behaviour in a given situation without imagining oneself in some social role, relationship, or practical tradition". So role and situation - context - is important. What may be intellectually exciting is reconstructing general ethics from the bottom up as it were, rather than from the top down. Nineteenth and twentieth century Anglo-American moral philosophy (whether utilitarian, rights-based, absolutist, or intuitive), pragmatism apart, decisively rejected this "micro" level of ethicising and developed the "macro" level as a theory for all, any, and every rational moral agent. But it may be that legal ethics is less about right conduct and more about good agents. This places legal ethics within Virtue Ethics. There are some parallels in my approach and that of Vincent Luizzi, *A Case For Legal Ethics: Legal Ethics as a Source for a Universal Ethic* (1993)