University of Huddersfield Repository

Drake, Philip James

Beyond the Bounds of Formalism: Social Justice and Legal Education

Original Citation

Drake, Philip James (2020) Beyond the Bounds of Formalism: Social Justice and Legal Education. Doctoral thesis, University of Huddersfield.

This version is available at https://eprints.hud.ac.uk/id/eprint/35314/

The University Repository is a digital collection of the research output of the University, available on Open Access. Copyright and Moral Rights for the items on this site are retained by the individual author and/or other copyright owners. Users may access full items free of charge; copies of full text items generally can be reproduced, displayed or performed and given to third parties in any format or medium for personal research or study, educational or not-for-profit purposes without prior permission or charge, provided:

- The authors, title and full bibliographic details is credited in any copy;
- A hyperlink and/or URL is included for the original metadata page; and
- The content is not changed in any way.

For more information, including our policy and submission procedure, please contact the Repository Team at: E.mailbox@hud.ac.uk.

http://eprints.hud.ac.uk/

BEYOND THE BOUNDS OF FORMALISM: SOCIAL JUSTICE AND LEGAL EDUCATION

PHILIP JAMES DRAKE

A thesis submitted to the University of Huddersfield in partial fulfilment of the requirements for the degree of Doctor of Philosophy

University of Huddersfield

March 2020

Acknowledgements

I would like to thank my supervisor, Professor Pete Sanderson. I am deeply grateful for his astute and often ingenious and invaluable guidance. I am indebted for his inspiration and have learned so much from him. I would also like to thank my initial supervisor, Professor Stuart Toddington, for igniting a passion for research in the area of clinical legal education and his tremendous support for me when setting up a legal advice clinic.

I am grateful for all the students, alumni and supervisors at the legal advice clinic who participated in this research. I have met such wonderful people during my time there.

Finally, I wish to thank my family Julia, Eloise, Isobel and Noah for their patience during these last seven years. It cannot have been easy. Without your encouragement and support this thesis would have never been completed. For this reason, I dedicate the thesis to you.

ABSTRACT

This thesis analyses professional identity formation in a university legal advice clinic and the tensions, dilemmas and conflicts that arise between contrasting idealistic and technocratic ideologies. The research is built upon solid theoretical foundations and draws upon the concepts of Bourdieu's habitus and field, Weber's value spheres and rationality for social action and Knorr Cetina's epistemic cultures. Through embedding theory into the research, the study acknowledges the participant's agency but also considers the underlying generative structures for knowledge and action. The thesis considers the literature outlining the destruction of the personal narrative in dialogical interactions between lawyer and client. It also examines the neutrally detached case method approach to legal education and alternative approaches to both traditional lawyering practices and educational pedagogies. Adopting a predominantly ethnographic approach, with idiographic elements, it presents a robust methodology, including uncomfortable reflexivity and a rigorous iterative analysis, within a pilot study, to reduce potential bias. The thesis examines the participants' sense of meaning and the explicit, implicit and tacit messages relayed within dialogical discourse. A range of identities emerges, with the experiential context of both the students and supervisors proving important to their rationalities. The students display dispositions ranging from anxiety to kinship and a beneficent character, whereas the supervisors relate the importance of procedure and collection of information. Analysis also identifies the influence of the formalistic and economic spheres of power and the tensions and conflicts that arise in seeking to invoke a more personal and relational approach to the learning of law. This innovative research moves the field of legal education forwards into a new domain, at a time when legal educators need to both question current methods and invoke new ways of thinking about the law. It considers not just what legal education *is*, but what it *ought* to be.

CONTENTS

Contents **4**

List of Abbreviations **8**

Chapter One: Introduction and Literature Review **9**

1.1 Background – A Reflection of my Personal Journey 9

1.2 Shape and Structure of the Thesis 15

1.3 Formalism and Legal Practice 17

1.4 Opportunity for a Model of Empowerment 25

1.5 Underpinning Theories and Theoretical Framework 27

1.5.1 Weber's Value Spheres and Multi-level Rationality for Social Action. 29

1.5.2 Bourdieu's Habitus, Capital and Field 33

1.5.3 Epistementalities 41

1.6 The Legal Profession's Identity and History 42

1.6.1 The Increasing Multi-faceted Status of the Profession of Solicitors 47

1.7 Formalism and the Academy 52

1.8 The influence of the Economic Sphere 67

1.9 The Rise of Clinical Legal Education 70

1.10 Incorporating Values into Legal Education and Practice 81

1.10.1 The English and Welsh perspective 81

1.10.2 The American perspective 85

1.11 Professional Role and Identity 90

1.12 The Relational Lawyer and a Hybrid Approach to Professionalism 94

1.13 My Research Question 99

Chapter Two: Methodology **102**

2.1 Introduction 102

2.1.1 Research Questions 102

2.1.2 Approach to the Research 102

2.2 Philosophical Approach 103
2.2.1 Ontological and Epistemological Position 103
2.3 Methodology
2.3.1 An Ethnographic and Idiographic Approach 108
2.3.2 Uncomfortable Reflexivity 121
2.3.3 Rigorous Iterative Analysis of the Data and Spradley's Developmental Research Method 114
2.3.4 A Hybrid Professional Framework Analysing Epistemic Practice and Applying Dilemma Analysis 121
2.3.4.1 A Hybrid Professional Methodology 121
2.3.4.2 Epistemic Practice – A Methodology 123
2.3.4.3 Dilemma Analysis 125
2.4 Ethics Approval 128
2.4.1 Harm to Participants 129
2.4.2 Informed Consent 132
2.4.3 Privacy 133
2.4.4 Open Approach 133
2.5 Method 133
2.5.1 Participant Observation 134
2.5.2 Interviews 139
2.5.3 Focus Groups 142
2.5.4 Data Interpretation and Analysis 147
2.5.5 Methods Summary 151
2.6 Summary 151
Chapter Three: Pilot Study 153
3.1 Reasons for a Pilot Study 153
3.1.1 Eliminating Bias and Developing my Reflexive Approach 153
3.1.2 Preparation for the Main Study 155
3.1.3 Testing my Theoretical Framework 156
3.1.4 Testing the Research Methods 156

3.1.4.1 Outcome of Line-by-line Coding 159
3.1.5 Observations from the Meetings and Interview 162
3.1.6 What are the Valued Dispositions or Cultural Capital of the LAC? 165
3.1.6.1 The First Post Interview Meeting 166
3.1.6.2 The Second Post Interview Meeting 166
3.1.6.3 Interview with student 5 167
3.2 Reflections on the Research Methodology 168
3.3 Reflections on the Research Methods 169
Chapter Four: Background and Influence of the Field 173
4.1 The Legal Advice Clinic and its Participants 173
4.2 Integral Themes to the Professional Identity and Role of a Student Advisor 175
4.2.1 Students new to the Student Advisor Role 176
4.2.1.1 Anxious Identity 176
4.2.1.2 Past Experiences or Habitus 181
4.2.1.3 Anxiety in the Field 184
4.2.1.4 Building Confidence in the Legal Advice Clinic 187
4.2.1.5 Summary 191
4.2.2 The More Experienced Student Advisors 192
4.2.2.1 Kinship in the Field 195
4.2.2.2 A Beneficent Role? 205
4.2.2.3 The Students Sense of 'Self' in relation to the Legal Advice Context 210
4.2.2.3.1 Family 210
4.2.2.3.2 Solicitors and the Future 215
4.2.2.3.2.1 Ethical tensions in the neo-liberal Legal Practice Field 224
4.2.2.4 Summary 238
Chapter Five: Epistemic Practice and Formalistic Tensions in the Field 242

5.1 Epistemic Practice in the Legal Advice Clinic 242

5.1.1 The Post Interview Meetings 244

5.1.2 Recognising Emotions 245

5.1.3 Extracting Legal Facts 254

5.1.4 Legitimisation through Documents 266

5.1.5 The Selection Panel Meeting 269

5.1.6 The Reflection Meeting 276

5.2 Tensions, Dilemmas and Conflicts from Legal Habitus in the Field 282

5.2.1 Specific Tensions, Conflicts and Dilemmas 292

5.2.2 Winter's Dilemma Analysis 296

Chapter Six: Conclusions 298

6.1 Findings 298

6.2 Significance of the Findings 304

6.3 Limitations of the Study 308

6.4 What now? 308

6.5 Final Thoughts 309

6.6 Proposals for Practice in the Clinic and in the Classroom 311

Bibliography 318

Appendix 1: Dilemma Analysis Document 351

Appendix 2: Example of Saved Files and Transcripts 362

Appendix 3: Example Coding using Spradley's Semantic Relationships 363

Appendix 4: Memo Writing 364

Appendix 5: Examples of Data Analysis 367

Appendix 6: Examples of Coding Charts 371

Appendix 7: Example of a Cluster Map 373

Appendix 8: Example of Hierarchy of Codes 374

Appendix 9: Table of Supervisors and Students involved in the research 375

Appendix 10: Uncomfortable Reflexivity – The Pilot Study 376

Appendix 11: Uncomfortable Reflexivity – Chapter Four 379

Appendix 12: Uncomfortable Relfexivity – Chapter Five 390

LIST OF ABBREVIATIONS

CLE	Clinical Legal Education
CLS	Critical Legal Studies
LAC	Legal Advice Clinic
LASPO	Legal Aid Sentencing and Punishment of Offenders Act 2012

CHAPTER ONE: INTRODUCTION AND LITERATURE REVIEW

1.1 Background - A Reflection of my Personal Journey

This thesis is of key significance to legal education and beyond that to professional identity formation. With the increasing influence of transnational corporations, the ascent of artificial intelligence and diminished access to justice for the vulnerable and disadvantaged, it is a moment of point and change for the profession and practitioners, where the very essence of what a lawyer 'is' and 'does' is open to question[1].

Contrary to customary tradition in law, I have written in some sections of this thesis from the perspective of the first person. Reflection and reflexivity have played an important role in my personal and professional journey and have also played an important role within my thesis[2]. My intention has been to write the self into my exploration, as a tool to discover the 'other'[3]. I wanted to share with the reader my expectations, hopes and attitudes as these are relevant to the direction my research has taken. Through incorporating my own emotions, characteristics and personality into the research, I have enhanced the

[1] Thalia Gonzalez, 'A Quiet Revolution: Mindfulness, Rebellious Lawyering, and Community Practice' [2016] 53 Cal W L Rev 49; Julie MacFarlane, The New Lawyer: How Settlement Is Transforming the Practice of Law (UBC Press Vancouver Toronto 2008); Angela Harris, Margaretta Lin & Jeff Selbin, 'From "The Art of War" to "Being Peace": Mindfulness and Community Lawyering in a Neoliberal Age' [2007] 95 Calif. L. Rev. 2073; Anthony V Alfieri, 'Educating Lawyers for Community' [2012] Winconsin Law Review 1

[2] An 'uncomfortable reflexivity' approach as proponed by Youd and Pillow, will play an important part of my methodology and is outlined further in the appropriate chapter. See Deborah Youdell, Queer outings: uncomfortable stories about the subjects of post-structural school ethnography, *International Journal of Qualitative Studies in Education*, (2010) 23:1, 87-100, DOI: 10.1080/09518390903447168 & Wanda Pillow, Confession, catharsis, or cure? Rethinking the uses of reflexivity as methodological power in qualitative research, *International Journal of Qualitative Studies in Education* [2003] 16:2, 175-196, DOI: 10.1080/0951839032000060635.

[3] See Norman K Denzin & Yvonna S Lincoln, *The Sage Handbook of Qualitative Research* (SAGE 2018) 630-631; Amanda Coffey, 'Ethnography and Self' in Tim May (Ed) *Qualitative research in Action* (SAGE 2002) 313-331.

transparency of the work that I have undertaken and hope to allow the reader to not only understand what influences how I see things but also for the reader to see what I see[4].

I fell into the law by accident. In 1991, I left Sixth Form College, not really knowing where my future lay. I applied for two jobs. I had two interviews and was offered one of the jobs at an insurance company dealing with third party claims. I stayed within this role for a few years but dealing with the claims, often made by solicitors, gave me a glimpse of 'the other side' and I decided to chance my hand at claimant work. I gained employment as a paralegal with a claimant firm of solicitors. I immediately moved from a culture where claimants were portrayed as deceitful and duplicitous, to one where they were seen as the victims of greedy and unscrupulous insurance companies. I pictured myself, albeit somewhat naively, as a modern day Robin Hood. However, whilst I was working for a firm of solicitors, there were relatively few solicitors involved in the work. Many of my colleagues were also paralegals and had come over from defendant insurance work. We all shared similar views and backgrounds and this period of time was one of the happiest in my career[5]. It was whilst undertaking this role that I decided to start the long and often arduous journey to qualification as a legal executive and then a solicitor[6].

---

[4] Colin M Turnbull, *The Mountain People* (London: Cape 1973) 13.

[5] Despite leaving this particular firm in 2001, I am still friendly with the group of colleagues who I worked with during this period and we all still meet up to socialise.

[6] After four years of study I qualified as a legal executive (F.Inst.L.Ex), then after taking an additional module for a year, was granted exemptions for my Post-Graduate Diploma in Law (GDL - law conversion degree) which took a further year. I then undertook two years part-time study on the Legal Practice Course (LPC) and qualified as a solicitor. The normal route would be three years full time study on an LLB (Hons) and then one year full time study on the LPC and two years on a training contract or alternatively a non-law degree for three years full time, a one year full time law conversion degree (GDL) and then one year full time study on the LPC and two years on a training contract. Whilst my academic journey may have been more difficult than undertaking full time study, the route was often viewed by many qualified solicitors to be a lesser route. It did however hold the benefit that as I was a legal executive I was not required to undertake a training contract which can act as a social barrier to many wishing to access the profession.

Eventually, I left the firm and worked in-house for a large local authority and for a small firm of solicitors, but the major change in office culture that I witnessed was after I had gained employment with a medium sized legal firm working in the area of civil and commercial litigation and corporate recovery and insolvency. For the first time, the majority of my work colleagues were qualified solicitors or barristers, who had undertaken the conventional route to qualification. If I was to be honest, and whilst I qualified as a solicitor there after 8 years of part-time study, I must confess I felt a little inferior. As well as a noticeably different projected class background[7] to my previous colleagues, I observed the difference in how they conducted themselves[8] and how they commonly shared similar viewpoints and characteristics[9]. They had an aura of confidence, seemed less likely to express emotions in relation to their clients, and talked in a specific legalistic manner, with acronyms for different forms and procedures, and all applying similar methodologies to their cases. I had always enjoyed the client interaction but the client appeared to be secondary to solving the legal case, hitting targets and bringing in profit[10]. There was a much greater emphasis on time recording and billing and whilst I often felt guilty billing clients for work[11], I was aware

[7] I use the word 'projected' as some of the lawyers may have come from working class backgrounds but 'projected' a middle class demeanour.

[8] Bourdieu describes these shared visible traits as *hexa* or the embodiment of *habitus*.

[9] This included viewpoints which I did not share and which may have been as a consequence of my unorthodox route to qualification and a failure to be indoctrinated into certain perspectives either in academic study or in training.

[10] Evetts argues that shared professional identity can result in similarities in work practices and procedures, mutual ways of perceiving problems and possible solutions and shared ways of perceiving and interacting with customers and clients. Julia Evetts, 'Professionalism: Value and ideology' [2013] Current Sociology Review 780. doi:10.1177/0011392113479316.

[11] I felt the work that I had undertaken could have been undertaken in a lesser time and would often accordingly reduce my bill. Also, with previous firms I had not billed the clients directly but claimed my costs back directly from the defendant insurers.

of at least one colleague who would bill clients for simply thinking about their case on the train into work.

This emphasis on the culture of costs is best represented in a performance review meeting I attended with the firm's managing partner. Before the meeting, I had been optimistic that this would be a reasonably agreeable and possibly laudatory encounter. I had achieved both my billable hours and costs targets. However, as the meeting began it became evident that the managing partner was not as satisfied with my performance as I had anticipated. He had printed off all my billable hours and had highlighted where I had recorded non-chargeable time, wanting an explanation of why I was recording non-chargeable time and specifically referring me to a block of approximately four hours on a specific date, which I had recorded a number of weeks earlier. Despite feeling ambushed, I was fortunately able to recall the reason for my non-charging of time on this date. I had prepared a trial bundle for a court hearing, as administrative support had not been available on the day to assist me. The managing partner suggested that I should have charged my hourly rate but I was adamant that my client should not have to pay my hourly rate and contended that it was the firm, not my client's responsibility, to have appropriate administrative support available. This was an extremely uncomfortable discussion but I held firm, not least as I felt it my professional duty to do so for the client, and eventually, albeit reluctantly, the managing partner accepted this.

It was not long after this confrontation that I left practice for academia. I cannot say that this was definitely linked but I did feel at the time a little disillusioned with the practice of

law. Perhaps, and some might argue rather ingenuously, I wanted to encourage the future generation of lawyers to adopt a more client-centric approach and a passion for helping the less privileged.

It was in my first year in academia, and whilst undertaking my studies for a qualification in higher education teaching, that I first encountered the concept of reflective practice. To my colleagues who worked in education and medicine, this was second nature and was a foundation of both their studies and their practice. I could not understand that whilst this was a bedrock to other professionals, I had not encountered this in any of my legal studies or preparation for legal practice. For me, it was a 'light bulb' moment and fitted in perfectly with my 'client-centric' outlook. It provided me with a framework to consider the impact of the law on a micro level on the client and the parties involved in the legal case and also allowed me to consider the impact of the law on the meso-level of community and macro-level of society.

My time in entering academia also coincided with the country facing economic recession[12] and the consequent austerity measures that followed. This included the catastrophic combination of cuts to local authority budgets, resulting in the closure of legal advice centres, which was exacerbated by the implementation of the Legal Aid Sentencing and Punishment of Offenders Act 2012[13], resulting in swathes of civil legal aid being

[12] Incidentally, a time when my colleagues in corporate recovery and insolvency had never been busier.
[13] Legal Aid Sentencing and Punishment of Offenders Act 2012 (LASPO) received Royal Assent on the 1st May 2012 and came into effect on 1st April 2013

diminished[14]. For the first time, I campaigned politically with many other lawyers against the cuts but unfortunately to no avail. Having worked and studied at the same time, I was interested in how clinical legal education combined both together. However, it was not until I met academics, such as Donald Nicolson, at conferences and specialist working groups, such as the 'Teaching Legal Ethics Group', and started to read the literature behind clinical legal education, that I realised how effective clinical legal education could be. It was not just a learning tool for 'lawyering' skills such as interviewing and letter writing, but also provided a space to develop a deeper, more ethical and reflective understanding of the law and its impact.

With the assistance and rejuvenating spirit of the students, we worked collaboratively to set up a Legal Advice Clinic (LAC) in shop premises in the town centre. The location was important as we recognised that the university campus to some of the most vulnerable and disadvantaged, might represent the 'institution' and many of the prejudices and ill treatment they had faced. Once the LAC was established, I was adamant that I did not want this experience to be an iteration of traditional lawyering for the students and grasped the opportunity to incorporate procedures and practices, which I hoped would integrate

[14] In the year prior to LASPO coming into effect, 925,000 cases were granted legal aid. 12 months after coming into effect, legal aid was granted in 497,000 cases, representing a drop of 46 per cent. Ministry of Justice, 'Legal Aid Statistics in England and Wales, 2013-2014' (2014) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/366575/legal-aid-statistics-2013-14.pdf> accessed 28 August 2019, 63. The reduction significantly impacted upon the most vulnerable and disadvantaged. In 2012-13, 88,378 welfare-benefits cases received legal aid in social welfare law. However, in the subsequent year this figure dropped to just 145, representing a 99% reduction. Other areas of law which were significantly impacted include housing cases which dropped by approximately 50% and private family cases by 60%. One individual described her experience in trying to obtain legal help as: 'I feel alone, like I've been left in the dark without anywhere to get help… I'm scared about what that will mean for my kids.' Amnesty International, 'Cuts That Hurt: The impact of legal aid cuts in England on access to justice'. (2016) <https://www.amnesty.org.uk/files/aiuk_legal_aid_report.pdf> accessed on 28 August 2019 3 9.

reflective practice, client-centricism and access to justice into the fundamental foundations and processes within the LAC. This hybrid model of learning situated between the academy and legal practice, provides an educational space for students to practice in the law but also to critically reflect upon their experiences and learn ethics and values in the law[15]. I wanted to educate the students to question tradition and not just accept it. Not dissimilar to Martha Nussbaum's three foundational values for a liberal education, I hoped to encourage the students to think critically about accepted norms and values; to welcome diversity and question stereotypes; and have the 'narrative imagination' to understand, value and empathise with other's perspectives[16].

1.2 Shape and Structure of the Thesis

As a consequence of this thesis using methods drawn from socio-legal technique, it does not have the shape of a traditional law thesis. Accordingly, the thesis is in the following format. It starts with chapter one providing a general introduction and background to the researcher and moves on to a critical consideration of dialogical discourse between the lawyer and client in legal practice. The research has strong theoretical foundations, and in this chapter, I explain and consider the three underpinning theoretical concepts that provide the framework for my considerations and analysis. Having identified these theoretical considerations and developed a conceptual framework within which to examine

[15] Nigel Duncan & Susan L Kay, 'Addressing Lawyer Competence, Ethics & Professionalism' in Frank S Bloch (Ed), *The Global Clinical Movement Educating Lawyers for Social Justice* (OUP 2011) 190-191; Donald Nicolson, 'Legal education, ethics and access to justice: forging warriors for justice in a neo-liberal world' [2015] International Journal of the Legal Profession 22:1, 51-69, DOI: 10.1080/09695958.2015.1047840; William M. Sullivan *et al.*, *Educating Lawyers: Preparation for the Profession of law (The Carnegie Report)* (Jossey-Bass 2007) 146-147.

[16] Martha Nussbaum, 'Education for Profit, Education for Freedom' (2009) Liberal Education Summer <https://files.eric.ed.gov/fulltext/EJ861161.pdf> accessed 28 August 2019 10-12.

the literature, my literature review then identifies and examines those elements relevant to my theoretical lens, such as the history of the legal profession, formalism in the academy, the influence of the economic sphere, the ascent of clinical legal education and professional identity formation. At the end of the chapter, and from my consideration of the literature, I identify the two research questions, which form the premise for the research.

As the research involves the collection and analysis of empirical data, the second chapter outlines the methodology that I have adopted including matching my theoretical framework with an epistemological and ontological position and an explanation of how I will effectively gather and analyse the data for the purposes of answering the research questions. The chapter includes a consideration of reflexivity, ethics and the research methods I will adopt.

In the second chapter, I identify completing a rigorous iterative line-by-line analysis of the data in a pilot study, as a means to reduce potential bias. My third chapter therefore outlines the analysis undertaken in the pilot study and its findings, relating back to my theoretical framework, methodology and research methods.

The fourth chapter addresses the first research question and considers the background and influence of the field and the professional identities that emerge. It applies the theoretical concepts to the data and considers and contrasts the difference in professional identities between the newly appointed student advisors and more experienced student advisors.

Through the theoretical lens of epistemic practice, in particular, but also with consideration of my other two theoretical concepts, chapter five considers the second research question and examines processes and procedures within the LAC, investigating the tensions, dilemmas and conflicts that arise within this space.

Chapter six provides a brief summary of the main findings and considers their significance, together with the limitations of the study, suggestions for further research and final thoughts.

1.3 Formalism and Legal Practice

The dialogical discourse between supervisors, students and clients in the environment of a university LAC is vitally important to the values and norms that are projected and learned. Such interaction represents "law in action" as much as any examination of legislation or judicial decisions[17]. As confirmed by Shapiro "… law is not what judges say in the reports but what lawyers say – to one another and to clients in their offices"[18]. Given that only a small proportion of civil legal cases ever result in a full trial hearing[19] and even less in an appeal court decision, the experience of the practice of law and its values and norms in the offices of solicitors or legal advice centres *is* the law to many[20]. At a time when clinical legal

[17] Goffman argued this for client/lawyer interaction in Erving Goffman, *The Presentation of Self in Everyday Life* (Anchor Books 1959).
[18] Martin Shapiro, 'On the Regrettable Decline of Law French: Or Shapiro Jettet Le Brickbat' [1981] 90 Yale LJ 1198.
[19] Herbert M Kritzer, 'Disappearing Trials - A Comparative Perspective' (2004) 1 J Empirical Legal Stud 735 739-747. Marc Galanter, 'The Hundred-Year Decline of Trials and the Thirty Years War' [2005] 57 Stan. L. Rev. 1255, 1256–63.
[20] Robert J Condlin comments that "lawyers amend, abrogate, and enforce the law, and in the process, determine much of law's meaning for persons who come in contact with it". Robert J. Condlin, '"Tastes Great, Less Filling": The Law School Clinic and Political Critique' (1986) 36 J. Legal Educ. 45 48, 51-52.

education is becoming increasingly popular as an educational tool in Higher Education Institutions[21], and in the future may count towards qualifying work experience[22], it is incumbent upon educators to seriously consider what is being relayed as the law within these legal environments and the consequent meaning that the various actors give to these experiences. These discussions can contribute towards the educational and professional development of many of the students at a liminal stage in their professional identity formation. The word 'liminal' is used in an anthropological sense, which represents a person's transitions through different life stages[23]. The thesis will focus on the *limen* stage of liminality, which is the stage where actors have not yet achieved the anthropological threshold from adolescence to 'manhood'[24] and represents the intermediary transitions in time between different social structures[25]. In these intermediate transitions the actors encounter new divergent social and cultural structures, which have the ability to both re-focus values and beliefs and engender a change in identity for the actors involved[26].

---

[21] In 2014, the pro bono charity produced a report confirming that out of 80 institutions who responded to their survey (representing 73% of all Law Schools) 96% undertook pro bono work. Between 2006 and 2010 there was a 33% increase in pro bono and clinical activity at law schools and a 5% increase in 2014. 25 of the 80 responding law schools confirmed that they provided generalist advice clinics and 32 provided subject-specialist advice clinics. Further clinics are increasingly providing CLE as assessed credit bearing modules with an increase from 10% of law schools in 2010 to 25% in 2014. LawWorks, 'The LawWorks Law School Pro Bono and Clinics Report 2014' <https://www.lawworks.org.uk/solicitors-and-volunteers/resources/lawworks-law-school-pro-bono-and-clinics-report-2014> accessed 29 August 2019.

[22] Rachel Dunn, Victoria Roper & Vinny Kennedy, 'Clinical legal education as qualifying work experience for solicitors' (2018) The Law Teacher, 52:4, 439-452, DOI: 10.1080/03069400.2018.1526480.

[23] Victor W Turner, 'Betwixt and between: The liminal period in Rites de passage' in Victor W Turner (ed) *The Forest of Symbols: Aspects of Ndembu Ritual*, 93 (Cornell University Press 1967). Victor W Turner, *The ritual process: Structure and anti-structure* (Routledge 1969)

[24] Whilst I use the word 'manhood' it is only in the historic use of the term attached to the research undertaken by anthropologists such as Victor W Turner, *ibid*.

[25] Arnold Van Gennep, *The Rites of Passage* (University of Chicago Press 1960).

[26] Oscar Rantatalo & Ola Lindberg, 'Liminal practice and reflection in professional education: police education and medical education' [2018] Studies in Continuing Education 40 (3) 351 DOI: 10.1080/0158037X.2018.1447918.

Consequently, the dialogical discourse between students and supervisors, in a LAC setting, at the students' liminal stage of their development, formed the foundations for my research interest. Rather than examining the lawyer/client interaction, I wanted to consider the supervisor/student discourse *about* these interactions[27]. Such an examination, provided the possibility to consider the meaning and values that were relayed and whether subsequent conflicts, dilemmas and tensions arose between an encouraged client-centric[28] approach to the law and the more traditional formalistic approach of legal practice and education.

Whilst there is a dearth of observational empirical literature regarding the discussions between supervisor and students in a clinical environment[29], there is plentiful research into the lawyer/client discussions. In her interaction with the client, the lawyer extracts the information relevant to the legal field in order to look to manipulate the language of the law

[27] As confirmed by Susan Brooks and Robert Madden, clinical legal education provides an effective teaching vehicle and the "reflection on reflection in action" is the key to the effectiveness of these experiences. See Susan Brooks and Robert Madden, "Epistemology and Ethics in Relationship-Centred Legal Education and Practice" [2011] 56 New York Law School Law Review 331 364.

[28] David A Binder & Susan C Price, *Legal Interviewing and Counselling: A Client-Centred Approach* (West Group 1977); Katherine R Kruse, 'Fortress in the Sand: The Plural Values of Client-Centred Representation' [2006] Scholarly Works. Paper 32.

[29] Elizabeth Mertz conducted a ground breaking ethnographic in-class observational study of eight American Law Schools but this did not include observation of interactions in legal advice clinics (see Elizabeth Mertz, The Language of Law School: Learning to "Think like a Lawyer" (New York: Oxford University Press 2007). A wide variety of research methods have however been utilised to empirically investigate university legal advice clinics including longitudinal studies (see Kennon M Sheldon & Lawrence S Krieger, 'Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory'. Personality and Social Psychology Bulletin [2007] 33 (6) 883-897. DOI: 10.1177/0146167207301014), semi-structured interviews (see Fiona Cownie, *Legal Academics: Culture and Identities* Hart Publishing 2004), discussion of fictional scenarios (see Stefan H Krieger, 'The Effect of Clinical Education on Law Student Reasoning: An Empirical Study [2008] Scholarly Commons at Hofstra Law 359), quantitative surveys (see Phil Harris & Sarah Beinart (2005) 'A survey of law schools in the United Kingdom, 2004' (2005) The Law Teacher 39 (3) 299 365. DOI: 10.1080/03069400.2005.9993189) and analysis of student reflective diaries, (See Donald Nicolson, 'Education, education, education: Legal, moral and clinical' (2008), The Law Teacher, 42:2, 145-172 http://dx.doi.org/10.1080/03069400.2008.9959773) to name but a few.

in favour of her client[30]. This purely formal type of knowledge and expertise exhibited in legal reasoning by lawyers is referred to by Talcott Parsons as functional specificity[31], which is grounded in professional authority:

> This professional authority has a peculiar sociological structure. It is not based on a generally superior status.... It is rather based on the superior "technical competence" of the professional man (sic).... This is possible because the area of professional authority is limited to a particular technically defined sphere. Professional authority, like other elements of the professional pattern, is characterized by "specificity of function."[32]

Research demonstrates that the exercise of functional specificity in lawyer/client interaction, particularly with disadvantaged clients and in areas of 'high street law', can descend into the marginalising, subordinating and disciplining of clients[33]. Clients may arrive into the legal environment of the law firm office with their own narratives of events, where they construe a broader theme or meaning than just a story or account of a happening. They relate a number of stories, which when constructed together provide meaning to their

---

[30] Lynn Mather & Barbara Yngvesson 'Language, Audience, and the Transformation of Disputes' [1981] 15 Law & Soc'y Rev 775 781. Schön describes professional activity as "… consist[ing] in instrumental problem solving made rigorous by the application of scientific theory and technique". Donald Schön *The Reflective Practitioner* (New York: Basic Books 1983) 21. Noordegraaf explains professionals are "… workers who have learned to apply abstract, general, or esoteric knowledge to specific, individual cases and problems". Mirko Noordegraaf, 'From "Pure" to "Hybrid" Professionalism, Present-Day Professionalism in Ambiguous Public Domains' [2007], Administration & Society, Vol 39 (6) 766 DOI: 10.1177 / 0095399707304434.

[31] Talcott Parsons, The Professions and Social Structure [1939] Social Forces 17(4), 457 460 http://dx.doi.org/10.2307/2570695; Talcott Parsons, *The social system* (London: Routledge 1991 [1951]) 305.

[32] ibid.

[33] Alfieri explains that marginalization establishes client inferiority, subordination entrenches inferiority in a lawyer-client hierarchy of subject-object relations and discipline enforces hierarchy by excluding the expression of the voices of client narratives. Anthony V Alfieri, 'Reconstructive Poverty Law Practice: Learning lessons of Client Narrative' [1991] 100 Yale LJ 2107 2125. See also Anthony V. Alfieri, 'Disabled Clients, Disabling Lawyers' [1992] 43 (4) HASTINGS L.J. and Alfieri (n 1) 115-158.

personal experience[34]. However, when encountering lawyers this narrative can be subordinated to a legal discourse where language is used to reinterpret and reframe social events into a legal reasoning framework[35].

This process of sorting the information into legal relevance and discarding information of social irrelevance by professionals is described by Andrew Abbott as the colligation and classification process[36]. It represents the means by which professionals '*diagnose*' problems in their verbal discourse with clients, towards the desired end of providing a legal solution or basis for legal action. When professionals diagnose problems, they undertake this process of obtaining the information from the client and assimilating this information into the rules of the professional sphere. In this process, issues that are not relevant to the legal sphere, such as emotions and feelings, are discarded in order for the professional to 'assemble a picture' and structure the client's legal case. This methodology involves the application of strict rules of relevance, to obtain necessary information and remove irrelevant information. Such a process when applied by legal professionals naturally involves the sorting of relevance according to the formal rationality of the legal sphere and a 'narrowing' where the legal expert seeks to define the legal problem in this context, in order to influence the outcome. Boaventura De Sousa Santos explains the purpose of 'narrowing' is:

[34] Binny Miller, 'Telling Stories about Cases and Clients: The Ethics of Narrative' [2000] 14 Geo J Legal Ethics 1 1-2.
[35] Ethan Michelson, (2006) 'The Practice of Law as an Obstacle to Justice: Chinese Lawyers at Work' [2006] Law & Soc'y Rev 40 (1) 1 3.
[36] Andrew Abbott, *The System of the Professions* (University of Chicago Press 1988) 40-44.

> "To fix the object of a dispute is to narrow it. That is exactly what the legal process does in defining what is to be decided. This selection is determined by the needs and purposes of the legal process"[37].

As a consequence, social and fairness issues are usually deemed irrelevant in this procedure. The purpose of colligation and narrowing is to assemble the relevant information into a picture that can be classified according to the relevant legal sphere. This involves mapping out the relevant facts within the rules, principles and procedures of the legal sphere in order to consider the solution and recommend the appropriate '*treatment*'. Whilst the concepts of colligation or narrowing, classification and treatment are logically distinct, there is usually not a clear distinction in practice. However, this approach, where issues important to the client, but not the legal case, are discarded, may go some way to explaining the 'violent interpretive struggle'[38] that some clients experience in their dialogical interactions with lawyers.

This violent interpretive struggle was observed by Sarat and Felstiner in their ground-breaking ethnographic study of family lawyers' interactions with their clients in the late nineteen eighties. They witnessed an emotional battle of wills between lawyer and client created through the lawyer's manoeuvring of the client's narrative into a subservient

[37] Boaventura De Sousa Santos, 'The Law of the Oppressed: The Construction and Reproduction of Legality in Pasargada' [1977] 12 Law & Soc'y Rev 5 18.

[38] Alfieri explains that 'interpretive violence' is driven by three lawyer practices: marginalization, subordination, and discipline. Marginalization establishes client inferiority. Subordination entrenches inferiority in a lawyer-client hierarchy of subject-object relations. Discipline enforces hierarchy by excluding the expression of the voices of client narratives. Alfieri (n 33) 2125

position. In their dialogical interactions, the clients wanted to explain their past, focus on character and explain how they were the victims of external circumstances. The lawyers however sought to avoid negotiating with the reality of the situation and prioritised rules analysis and problem solving. The client's emotions and feelings surrounding the narrative were seen as obstructive to the legal case and another reason for the lawyer to invite total client dependence[39]. This objective of client dependence is therefore an enduring objective in the dialogical interactions between lawyer and client. It is achieved through the silencing and de-contextualisation of the client narrative[40], the creation of a divergent lawyer narrative and the consequent disempowerment of the client. Events are reconstructed to package a new reality, which makes sense within the legal field. Shin Imai describes this invasion, subjugation and transformation of reality as the work of an 'epistemological imperialist'[41]. Through the lawyer translating the client story into classifications of value, the client descends from a position of autonomy and centrality, to dependence and abstraction[42]. Having secured dependence, the lawyer then determines the role for the client in the legal proceedings, which will most benefit the legal case i.e. victim, incompetent or enfeebled[43]. This displacement of power to the adversarial lawyers, combined with the lawyers' translation from the substantive to the formalistic in legal

[39] Austin Sarat & William L F Felstiner, 'Vocabularies of Motive in Lawyer/Client Interaction' [1988] *Law & Society Review* 22 (4) 93.
[40] Alfieri describes the silencing process as a parallel destruction of the client narrative, together with the construction of a lawyer narrative. Alfieri (n 33) 2124.
[41] Shin Imai, 'A Counter-Pedagogy for Social Justice: Core Skills for Community-Based Lawyering' [2002] 9 Clinical L. Rev. 11 195 196-197.
[42] Simon describes this as 'juridical abstraction'. William H. Simon, 'Homo Psychologicus: Notes on a New Legal Formalism' [1980] 32 Stan. L. Rev. 487 490.
[43] Alfieri describes this as a three stage model of 'triage' and separates the processes into the categories of silencing, objectifying and classifying. Alfieri (n 33) 2124.

discussion, also results in many clients believing that the legal process and their lawyer actually exacerbate conflict, rather than dissipates it[44].

The process of silencing and displacing of client narratives, and the consequent disempowerment that this may cause, is of particular relevance when considering the plight of the poor and powerless, who are already subject to excessive power anomalies and are disproportionately impacted by the law[45]. Even with the availability of legal aid and assistance, lawyers within the field of welfare and poverty law have been criticised for their approach to clients and have been described as domineering[46], unreflective[47], unfeeling bureaucrats[48], agents of domination[49] and oppressors[50].

---

[44] See Marsha Kline Pruett & Tamara D. Jackson, 'The Lawyer's Role During the Divorce Process: Perceptions of Parents, Their Young Children, and Their Attorneys' [1999] 33 Fam. L. Q. 283 298 where 71% of legally represented parents in uncontested divorce cases believed the legal process had exacerbated hostility and the conversion of all communication to formalistic representation between the legal representatives had contributed to antagonism. Julie MacFarlane suggests that lawyers are more associated with conflict, than conflict resolution. MacFarlane (n 1).

[45] Ewick & Selby identify how the most marginalised in society (the poor and working class, the racially and ethnically stigmatised, physically and mentally disabled persons, women, children and the elderly) are the most subjected to the power of the law. Patricia Ewick & Susan S. Silbey, *The Common Place of Law* (The University of Chicago 1998) 234-238. Austin Sarat also discusses how for the impoverished are disproportionately impacted by the law and are likely to be subjected to a power and dominance imbalance. Austin Sarat '".. The Law Is All Over": Power, Resistance and the Legal Consciousness of the Welfare Poor' [1990] Yal
e Journal of Law & the Humanities 2 (2) (6) 343.

[46] James B White, *Justice as Translation: An Essay in Cultural and Legal Criticism* (Chicago: University of Chicago Press 1990).

[47] Alfieri (n 33).

[48] Hosticka provided this comparison in his ethnographic study of 50 lawyers in Carl J Hosticka,'We Don't Care about What Happened, We Only Care about What Is Going to Happen: Lawyer-Client Negotiations of Reality' Social Problems (1979) 26 (5) 599 604, 608.

[49] Imai (n 41) 197.

[50] Anthony V Alfieri, 'The Antinomies of Poverty Law and a Theory of Dialogic Empowerment' [1987] 16 N.Y.U. Rev. L. & Soc. Change 659.

Empirical investigation has also suggested that, contrary to the belief of many lawyers that the service they provide is unparalleled, the performance of non-lawyers in not for profit agencies in areas such as welfare law, is of a significantly higher standard than that of lawyers and is also provided with higher levels of satisfaction[51]. However, studies also suggest that in some cases litigants in person, with their ignorance of the law and its procedures were less unhappy after appearing in court, than those who had received advice in a client-centred self-help assistance centre. Whilst the clients receiving advice were initially very pleased after receiving their advice[52], following their court appearance they were less happy. The self-help centre had explained the law perfectly well, but had not prepared the clients adequately for the court procedures and the unadvised clients did not know of possible outcomes, so were less disappointed when they did not achieve them. Consequently, the assisted clients felt that they had received less justice[53].

1.4 Opportunity for a Model of Empowerment

Whilst failing to provide any advice or assistance is not an option that will be advocated or considered any further, this does raise the important point that it is necessary to think very carefully about the advice that is provided and the brutal system within which the advice is being given[54]. Civil legal advice provision to the poor has been decimated over the last

[51] Richard Moorhead *et al.* suggested it is specialisation rather than professional status that is the best indicator for quality. Richard Moorhead, Avrom Sherr & Alan Paterson, 'Contesting Professionalism: Legal Aid and Nonlawyers in England and Wales' [2003] Law & Society Review 37 (4) 765 795-796, 799 See also Hazel Genn & Yvette Genn, *The Effectiveness of Representation at Tribunals, Report to the Lord Chancellor*. (London: Lord Chancellor's Department 1989).
[52] 95% stated they were either "extremely satisfied" or "very satisfied" with the assistance they had received. Gary Blasi, 'How Much Access? How Much Justice?' [2004] 73 Fordham L. Rev. 865 869-870.
[53] ibid.
[54] Sarat (n 45).

decade[55] but if future professionals are to be educated through clinical legal education, it should not just be a replication of legal practice nor a sole exercise in engaging with the client's emotions. Advice provision should take account of the client's substantive sphere, but also empower the client to understand the formalistic legal sphere and be able to act for herself[56]. Careful attention therefore needs to be given to the dialogical discourse between advisor and client, as well as the tacit, implicit and explicit messages relayed between supervisor and supervisee in their interactions. As noted by Michelson, what happens at a micro level can both facilitate and deny access to justice at a macro level[57].

Consideration of the dialogical discourse between supervisor and supervisees is also particularly pertinent at a time when the Law Society are campaigning for the reintroduction of legal aid for early advice[58]. The purpose of such 'one-off' advice must be to empower an individual to understand and take charge of their legal position. Such an approach is pedagogical, rather than adversarial, and requires the lawyer to take the role of wise counsel, rather than 'hired gun'[59]. It requires the lawyer to be able to both relay the law and understand the client. Whereas under the representational model the clients feelings and

---

[55] See Hilary Sommerlad & Peter Sanderson, 'Social justice on the margins: the future of the not for profit sector as providers of legal advice in England and Wales' [2013] Journal of Social Welfare and Family Law 35 (3), 305. DOI: 10.1080/09649069.2013.802108; Marjorie Mayo, 'Providing access to justice in disadvantaged communities: Commitments to welfare revisited in neo-liberal times' [2013] Critical Social Policy 33 (4) 679; Owen Bowcott, Amelia Hill and Pamela Duncan, 'Revealed: legal aid cuts forcing parents to give up fight for children' *The Guardian* (26 December 2018) <https://www.theguardian.com/law/2018/dec/26/revealed-legal-aid-cuts-forcing-parents-to-give-up-fight-for-children> accessed 16 February 2020.

[56] Jeremy Cooper and Louise G. Trubek, 'Social Values from Law School to Practice: an Introductory Essay' in Jeremy Cooper & Louise G. Trubek (Eds), *Educating for Justice: Social Values and Legal Education*, (Ashgate Dartmouth 1997) 15.

[57] Michelson (n 35) 3.

[58] The Law Society, 'Early legal advice' (undated) <https://www.lawsociety.org.uk/policy-campaigns/campaigns/early-legal-advice/> accessed 30 September 2019.

[59] Donald Nicolson & Julian Webb, *Professional Legal Ethics: Critical Interrogations* (Oxford, Hart Publishing, 1999) ch. 6.

emotions were seen as 'getting in the way', under this different role, feelings and emotions are important considerations to the advice provision.

This model also is not just limited to the poor and disadvantaged. As the law becomes increasingly complex, expensive and inaccessible, and with conditional/contingency fee arrangements not always suitable or appropriate, an empowerment model offers an alternative legal service provision. This may be particularly relevant at a time of increasing technological advancement in advice provision[60], where information can be accessed, but the legal professional undertakes the role of translator, providing a humanistic element to the advice provision. Within such a model, rather than representing the client as their legal champion, the legal professional helps facilitate, enhance and maximise the clients understanding[61]. However, in a sphere where the transcendental logic is precedent and looking backwards to history as a means of making decisions in the present and future, innovation and change is not always quick.

1.5 Underpinning Theories and Theoretical Framework

In order to consider the viability for change and to understand issues such as why a 'violent interpretive struggle'[62] may arise between lawyer and client, it is necessary to situate these

[60] Richard Susskind, *The End of Lawyers? Rethinking the nature of legal services* (Oxford University Press 2010); Richard Susskind & Daniel Susskind, *The Future of the Professions, How Technology will transform the Work of Human Experts* (Oxford University Press 2015).
[61] Vygotsky describes this as scaffolding and the means by which individuals can be taken to a level of understanding that they would ordinary be unable to achieve. He describes this level as the 'Zone of Proximal Development' See Lev S Vygotsky, *Mind in Society: The Development of Higher Psychological Processes* (Cambridge, MA: Harvard University Press, 1978); Lev S Vygotsky, *The Collected Works of L. S. Vygotsky,* R W Reiber and A S Carton (Eds) (New York: Plenum Press 1986).
[62] Alfieri (n 33) 2125.

facts and observations within a theoretical framework[63]. The theoretical lens in which we view the world helps shape and organise the observed facts and opinions[64] into a cohesive whole, which can provide both a conceptual explanation of the past and a prediction of the future[65]. As confirmed by Blumer:

> One can see the empirical world only through some scheme or image of it. The *entire* act of scientific study is oriented and shaped by the underlying picture of the empirical world that is used. This picture sets the selection and formulation of problems, the determination of what are data, the kinds of relations sought between data, and the forms in which propositions are cast[66].

The theory therefore provides both the background to the research, whilst also concurrently providing a justification for the research and providing a framework to understand and interpret the social phenomena[67]. A theoretical standpoint also allows for consideration of how the phenomena is both constructed and experienced in the participants' activities[68].

The research will therefore be located within three theoretical perspectives. The first of these three specific theorisations is Max Weber's model of value spheres, together with his related multi-level rationality for social action. The second theoretical element is Bourdieu's

---

[63] Norman Blaikie, *Approaches to Social Enquiry* (Reprint (1993), Polity Press 1995) 6
[64] Silverman (n 64) 99
[65] Kevin Orr, *College Cultures and Pre-Service Trainee Teachers: a study in the creation and transmission of ideas about teaching* (Doctoral thesis: University of Huddersfield 2009) 22.
[66] Herbert Blumer, *Symbolic Interactionism; Perspective and Method* (Englewood Cliffs, NJ, Prentice Hall 1969) 24-25.
[67] Alan Bryman, *Social Research Methods* (5th edn, Oxford University Press 2016) 18.
[68] David Silverman, *Doing Qualitative Research* (4th edn, Sage Publications Ltd 2017) 133.

relational concepts of *habitus*, *field* and *capital*, together with some consideration of his less familiar concepts such as *doxa*[69] and *hexis*[70]. The final element is Knorr Cetina's concept of epistemic cultures, incorporating epistemic practice and epistementalities

1.5.1 Weber's Value Spheres and Multi-level Rationality for Social Action

The exploration of theoretical perspectives will inform the understanding of law students' growth and learning and how objective mechanisms can influence subjective understanding and rationality for action. Max Weber provides a theoretical explanation for formalism and conceives the idea of irreconcilably different formalistic and substantive spheres and how these can collide in social action. This theoretical concept draws upon the conceptual rationalities of wertrationalitaet and zweckrationalitaet. Zweckrational action, or instrumentally calculative rationality for action, fits within Weber's formalistic sphere and corresponds with a formalistic manner of thinking, where action is taken in a conscious calculating attempt to achieve desired ends through the appropriate means. Wertrational, on the other hand, falls within the substantive sphere and represents acting in a particular manner, for the intrinsic value of an action, where action is taken regardless of the consequences and includes action that may be detrimental to the self.

Formal rationality represents the dominant rationality within a capitalist system and is founded upon maximising the calculability of action. This approach favours powerful and

[69] Pierre Bourdieu, *The Logic of Practice* (Cambridge: Polity 1990).
[70] Pierre Bourdieu, *Outline of a Theory of Practice* (R. Nice (trans.) Cambridge: Cambridge University Press 1977 [1972]) 214.

bourgeois interests[71], enabling the economically privileged to be able to acquire, through payment or otherwise, the resources to predict the legal consequences of their actions[72]. For example, when entering into a contract, the skills of a lawyer in inserting clauses, such as a non-disclosure clause[73] or a clause to enable a landlord to recover costs against a tenant[74], will allow for some certainty over the future. In the former, the client may be content that past potentially damaging indiscretions will not be revealed, whereas with the latter, the client can provide for facilities to recover costs to be available should disadvantageous events occur in the future. Lawyers can therefore proactively help plan for and prevent disputes, whilst structuring transactions for their 'financially privileged' clients to provide them with optimal benefit[75].

The certainty of those with access to an understanding of the legal sphere might be compared and contrasted with the many financial transactions undertaken by the ordinary public, who have little or no access to this knowledge base. When undertaking simple transactions, such as loaning money to friends and relatives, many have little idea that their transaction is often unenforceable in the law, with the ramifications of such alien concepts as intention to create legal relations, consideration and offer and acceptance, meaning a simple agreement to repay may prove to be legally unenforceable[76]. Whilst the economically powerful are able to minimise risks, maximise profits and establish

---

[71] Magali Sarfatti Larson, *The Rise of Professionalism* (Transaction Publishers 2013) 168.
[72] Max Weber, *Economy and Society: An Outline of Interpretive Sociology* (University of California Press 1978) 811.
[73] See Force India Formula One Team Ltd v Aerolab SRL and another company [2013] EWCA Civ 780; [2013] All ER (D) 39 (Jul).
[74] In relation to a landlord's costs of enforcing tenant's covenants under the Law of Property Act 1925, s146-147 or the Leasehold Property (Repairs) Act 1938.
[75] Blasi (n 52) 879.
[76] Blue v Ashley [2017] EWHC 1928 (Comm), paras [55]-[57].

misbalanced power relations of control over those with less power i.e. through contracts of employment, lease agreements and/or consumer contracts[77], the legal sphere does not afford such luxuries to those without access to the necessary rationality of law.

This formal rationality of law operates within an autonomous *supra-individual value sphere*[78]. It exists independently and externally to individuals, and possesses its own distinct norms. Within this sphere of existence, the rationality of law ties in with the economic sphere and prioritises calculability, efficiency and impersonality; it de-personalises and objectifies relationships and focuses upon a formalised, and often abstract, set of rules, principles and procedures. However, it is only those with the necessary skills and knowledge, or those who are able to acquire the necessary skills and knowledge through payment or otherwise, who can circumnavigate the complex rules of this sphere. The inaccessible nature of this sphere, to many, has serious implications at a time when the law is increasingly the preserve of the rich and powerful with less and less people afforded access[79].

---

[77] There is some case law and statutes which seeks to protect the powerless from the powerful, such as the Unfair Contract Terms Act 1977, but the incorporation of the services of a lawyer in both pre-contractual and litigation services can assist in minimising any risks arising from any statutory or legal protection.

[78] Roger Brubaker, *The Limits of Rationality An Essay on the Social and Moral Thought of Max Weber* (Routledge 1984) Ch 3.

[79] As confirmed by Lord Neuberger, former President of the Supreme Court in an address to the Australian Bar Association (3 July 2017) [it] *'… verges on the hypocritical for governments to bestow rights on citizens while doing very little to ensure that those rights are enforceable. It has faint echoes of the familiar and depressing sight of repressive totalitarian regimes producing wonderful constitutions and then ignoring them'*. Lord Neuberger, President of the Supreme Court, *Access to Justice: Welcome address to Australian Bar Association Biennial Conference* (2017) < https://www.supremecourt.uk/docs/speech-170703.pdf> accessed 16 February 2020, para [8]. The Law Society confirmed in their investigation into the impact of LASPO: *'Large numbers of people, including children and those on low incomes, are now excluded from whole areas of free or subsidised legal advice – valuable advice which they cannot realistically be expected to afford themselves'*. The Law Society, *Access Denied? LASPO four years on: a Law Society Review* (2017) <file://nask.man.ac.uk/home$/Downloads/lapso%204%20years%20on%20review.pdf> accessed 16 February 2020.

In contrast, Weber's substantive rationality, which is antithetical to formal rationality, starts from the perspective of a particular end, value or belief and favours intrinsic values such as equality, fraternity and caritas. It is subjective and dependent upon the individual's own consciousness and *individual value orientation*. Such an approach, described by Weber as *Kadi justice*[80], does operate in some non-western courts, notably under sharia law. With its subjective cultural fairness and regard to equality, the adoption of a substantive approach may be more preferable to those without the means to access the rules of the formalistic sphere. However, whilst formalists criticise the substantive approach arguing it creates instability and arbitrariness, Max Rheinstein argues that *Kadi justice* does not necessarily lack all rationality, nor is it administered upon the basis of an arbitrary whim. He suggests that *Kadi justice* provides decisions based upon the principles of the prevailing religious or ethical values systems and whilst it can be based more on feelings, rather than knowledge, it can represent the 'sound feeling of the people'[81]. Lawrence Rosen suggests that *kadi justice* is founded upon 'a logic of consequence, rather than a logic of antecedent' focusing upon the contextual assessment of the occurrence itself, rather than the intent of the individuals. Rather than a system situated around rules, it constitutes a system structured around assumptions and conventions[82]. However, the lack of certainty created by it is particularity is likely to be criticised by the economically privileged, who under a substantive system would be unable to enter into legal contracts or take legal action with the same level of predictability of likely outcomes. Tension exists between these two realms of rationality and

[80] Weber (n 72) 213, 317, 351-352.
[81] ibid, 'Introduction' l & lv
[82] Lawrence Rosen, 'Equity and Discretion in a Modern Islamic Legal System' [1980] 15 Law & Society Review 217 242-243.

it is perhaps unsurprising, that in a capitalist system, and with its links to the economic sphere and need for certainty, that the *supra-individual value sphere* of legal formal rationality dominates over the subjective ideals of substantive rationality and *individual value orientation*.

The consideration of the tensions between these two spheres helps facilitate an understanding of the predominant approach of the formalistic sphere, and how conflicts may arise in the lawyer's office, where the lawyer's formalistic ideals and methods clash with the client's subjective narrative and meaning. The capitalist interpretation of formal rationality, despite being inaccessible to many, therefore reigns supreme. As the dominant sphere, it reproduces and reinforces certain attitudes and dispositions to those individuals practising within it. The reproduction of relational attributes arising within this particular field therefore leads to the second theoretical lens and consideration of Bourdieu's relational concepts of habitus, field and capital.

1.5.2 Bourdieu's Habitus, Capital and Field

Similarly to Weber, the sociological theorist Pierre Bourdieu's theoretical concepts arise from external mechanisms and how they impact upon individual agency. In his relational theory and 'thinking tools' of habitus, field and capital, Bourdieu, provides a metaphor for understanding the dichotomy of an individual's subjective autonomous agency, and the objective external structural influences that can *influence* behaviour. Historically, this problem has been sociologically seen as irreconcilable with the former commonly seen as the domain of functionalists such as Emile Durkheim and Talcott Parson. However, Bourdieu

offers an alternative to this recurring, seemingly perennial Gordian knot[83]. He offers an explanation that an agency of an individual arises from her habitus or life experiences and describes the habitus as a "structured and structuring structure"[84]. It can be structured through individuals, groups or even institutions[85], past experiences and circumstances and is structuring as these experiences help structure an individual's present and future. The structure is organised, as opposed to random, and entails a system of dispositions all of which can generate certain perceptions, beliefs, appreciations, feelings and practices[86]. As explained by Bourdieu:

> It [habitus] expresses first the *result of an organising action*, with a meaning close to that of words such as structure; it also designates a *way of being, a habitual state* (especially of the body) and, in particular, a *predisposition, tendency, propensity or inclination*[87].

However, the habitus does not act alone and practice results not only from the dispositions of the individual but also extends to "an unconscious"[88] and dialectical relationship between habitus and field, exhibited in the following formula:

> [(habitus)(capital)] + field = practice[89]

---

[83] Pierre Bourdieu & Loic J D Wacquant, 'Towards a Reflexive Sociology: A Workshop with Pierre Bourdieu' (1989) *Sociological Theory* 7(1).
[84] ibid 170.
[85] Michael Grenfell, *Pierre Bourdieu Key Concepts'* (2nd edn, Acumen Publishing Limited 2012) 50.
[86] Pierre Bourdieu, *Language and Symbolic Power*, G Raymond & M Adamson (trans.), (Cambridge: Pollity 1990).
[87] Bourdieu (n 70) 214.
[88] Pierre Bourdieu, *Sociology in Question,* R. Nice (trans), (London: Sage 1993) 76.
[89] Pierre Bourdieu, 'The Production of Belief: Contribution to an Economy of Symbolic Goods' in R Collins, J Curran, N Garnham & P Scannell (Eds), *Media, Culture and Society: A Critical Reader* (London: Sage 1986).

There are multiple levels of fields and sub-fields at a macro, meso and micro level. Fields are competitive with pre-determined positions and depending upon the capital held by an individual agent, can restrict or support what that agent can or cannot do. The concept of capital relates not only to *economic* capital such as money and assets but also the *cultural* relating to knowledge, taste and preferences or *social* relating to families, religion and cultural heritage. The habitus of an agent will often dictate in what position the agent finds herself within a field or how comfortable the agent is in this field and in their consequent practice. During their research into why students from middle class backgrounds were more likely to attend university than students from a working class background, Bourdieu and Passeron[90] outlined the importance of outlook, beliefs and practices, and experiences in a particular field. Through their outlook, beliefs and practices the agents may feel more or less comfortable in the field that they find themselves. The middle class students saw university as a 'natural' step which fitted in with their habitus perfectly but the working class students felt uncomfortable within their new environment, considering that university was 'not for the likes of them'. The middle class students felt more 'at home' in the university due to their knowledge, through past experiences of the unwritten rules of the 'middle class' game which matched with their own habitus. They felt like 'fish in water' as opposed to the working class students who felt like 'fish out of water' with a habitus mismatch within the field and their deficiency of social and cultural capital. The social reality for the students

[90] Pierre Bourdieu. & Jean Claude Passeron, (1979) *The Inheritors, French Students and their Relation to Culture*, R Nice (trans), (Chicago, IL: University of Chicago Press 1979).

existed in their minds, in the field and in their own habitus, outside and inside of their agency[91].

The relational link between subjective experience and objective structure can also result in an unquestionable, perceived belief in the 'truth' in a field, known as a *doxa*, based upon the logic of the field and the valued practices or capital within that field[92]. This concept is not only important for considerations of a rationale for conduct, behaviour and social action within the legal field but as part of my methodology to consider my own beliefs and *doxa* introspectively and reflexively, so as not to prejudice my analysis.

In his major work relating to the law, 'The Force of Law'[93], Bourdieu specifically considers the logic of the juridical field and relates some of his theoretical concepts to the work of Weber, particularly in his assessment of the logic of the juridical field. He distinguishes formalistic judgments based upon the law from what he describes as "naïve intuitions of fairness"[94] and positions his views within a framework similar to Weber, where an ordinary sense of substantive fairness is replaced with the rigorous deduction of systematically coherent and formalistic rules[95]. Critically, within these rules, is a juridical language, which presents all the hallmarks of neutral detachment and has the effect of creating a 'judicial space'[96]. This space has the effect of empowering those with the necessary legal knowledge

[91] Bourdieu & Wacquant (n 83) 43.
[92] Pierre Bourdieu, *In Other Words: Essays towards a reflexive sociology* (Stanford University Press 1990) 11.
[93] Pierre Bourdieu, 'The Force of Law: Toward a Sociology of the Juridical Field' [1987] Hastings Law Journal 38 (5) 814.
[94] ibid 817.
[95] ibid 820.
[96] ibid 819-820.

and skills gained through training and education towards the top of the field, whilst also contemporaneously disempowering the lay people without this knowledge and understanding. This structural concordance and discordance, including the changing of words from their ordinary usage both on a syntactic and lexicological level, creates both understanding and misunderstanding depending upon the participant's position within the field and sphere of knowledge[97]. The disempowerment experienced by the uneducated in the law operating within this field results in a dislocation of the habitus and an experience of 'hysteresis'[98] or 'symbolic violence'[99].

Through its operation within a neo-liberal field of power and tradition, it is perhaps unsurprising that Bourdieu suggests that the reason for the exclusivity of access to the law correlates with the economic field[100]. Through the creation of a legal case, with complex legal rules in need of evaluation and juridical language in need of translation[101], the legal profession also thus protects ingress into the juridical field, whilst concomitantly increasing demand for its services[102]. This discernible strategy is not only limited to the rich and bourgeoisie, but also includes the provision of services to the poor through government payment[103] and the support of organisations such as charities and trade unions. With the latter, the legal profession has worked collaboratively, and often generously, to represent employees against the more powerful employers. However, by doing so, a 'juridicization' of

[97] ibid 829.
[98] Steven J Courtney, 'Corporatising school leadership through hysteresis' [2017] British Journal of Sociology of Education, 38 (7) 1054-1067. DOI: 10.1080/01425692.2016.1245131.
[99] Bourdieu describes this as 'summa injuria'. Bourdieu (n 93) 850.
[100] Bourdieu (n 93) 852
[101] ibid 834.
[102] ibid 835
[103] Although as already outlined the availability for legally aided support and assistance in common law jurisdictions such as the UK, America and Australia is severely restricted.

the field has emerged resulting in an extension of the market for legal services and consequently an increase in demand[104] and resulting in less accessibility to those without the means to engage the services of a lawyer.

In addition to pursuing an aspiration of increasing demand, and whilst not dissimilar to other professions, the legal profession has sought to restrict the supply of its services and to monopolise the area of law[105]. For example, whilst in other jurisdictions, notably Scotland, non-professionals may assist in litigation; in England and Wales this is categorised as reserved legal activity, which may only be undertaken by authorised persons such as solicitors, barristers or similarly qualified legal professionals[106]. Consequently, for activities such as litigation, non-professionals cannot be entrusted to undertake such work and are effectively excluded from the performance of such work[107].

---

[104] Bourdieu (n 93) 836-837. The sanctioning of contingency fee agreements in the UK, where lawyers are entitled to a percentage of the damages awarded has also led to increased access to the law for the disadvantaged but with a consequent increased juridicization of this area of law and less accessibility to those without the appropriate knowledge of rules and procedures.

[105] Deborah L. Rhode, 'What We Know and Need to Know About the Delivery of Legal Services By Nonlawyers' [2016] 67 South Carolina Law Review 429; Deborah L Rhode, 'Policing the Professional Monopoly: A Constitutional and Empirical Analysis of Unauthorized Practice Prohibitions' [1981] 34 Stan L Rev 1; American Bar Association, *Nonlawyer Activity in Law-Related Situations: A Report with Recommendations* (Chicago: American Bar Association 1995). In Deborah Rhode, *In the Interests of Justice: Reforming the Legal Profession* (Oxford University Press 2003), Deborah Rhode suggests that the organised bar sees pro bono work and its use of specialists from outside of the legal profession as a threat to its monopoly. cf. Anton Kazun, (2016) Juridical Field or Legal Profession? Comparison of Bourdieusian Theory and Theory of Professionalism for Studies of Legal Community' (2016) Comparative Sociology 15 572 578 which suggests there is a multi-tier system of checks and balances in place to prevent monopolisation.

[106] This reserved legal activity is provided for under the Legal Services Act 2007 ("LSA") which prescribes that certain legal activities are "reserved" legal activities and can only be carried out by persons who are authorised to do so. These activities are listed at section 12 of the LSA and include: a) the exercise of a right of audience; b) the conduct of litigation; c) reserved instrument activities (predominantly conveyancing activities); d) probate activities; e) notarial activities; f) the administration of oaths.

[107] Mike Saks, 'Analyzing the Professions: The Case for the Neo-Weberian Approach' (2010) Comparative Sociology 9 (6): 887–915. doi:10.1163/156913310X522624.

Through a combination of increasing demand, intensifying the difficulty of admission into the profession, and thus limiting the number of legal professionals providing a legal service[108], together with monopolising the ability and competence of those able to interpret, translate and function within the legal sphere[109], the outcome of diminished access to justice is unsurprising. However, the theoretical and conceptual lens provided by Weber and Bourdieu provides for the possibility to interpret and construct the empirical phenomena of law by observing the legal habitus, juridical field and legal and substantive spheres. This theoretical framework of the legal field and habitus of actors situated within a formalistic hegemonic objective legal sphere therefore enhances our understanding of how professional values and identity are constructed. It allows for the examination of external relational structures and a consideration of why the participants pursue different courses of action and their rationality for such action.

When applying these theoretical lenses, the influence of the economic field of power is identifiable and undeniable. The increase in complexity of the law has assisted the legal profession, through the exclusivity of its services, in both increasing demand and limiting the supply of such services to those recognised as legal professionals. However, whilst historically the legal profession has grown, with the withdrawal of state support to many

[108] Bourdieu (n 93) 835. In the UK the SRA has sought back control of setting the new SQE arguably for this reason.
[109] Magali Sarfatti Larson, *The Rise of Professionalism*. (University of California Press 1977) 47; Bourdieu (n 93) 817.

areas, this growth has been primarily with the larger more powerful commercial firms, and very much to the detriment of the traditional high street firms[110].

This chapter will therefore proceed to consider the history of the field; the habitus and social and cultural capital of the legal profession and how this may have impacted upon professional values and identity. It will also consider how the academy and regulation may have contributed towards this perpetuation of the domination of formalistic values over more substantive values such as caritas, fairness and equality. Whilst Bourdieu did suggest that sociologists should move beyond a traditional western critique of the professions put forward by Larson and Abbott, and replace this with his field concept, it is suggested that these two approaches are not mutually exclusive and may actually be complementary[111]. Bourdieu's objections were based upon providing a specific category for professions and ignoring the nature of competition and struggle within the juridical field[112]. However, as has already been examined, much of Bourdieu's views overlap with those of Larson and Abbott particularly in relation to the profession of law as a neo-liberalist force. Whilst the participants in the legal field may be different, it is the competition and struggle within the juridical field that creates the similarities between lawyers.

---

[110] Following the enactment of the Legal Aid and Advice Act 1949, 80% of the UK population were entitled to legal aid. See Steve Hynes and Jon Robins, *The Justice Gap: Whatever Happened to Legal Aid?* (Legal Action Group 2009) 21. However, the latter part of the twentieth century witnessed a steady erosion of legal aid followed by its decimation in many areas in 2013, following the enactment of the Legal Aid Sentencing and Punishment of Offenders Act 2012.

[111] Kazun (n 105) 572

[112] Pierre Bourdieu & Loïc J D Wacquant, *An Invitation to Reflexive Sociology* (University of Chicago Press 1992) 243.

Applying Bourdieu's other relational concepts, such as habitus and capital, it can be seen how certain players in the field have inherent advantages over others as a consequence of their background, class and status.

1.5.3 Epistementalities

Bourdieu's relational concepts of habitus, capital and field, and particularly his concept of *doxa* and the perceived belief of 'truth' in a field, accords with Knorr Cetina's notions of epistemic culture[113]. From this notion, a number of concepts arise including the concepts of epistemic machineries, epistementalities and epistemic practice. Epistementalities represents a whole system of knowledge, which applies from a particular way of thinking, reasoning and understanding and considers how this is mediated through a framework, considering historical knowledge, evolving institutional arrangements, student experience, and the relationship between these areas of knowledge[114]. This framework, identified by Jensen *et al*.[115], is summarised in the diagram below:

Framework		
Dynamic relationship between:		
Historical knowledge as an evolving phenomenon	Evolving institutional arrangements that serve knowledge and learning	Students' Experiences

[113] Karin Knorr Cetina, 'Epistemic cultures: How the sciences make knowledge' (Cambridge, MA: Harvard University Press 1999).
[114] Karen Jensen, Monika Nerland & Cecilie Enqvist-Jensen, 'Enrolment of newcomers in expert cultures: an analysis of epistemic practices in a legal education introductory course' [2015] High Educ 70 867 DOI: 10.1007/s10734-015-9872-z
[115] *ibid*.

The 'machinery of knowledge construction' in the epistemic culture is therefore important to understanding how knowledge emerges and pervades throughout the field. As confirmed in the work of Knorr Cetina[116], knowledge can be produced in different ways within different epistemic cultures and it is this knowledge that is produced that defines the field[117].

The concept of epistemic practice allows for a transcension from viewing knowledge as purely situated on content alone to an examination of 'the investigative processes, models of inquiry and the principles for verification used'[118]. This concept therefore enables the consideration of both Bourdieu and Weber's theories within a specific methodological framework concerning 'what the participants do' and 'how they do it'. It will be considered further and in more detail as a methodological tool within the next chapter. However, as historical knowledge, habitus and capital is important to the epistemic culture or *doxa* of the field, this chapter will next consider the history of the legal profession.

1.6 The Legal Profession's Identity and History

> "The first thing we do, let's kill all the lawyers" [119].

Lawyers have long had a relationship with controversy. This highly emotive sentence from the Shakespeare play, Henry IV, may be interpreted tendentiously. Some might suggest it

[116] Knorr Cetina (n 113); Karin Knorr Cetina, 'Objectual practice' in Theodore R Schatzki, Karin Knorr-Cetina & Eike von Savigny (Eds), *The practice turn in contemporary theory*. (London: Routledge 2001) 175.
[117] Although Knorr Cetina refers to this as culture, rather than field.
[118] Jensen, Nerland & Enqvist-Jensen (n 114) 869.
[119] William Shakespeare. Henry IV, Part 2, Act IV, Scene 2.

supports the contention of the lawyer as a noble profession and defender of the public's rights, whilst for others it may represent lawyers as the vicarious representatives of the cost, complexity and inaccessibility of the law[120]. What is clear is that controversy surrounding the legal profession is nothing new. Since its early inception in the late thirteenth and early fourteenth century, the legal profession has been the object of antagonism.

The legal profession has long displayed the traits of professionalisation (such as self-regulation, disciplinary and educational systems, esoteric knowledge and monopolisation) dating back as far as the work that it undertook in the sixteenth century[121]. Whilst a number of different categories of legal professional have emerged, particularly in the last century[122], for centuries the dominant two legal professions in England and Wales have been barrister and solicitor/attorney operating side by side in the paradigm of a symbiotic relationship[123].

Whilst acknowledging other types of legal professional exist, and the inherent difficulty in defining the meaning of the terms profession and professionalism[124], this chapter will focus on the solicitor strand of legal professionalism, as the most dominant side of the

[120] Gary Blasi reminisces when growing up in Oklahoma how he never heard the term lawyer associated with justice. Instead it tended to relate to "rip-off" and "sell-out" and usually concluded with an unhappy ending. Blasi (n 52) 867.

[121] David Sugarman, 'Bourgeois Collectivism, Professional Power and the Boundaries of the State – The Private and Public Life of the Law Society, 1825 to 1914'[1996] The International Journal of the Legal Profession 81 82-83.

[122] i.e. notably Legal Executives.

[123] Richard L Abel, 'The Decline of Professionalism' [1986] 48 Mod L Rev 1 24. However, the relationship is not quite as symbiotic as previously undertood, with barristers now having successfully achieved instant access to clients without the necessity of being instructed by a solicitor and solicitors are able to gain higher rights of audience in the courts.

[124] Hilary Sommerlad, '"A pit to put women in": professionalism, work intensification, sexualisation and work–life balance in the legal profession in England and Wales (2016) International Journal of the Legal Profession, 23:1, 61 65. DOI: 10.1080/09695958.2016.1140945; Evetts (n 10) 778–796; Mike Saks, 'Defining a Profession: The Role of Knowledge and Expertise (2012) Professions & Professionalism, 2(1) 1–10.

profession[125] and traditionally the side of the legal profession with greater personal client contact and communication.

Historically, status and social standing have been important to the profession, particularly given its description as the lower branch of the profession and the social and intellectual inferior to barristers[126]. Attitudes suggesting the inferiority of solicitors to barristers are deep rooted but can generally be related back to the historical method of qualification for the two professions, with solicitors traditionally following a vocational apprenticeship route, whereas barristers undertook a more formal education at the inns of court[127]. Whilst reasons for this inferiority and superiority is nuanced, based upon class and other issues, the manner of qualification has been integral, with a vocational apprenticeship being seen as subordinate to a university education/education in the inns of court.

In the mid-sixteenth century, the barristers desire to distinguish themselves from solicitors and attorneys became so paramount, that solicitors and attorneys were effectively excluded from membership of the inns[128] and accordingly the educational element of their identity.

---

[125] Iain Campbell and Sara Charlesworth, 'Salaried Lawyers and Billable Hours: A New Perspective from the Sociology of Work' (2012) 19 Int'l J Legal Prof 89 93. In England and Wales, as at the 31st July 2017, there were 181,968 individuals on the roll of solicitors with 139,624 of these individuals practising as solicitors. See the Law Society, 'Annual Statistic Report 2017 <https://www.lawsociety.org.uk/support-services/research-trends/annual-statistics-report-2017/> accessed on 14 October 2019. This is in comparison with 16,435 practising barristers in 2017. See the Bar Standards Board, Statistics about the Bar (undated) <https://www.barstandardsboard.org.uk/media-centre/research-and-statistics/statistics/practising-barrister-statistics/> accessed on 14 October 2019.

[126] Richard L Abel, 'Lawyer self-regulation and the public interest: a reflection' (2017) Legal Ethics, 20:1, 115 116-117. DOI: 10.1080/1460728x.2017.1334742. Sugarman (n 121) 86. Larson defines the solicitor profession as the lower branch of the law. Larson (n 71) 85.

[127] Sugarman (n 121) 85.

[128] David Lemmings, *Gentlemen and Barristers: The Inns of Court and the English Bar 1680-1730* (Oxford University Press 1990) 5-6, 149-150

The impact on attorneys and solicitors of being essentially expelled from the inns was profound and described by David Sugarman as '*the* traumatic moment in the collective memory of attorneys and solicitors'[129]. Understanding this history and the cultural capital emerging from this fundamentally damaged habitus of the profession is important, particularly as this thesis is proposing a greater vocational approach, albeit within the academy.

In the early eighteenth century, the state recognised the need for regulation of both attorneys and solicitors and enacted the Attorneys and Solicitors Act of 1728. This statute required the completion of specific professional training for qualification, including an examination of good character by a judge and the completion of five years of 'articles', serving as an apprentice under an experienced attorney or solicitor. Following their completion of 'articles', the clerk would take the prescribed oath and their name would be entered on to a roll[130] to practice as an attorney.

During the eighteenth century, solicitors and attorneys possessed a mixed reputation. Whilst they were now acquiring wealth and status, they had also gained a reputation for improprieties such as overcharging and embezzlement, leading them to be referred by some as 'pettyfoggers'[131]. Concerned that such charges impacted negatively on the status and reputation of their profession, and in order to protect the interests of the profession, to

[129] Sugarman (n 121) 85
[130] The National Archives, 'Lawyers' <https://www.nationalarchives.gov.uk/help-with-your-research/research-guides/lawyers-further-research/#2-types-of-lawyers> accessed on 16 September 2019.
[131] Christopher W Brooks, *Pettyfoggers and Vipers of the Commonwealth: The 'Lower Branch' of the Legal Profession in Early Modern England*, 132-145, 277-278 (Cambridge University Press 1986)

improve quality and conduct and consequently status, the Society of Gentleman Practisers was established in 1739. This association developed from elitist clubs of male solicitors and attorneys, meeting in coffee houses near Chancery Lane and consisted of less than two hundred lawyers mainly based in London[132]. The profession of solicitors and attorneys thus increasingly became more occupied with the acquisition of high status, reputation and honour[133]. As noted by Magali Sarfatti Larson however, this desire for status, as well as income, has long been a goal of the professional project[134].

The training of English lawyers at this time was both narrow in focus and practical in nature. Despite Blackstone commencing his Vinerian lectures in the mid-eighteenth century[135], there was little formal theoretical training or connection with the academy in the United Kingdom[136]. In contrast, in continental Europe, there were strong established historical links between the legal profession and academy dating back to the fourteenth and fifteenth centuries, with the academy involved in the development and codification of the law. Whilst the European approach was adopted in some colleges and universities in the United States[137], in the UK, the civil courts and their common law based system was considered intellectually inadequate for university teaching[138]. The professionalisation of lawyers had

[132] Sugarman (n 121) 88
[133] See Michael Burrage, 'From a Gentlemen's to a Public Profession: Status and Politics in the History of English Solicitors' [1996] 3 Int'l L J. Legal Prof 45.
[134] Larson (n109); Richard L Abel, 'Review Essay on M.S. Larson, The Rise of Professionalism' [1979] British Journal of Law and Society 6 82. Larson's views fall in with a neo-Weberian description of professionals practising closure against outsiders through high social status, technical qualifications and inflated income. Weber (n 72) 220-222.
[135] K J M Smith and J P S McLaren, 'History's Living Legacy: An Outline of Modern Historiography of the Common Law' (2001) 21 Legal Stud 251 253-255.
[136] Larson (n 71) 87. Although Blackstone's teaching did resonate over in America.
[137] Margaret M Barry, Jon C Dubin & Peter A Joy, Clinical Education for this Millenium: The Third Wave (2000) Clinical Law Review (Vol 7:1) 1 5.
[138] Larson (n 71) 85.

come earlier in England than in other common law countries[139], but qualification as a solicitor remained historically very much vocationally based, with little academy involvement[140].

1.6.1 The Increasing Multi-faceted Status of the Profession of Solicitors

The desire to connect and improve the social status of the profession resulted in the establishment of local law societies in counties and large cities across England between the end of the late eighteenth century and the beginning of the nineteenth century, eventually leading to the eventual creation of the national Law Society in 1825. The building that became the Law Society's Hall at 113 Chancery Lane represented the epitome of professional stature with its impressive library, imposing facades and ancient Greek like architecture[141]. As confirmed by David Sugarman:

> "… the Law Society's Hall was emblematic of the complex interplay between the values associated with the landed gentry and those of the bourgeoisie that together constituted the culture of a professional elite. In short, the Hall symbolised the hopes and aspirations of the profession's elite. It was a significant act of conspicuous consumption, self-definition and social exclusion, testifying to the construction of a new collective identity, designed to attract people of 'character' who saw themselves as serious, cultured, learned, responsible and, above all, respectable. Membership of the Society was an important means by which individuals could

[139] Abel (n 123) 2.

[140] Similarly, qualification as a barrister was also vocationally based where from around the fifteenth century, barrister's training developed in the collegiate residence halls which would later become the Inns of Court. Larson (n 71) 85.

[141] Nicholaus Pevsner, *The Englishness of English Art* (London, 1993) 51.

affirm their respectability, their position and their public reputation, thereby, conferring upon "refined" practitioners the coveted status of a "gentleman"[142].

From establishing itself as representative of a professional elite, the Law Society identified the importance of protecting the profession's increasing status and reputation. It began to codify and publish 'best practice' and in 1834 started the first of its misconduct proceedings against deemed dishonourable practitioners[143]. However, despite this, the profession still remained beset with scandals involving the misuse of client money and fraud throughout the late nineteenth century[144].

Recognising the connection between status and education, the Law Society introduced compulsory examinations in 1836, although these were criticised for their lack of robustness and the possibility of allowing an opening to the lower classes. In reality, this was unlikely given the necessity of articled clerks having to pay duties to their training principals and having to work up to five years unpaid during their articles[145]. However, it did represent the protectionist approach the profession was then taking. By this time, the profession had become the exclusive preserve of the white, male, middle and upper classes, associating its very image as that of 'the gentleman'. Masculinity and class were the dominant features[146]

[142] Sugarman (n 121) 91.
[143] ibid 94.
[144] ibid 110.
[145] The Law Society Gazette, 'Building a profession', <https://www.lawgazette.co.uk/news/building-a-profession/39783.article> accessed on 18 March 2020.
[146] The men of the legal profession have been described as 'pale, male and stale': Julie Ashdown, 'Shaping diversity and inclusion policy within research' [2015] Fordham Law Review 85, 2249; Richard Collier, 'Fatherhood, gender and the making of professional identity in large law firms: bringing men into the frame' (2019) International Journal of Law in Context, 15, 68 83. DOI:10.1017/S1744552318000162.

intrinsically linked with a 'white male bourgeois personality'[147] where other groups such as the poor, the working classes and women[148] were seen as inferior[149]. The possible entry of the lower classes was seen as dangerous, with the profession seeking to restrict their entry and retain its exclusivity. Such protectionist approaches were personified in the 1850s, by the Law Times, who suggested in an article that a new compulsory examination comprising of learning associated with 'being a gentleman' including such areas as Latin and Greek, science and history should be introduced "...as a remedy for the influx into the profession of persons of a lower class..."[150] The implementation of such a provision would in the Law Times words "… advance the respectability, influence and social position of the profession..."[151]

Through its pre-occupation with honour, dignity and the security of professionalism, the profession did however resist, to a degree, corporate capitalism, with claims of superior status or honour also inter-related with claims of superior ethicality[152]. However, whilst such views may link in with Weber's wertrationalitaet or value based rationality for action[153] it was from a position where the profession had wealth and could afford to make such valued based decisions. This did not allow for the extension of such values to the lower classes and

---

[147] Ulrike Schultz and Gisela Shaw, *Gender and judging: overview and synthesis* in Ulrike Schultz and Gisela Shaw (Eds), *Gender and Judging* (Oxford: Hart 2013) 25.
[148] Women were not admitted into the profession until 1922. See Mary Jane Mossman, *The First Women Lawyers: A Comparative Study of Gender, Law and the Legal Professions* (Hart 2006) 118
[149] Sugarman (n 121) 108.
[150] 'Examination of Attorneys', The Law Times 23 (1854) 16 September, 254 quoted *ibid*.
[151] *ibid*.
[152] Andrew Abbott, 'Professional Ethics' [1983] American Journal of Sociology 88 (5) 855 865-866; J Ben-David, 'Professions in the Class Systems of Present Day Societies' (1963) Current Sociology 12 249-330; and Burton J Bledstein, *The Culture of Professionalism* (New York: Norton 1976).
[153] Max Weber, *The Theory of Social and Economic Organization*. A M Henderson and T Parsons (trans) (New York: Free Press 1964) 115-18.

further, such ethical superiority had not historically promulgated pro bono work. Such work represented a negative correlate of intra-professional status[154] most likely as a consequence of its connection with the lower classes.

Following the consolidation of the attorney and solicitor professions in 1873, the Law Society created further examinations, in addition to the articles that every aspiring solicitor was obliged to undertake[155]. These examinations consisted of five examinations, one preliminary, two intermediate and two final examinations. The purpose behind this may have been relayed as robustness; however, it again served the purpose of regulating the supply to the profession to what was considered a more 'desirable patronage'[156]. Whilst, the solicitors profession had traditionally focused more upon skills and knowledge, entry nevertheless remained restricted to the lower classes, through the economic difficulty of funding articles and examinations and not having the necessary cultural capital of a 'gentleman' nor the social capital and networks to obtain articles[157]. The profession continued to manifest its identity in the image of its past, in its dress and hierarchical and patriarchal nature and values[158]. Through this dominant cultural capital of 'similarity', the

[154] Edward O Laumann and John P Heinz, 'Specialization and Prestige in the Legal Profession' [1977] American Bar Foundation Research Journal 155.
[155] Abel (n 126) 116.
[156] ibid. In more recent times, the SRA has recently wrestled back control of the professional examinations with the Solicitors Qualifying Examination, which arguably may provide them with greater means to regulate the supply of the profession. See The Law Society, 'Solicitors Qualifying Exam' (undated) <https://www.lawsociety.org.uk/law-careers/becoming-a-solicitor/solicitors-qualifying-exam/> accessed on 17 September 2019 and the Solicitors Regulation Authority, 'I want to be a solicitor' <https://www.sra.org.uk/sra/policy/sqe/solicitor-persona/> accessed on 17 September 2019.
[157] Abel (n 123).
[158] Sommerlad (n 124). 65.

profession often valued the requisite patriarchal and gentlemanly dispositions and characteristics over individual competence[159].

It is therefore important to understand the habitus of the profession to understand the values or cultural capital of being a legal professional. The profession historically was, and arguably still is, situated on a patriarchal, class-based understructure, where status, honour and reputation are of eminence. Within a neo-liberal society, the ability of lawyers to be able to both predict and circumnavigate the law is of central importance, together with a display of patriarchal class dispositions and characteristics. Exhibiting such formalistic features and knowledge is therefore central to the cultural capital of the profession. Through viewing the history of the profession through a Bourdieusian and Weberian theoretical lens it is therefore possible to understand how intertwined formalistic and patriarchal class attributes are with the status and reputation of the profession. Given the diametric opposition between the formalistic sphere and substantive sphere, it is also possible to understand the legal profession's reluctance to embrace the substantive attributes necessary for a relational approach. Such non-formalistic and non-patriarchal attributes within the legal practice field are therefore associated with low status and inferiority within the legal field.

[159] Richard Collier, 'Be smart, be successful, be yourself'? Representations of the training contract and the trainee solicitor in advertising by large law firms [2005] International Journal of the Legal Profession 12 51 75. Also, see Hilary Sommerlad, ' The commercialisation of law and the enterprising legal practitioner: continuity and change' [2011] International Journal of the Legal Profession, 18 (1-2) 73 81. DOI: 10.1080/09695958.2011.619852.

Having considered the profession's historical formalistic and patriarchal class based identity and the importance it attached to status and social standing, it is of little surprise that in the late nineteenth century it sought to build greater links with the academy.

1.7 Formalism and the Academy

Whilst qualification as a solicitor was traditionally more vocationally based, certainly in its origins, the academy's first involvement with the legal profession, did serve to reinforce the profession as the preserve of the middle and upper classes. The legal profession saw the involvement of the academy as an opportunity to increase the status of the profession further and subsidised much of the expansion of legal education in the late nineteenth and early twentieth centuries[160]. By providing exemptions to the graduates of the academy, with their predominantly more privileged background and higher status, the status and class base of the profession became even further grounded in this particular demographic[161].

The traditional base of teaching common law in the academy has its roots back in the late nineteenth century, where former New York Lawyer[162], Christopher Columbus Langdell, introduced Harvard Law School to the 'doctrinal' and 'black letter' analysis of law and the Socratic and case method approach to the learning of law[163]. This perceived 'scientific'

---

[160] Julian Webb, 'The LETRs (Still) in the Post: The Legal Education and Training Review and the Reform of Legal Services Education and Training – A Personal (Re)view' in Hilary Sommerlad, Sonia Harris-Short, Steven Vaughan and Richard Young (Eds), *The Futures of Legal Education and the Legal Profession* (Oxford: Hart 2015) 97 108.

[161] Richard L Abel, *The Legal Profession in England and Wales* (Basil Blackwell 1988) Ch 10.

[162] Although it is suggested that he was more pre-occupied with spending time in the law library than with clients and most of his time was spent drafting briefs and proceedings for other lawyers. See Jerome Frank, 'A Plea for Lawyer-Schools' [1947] 56 Yale LJ 1303.

[163] Bruce A Kimball, *The Inception of Modern Professional Education: C. C. Langdell, 1826-1906* (University of North Carolina Press, 2009) 131; Bruce A. Kimball, 'The Proliferation of Case Method Teaching in American Law

analytical technique[164], within a case method methodology, of 'discovering' the law was similar to the diagnostic procedure of colligation and classification[165] characteristic of professional practice, examined earlier in this chapter.

The approach advocated by Langdell required law students to read from primary sources[166], and predominantly the cases of the appellate and more senior courts. The students learned the principles or doctrines encapsulated in case law in order to comprehend their meaning and to analyse and apply them to similar scenarios[167]. However, the case method principles were in direct contrast to the more vocational established apprentice-training model that had been in place for centuries. This contrasting model was no accident and was a deliberate approach by the academy towards a 'Law School' academic education. Upon the basis of this academic method of learning, the academy began to compete and intellectually distinguish itself from the traditional apprenticeship based model[168]. Gradually, these

---

Schools: Mr. Langdell's Emblematic "Abomination," 1890-1915' (2006) 46 Hist. of Educ. Q. 192; Phillip C Kissam, *The Discipline of Law Schools: The Making of Modern Lawyers* (Caroline Academic Press 2003); Edward Rubin, 'What's Wrong with Langdell's Method, and What To Do About It' (2007) 60 V and. L. Rev. 609; Ralph Michael Stein, 'The Path of Legal Education from Edward I to Langdell: A History of Insular Reaction' (1981) 57 Chi.-Kent L. Rev. 429. The American Bar Association, *Report of the Task Force on Law Schools and the Profession: Narrowing the Gap* (The 'McCrate Report') (Chicago, ABA 1992) 106.

[164] Carrie Menkel-Meadow, Taking Law and ___ Really Seriously: Before, during and after the Law (2007) 60 V and. L. Rev. 555 561.

[165] Abbott (n 36) 40-44.

[166] Kimball (n 163) 141.

[167] Jeannie Suk Gersen, 'The Socratic Method in the Age of Trauma' [2017] 130 Harv. L. Rev. 2320 2322; Thomas Grey, 'Langdell's Orthodoxy' [1983] 45 U. Pitt. L. Rev. 1; Bruce Kimball, 'Warn Students That I Entertain Heretical Opinions Which They Are Not To Take as Law: The Inception of the Case Method Teaching in the Early Classrooms of the Early C.C. Langdell 1870-1883' (1999) 17 Law & Hist. Rev. 57.

[168] See James E. Moliterno, 'An Analysis of Ethics Teaching in Law Schools: Replacing Lost Benefits of the Apprentice System in the Academic Atmosphere' [1991] 60 U. Clin. L. Rev. 83 85; Scott Cumming, 'UCLA: Lawyers and legal clinical work in the USA', Colloquium: A need for legal clinical work? Theoretical & practical concerns' [2019] University of Southern Denmark; Laura I Applebaum, 'The Rise of the Modern American Law School: How Professionalization, German Scholarship, and Legal Reform Shaped Our System of Legal Education' [2005], 39 New Engl. L. Rev. 251. The university law school was greatly assisted in America by the ABA's call in the late twentieth century for the establishment of an organisation of "reputable" law schools and the establishment of boards of law examiners usually requiring at least one year of law school preceded by

methods became increasingly accepted to the point that in modern times, and in conjunction with a period of training in the workplace, the university is now considered the nucleus for the creation of modern day professionals[169] and the formal competencies considered necessary for practice[170].

Langdell's intellectual model was hailed as a success[171] and over a hundred years later, his analytical technique of doctrinal teaching and understanding is still influential on the teaching of law across both common law and civil law jurisdictions. There is a diversity in the approach of different legal education providers across the different jurisdictions and no one particular description that can be used to fit all. However, significant academic commentary in North America indicates that formalistic doctrinal teaching in a case method like approach remains the most prominent teaching method[172]. This is echoed in the findings of Jensen *et al*'s Norwegian study of epistemic cultures[173] in Scandinavian legal education considered earlier. However, and as already alluded to, whilst law teaching can be situated in similar common law jurisdictions, teaching practices within these jurisdictions can be very different. England differs from North America in that the law degree in England is an undergraduate level entry degree, whereas the juris doctor in America is a specialist

---

two years in either a law office or a law school. This subsequently led to a requirement that the whole three years were undertaken in a law school. The American Bar Association (n 163) 108.

[169] Kazun (n 105) 574.

[170] Andrew Abbott, 'Status and Status Strain in the Professions' (1981) American Journal of Sociology 86 (4) 819 828.

[171] Edward Hirsch Levi suggests that the study of law is the whole method of legal reasoning. Edward Hirsch Levi, 'An Introduction to Legal Reasoning' (1948) 15 University of Chicago Law Review 501.

[172] Imai (n 41); Robert Granfield, Making Elite Lawyers: Visions of Law at Harvard and Beyond (New York: Routledge 1992); Susan Daicoff, Lawyer Know Thyself: A Psychological Analysis of Personality Strengths and Weaknesses (Washington DC: American Psychological Association 2004); Mertz (n 29).

[173] Jensen, Nerland & Enqvist-Jensen (n 114).

graduate entry professional degree[174]. This distinction is important as, in comparison to American juris doctor students who are undertaking their law degree towards qualification in the legal profession[175], only between 40% and 50% of English law students intend to enter the profession[176]. With the notable exceptions of Fiona Cownie[177] and Phil Harris and Sarah Beinart's[178] studies, there is however a dearth of empirical studies to draw upon for the jurisdiction of England and Wales. The available sources indicate that in light of its undergraduate status, the English law degree has not been 'professionalised' to the same level as in North America[179]. However, this viewpoint is not universal[180] and it is suggested by legal academics, such as John Flood, that English legal education providers still do pursue a doctrinal and formalistic educational viewpoint from the perspective of the profession[181]. This is perhaps unsurprising, particularly as the necessary provisions required for a qualifying law degree, currently set down by the joint statement issued by representatives

---

[174] Donna Batten, Gale Encyclopedia of American Law (Gale 2011) (6) 3rd Edition 83.

[175] Anthony Bradney, 'The success of university law schools in England and Wales: or how to fail' (2018) The Law Teacher 52 (4) 490 497 DOI: 10.1080/03069400.2018.1529278; Paul Campos, 'The Crisis of the American Law School' (2012) University of Michigan Journal of Law Reform 177, 198; cf Peter W Martin, Robert W Gordon, Paul D Carrington, Paul Brest, Phillip E Johnson, William W Van Alstyne, Guido Calabresi & Owen M Fiss, 'Of Law and the River and of Nihilism and Academic Freedom' Journal of Legal Education 35 (1) 26 who argues based upon critical legal studies foundations that the role of a law tutor is not to train lawyers.

[176] See Harris & Beinart (n 29); James Gray & Mick Woodley, 'The Relationship between Academic Legal Education and the Legal Profession: The Review of Legal Education in England and Wales and the Teaching Hospital Model' (2005) 2 European Journal of Legal Education 1 3.

[177] Cownie (n 29) 54-58.

[178] Harris & Beinart (n 29) 299 In the interests of brevity I will also refer to the jurisdiction of England and Wales as England.

[179] Andrew Boon & Julian Webb 'Legal education and training in England and Wales: Back to the future?' (2008) Journal of Legal Education 58 (1) 79 91; Abel (n 161) 268.

[180] Roger Burridge and Julian Webb describe the domination of doctrinal law in Law Schools as 'rule based regulation'. See Roger Burridge & Julian Webb, 'The Values of Common Education: Rethinking Rules, Responsibilities, Relationships and Roles in the Law School' (2007) Legal Ethics 10 (1) 72 80-83. DOI: 10.1080/1460728X.2007.11423883.See also Julian Webb, 'The "ambitious modesty" of Harold Arthur's humane professionalism' (2006) Osgoode Hall Law Journal 44 119.

[181] John Flood, 'Legal Education in the Global Context. Challenges from Globalization, Technology and changes in Government Regulation' (2011) Report for the Legal Services Board. <http://www.legalservicesboard.org.uk/wp-content/media/International-legal-education.pdf> accessed on 22nd September 2020 3.

of the legal profession, consisting of the Law Society and the General Council of the Bar, *requires* the adoption of doctrinal approaches to teaching[182].

Fiona Cownie's extensive empirical study of both old (pre 1992) and new (post 1992) English universities in 2005, supports the view that English education differs from a North American approach. She suggests that the pure doctrinal teaching of law has become diluted in English Law Schools and is in decline, giving way to a more nuanced balance of doctrinal and socio legal type teaching[183]. However, this suggestion of a diminution of doctrinal law remains a contentious issue[184], which is further exacerbated by the UK legal professions' scant support for a socio legal teaching model of learning, in contrast to their favoured traditional doctrinal and modularised approaches[185].

---

[182] Under Schedule One (A)(i) of the joint statement the knowledge and transferable skills which must be addressed in any course of study leading to the award of a recognised degree, students must have acquired knowledge and understanding of the fundamental doctrines and principles which underpin the law of England and Wales'. Solicitors Regulation Authority, 'Joint statement on the academic stage of training' <https://www.sra.org.uk/students/academic-stage/academic-stage-joint-statement-bsb-law-society/> accessed on 23 September 2020. See also Julian Webb, Jane Ching, Paul Maharg & Avrom Sherr, *The Legal Education and Training Review Literature Review Chapter 6. Requirements made of approved providers of legal education and training* (2013) < https://paulmaharg.com/letr/wp-content/uploads/LR-chapter-6.pdf> accessed on 23 September 2020 3.

[183] Fiona Cownie's research suggested a broadly equal split between those respondents who considered they adopted a socio legal approach in contrast to those who considered they adopted a doctrinal approach. In practice these viewpoints were not quite as distinct with socio-legalists acknowledging the need to understand doctrinal foundations of the law and doctrinalists acknowledging context was also important. So Cownie's research does not suggest doctrinalism is at an end but law teaching involves both a combination of doctrinalism and contextualisation. Cownie (n 29) 54-58; Also see Anthony Bradney, 'Law as a Parasitic Discipline' (1998) Journal of Law and Society 71 73

[184] Emma Jones, 'Transforming legal education through emotions' (2018) The Journal of Legal Studies 38 450 453.

[185] In the Legal Education Training Review, socio-legal studies was ranked bottom of the list of sixteen knowledge areas in order of importance by both barristers and solicitors. Whilst professional ethics was ranked the most valuable knowledge area, doctrinal areas such as contract law and tort law, occupied the next highest positions, with other doctrinal areas such as European law, equity, public law etc. following closely behind. See Webb, Ching, Maharg & Sherr, *Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales* (London, Legal Education and Training Review 2013) 34.

Further, whilst legal theory can provide a philosophical and sociological conduit to rigorously examine the nature of law and its functions[186], Phil Harris and Sarah Beinart's empirical study indicates an increasingly diminishing focus on legal theory in English Law Schools[187] . Legal theory is important as it can provide an intellectual counter balance to predominant positivistic commitments to specific bodies of rules and allows for a structured critique of the ethical and humanitarian dimensions of law[188]. However, its pedagogical sphere discords with a doctrinal ideology and method of learning. This is to such an extent that moral reasoning has been described as the epistemological enemy of formalistic law and rules based learning[189]. As lamented by Roger Burridge and Julian Webb, this has led to jurisprudence becoming 'less engaged as the conscience of the law school curriculum'[190] . It is not however only legal theory that receives comparatively little attention but also the consideration of more substantive elements (in a Weberian context) such as emotions and feelings. Emma Jones propounds the view that even in English undergraduate legal education, traditional formalistic paradigms continue to dominate and subordinate the consideration of factors such as emotions and feelings, reducing such matters to irrationality and therefore irrelevance[191]. In the formalistic sphere of knowledge, that is law, substantive factors operate in subordination to objective reason and rationality and are

[186] Fiona Cownie identifies that out of all respondents none identified themselves as taking a purely critical legal studies (CLS) approach and only 10% described themselves as taking a socio-legal/CLS approach. Cownie (n 29) 52.

[187] Jurisprudence/Legal theory was a mandatory subject in less than half of the Law Schools who participated in the study, with almost 20% not covering the topic at all. Harris & Beinart (n 29) 365.

[188] Gray & Woodley (n 176) 15.

[189] Stanley Fish, 'The Law Wishes to have a Formal Existence' in Austin Sarat and Thomas R Kearns (Eds), *The Fate of Law* (University of Michigan Press 1991). Francis Rose, 'The Evolution of the Species' in Andrew Burrows and Alan Rodger (eds), *Mapping the Law: Essays in Memory of Peter Birks* (OUP 2006)

[190] Burridge & Webb (n 180) 81.

[191] Jones (n184) 450;

therefore suppressed and marginalised[192]. It is therefore suggested that whilst Fiona Cownie's research indicates socio legal and contextual[193] approaches may be becoming more common within legal education, that these considerations apply but principally continue to operate within a formalistic paradigm and context[194].

English Law Schools have been subjected to a number of external regulatory changes since the time of both studies[195] and there have been further pedagogical developments in law teaching[196]. However, and with this caveat in mind, both of the two major studies of UK Law Schools provided confirmation that the primary method of delivery at the time of the investigations remain the traditional lecture and tutorial methodological paradigm[197].

---

[192] Weber (n 72).

[193] Anthony Bradney and Fiona Cownie relate a socio-legal approach to a 'law in context' approach. See Anthony Bradney & Fiona Cownie in David Hayton's (Ed), *British University Law Schools* (Hart Publishing 2000) 6; Cownie (n 29) 50-51.

[194] See Jensen, Nerland & Enqvist-Jensen (n 114). Nick Johnson describes Fiona Cownie's findings as evidence of a new 'soft positivism' which he laments as creating 'an intellectual fuzziness' in comparison to his favoured doctrinal approach of black letter law. See Nick Johnson, 'The lecturer, the law student and the transmission of legal culture [2006] The Law Teacher 40 (2) 117 122; 128. DOI: 10.1080/03069400.2006.9993202. Philip Thomas, whilst acknowledging the substantial changes to legal education and the increasing importance of socio legal scholarship, suggests that the core of academic teaching remains legally positivistic. See Philip Thomas, 'Legal education: Then and now [2006] The Law Teacher, 40 (3) 239 247. DOI: 10.1080/03069400.2006.9993210.

[195] Not least the Legal Services Act 2007 which imposed a number of regulatory changes to the legal profession.

[196] Such as problem based learning, see David Boud & Grahame Feletti (Eds), *The Challenge of Problem Based Learning* (Routledge 1997) and flipped classrooms, see Lutz-Christian Wolff & Jenny Chan, *Flipped Classrooms for Legal Education*, (Springer 2016).

[197] Harris & Beinart (n 29) 315-316. Cownie (n 29) 123. The financial advantages of adopting a lecture as a primary disseminator of knowledge, with its ability to frame teaching within large class sizes, in contrast to other approaches such as clinical legal education is clear for institutions. See Robert Stevens, *Law School: Legal Education in America from the 1850s to the 1980s* (Univ. of North Carolina Press 1983) 63. This should be contrasted with clinical legal education, which involves much smaller classes and represents a more expensive version of legal education: Richard L. Abel, 'You never want a serious crisis to go to waste." Reflections on the reform of legal education in the US, UK, and Australia' [2015], International Journal of the Legal Profession, 22:1, 3 15. DOI: 10.1080/09695958.2015.1119026. However, legal education is increasingly under the spotlight for the financial value for money it provides for students based upon the debt that they sustain during their legal education, in contrast with their future financial earnings as graduates: Campos (n 175); Jack Graves, 'An essay on rebuilding and renewal in American legal education' [2013] Touro Law Review 29; Richard A Matasar, 'The viability of the law degree: cost, value, and intrinsic worth' [2011] Iowa Law Review, 96. The Legal

Within this traditional methodology, the students are taught to focus upon the relevant facts and rules within the confines of a lecture theatre and in a manner often described as the 'transmission'[198] or 'banking' model[199], where concepts and legal rules are learnt through the imparting of legal principles from statutes and 'higher' level precedents[200]. Lectures are then followed by tutorials, where the students apply the doctrinal or black letter law they have learned, in a dialogical or case method like approach, not completely dissimilar to Langdell's original methodology[201], to expose conceptual difficulties and to solve 'well-structured' contextual problems[202]. However, even the aforementioned 'flipped classroom' approach[203], as well as the highly coveted problem based learning pedagogy[204], may still result in students considering a contextual problem through a doctrinal formalistic lens and approach to the law[205]. Whilst these approaches may be innovative, they are representative of methodologies, rather than spheres of knowledge and understanding. The formalistic process, culturally valued within the legal academic and practice fields, often fails to acknowledge that in reality, and particularly for the poor in society, there is not always one single correct answer and problems can be multitudinal, amorphous and constantly

---

Education and Training Review (LETR) described "growing student numbers… escalating costs of qualifications and difficulties in finding employment" Webb, Ching, Maharg & Sherr (n 185); cf: Michael Simkovic and Frank McIntyre, 'The Economic Value of a Law Degree' (2014) The Journal of Legal Studies 43 (2) 249-289.

[198] John Bransford & Barry S Stein*, The Ideal Problem Solver: Guide for Improving Thinking, Learning, and Creativity* (2d edn, W H Freeman & Co Ltd 1993) 199.
[199] Paolo Freire, *Pedagogy of the oppressed,* Myra Bergman Ramos (trans) (Penguin Books 1972) 57.
[200] For a discussion of the didactic approaches to legal education see Andrew Boon & Avis Whyte, 'Looking back: Analysing experiences of legal education and training' (2007) The Law Teacher 41 (2) 169 174. Fiona Cownie identified how the delivery of the lecture is integral to the identity of many law academics. Cownie (n 29) 124-129. There are also clear pedagogical reservations relating to this approach. See Marlee Le Brun & Richard Johnstone, *The Quiet Revolution: Improving Student Learning in Law* (The Law Book Company Limited 1994) 257-258.
[201] Although unlike Langdell's methodology of aggressively questioning students within the context of a large lecture theatre at great psychological stress to the students involved.It represents more of a smaller group dialogical discussion (See Paul D Carrington, 'Hail-Langdell!' (1995) 20 Law and Social Inquiry 691 741-742).
[202] Imai (n 41) 202.
[203] Wolf and Chan (n 190).
[204] Boud & Feletti (n 195).
[205] Jensen, Nerland & Enqvist-Jensen (n 114).

shifting, which memory and logic alone cannot solve[206]. It also requires a focus upon the law and a discard of other relational facts such as the attributes and social narrative of the people involved within a legal case or a wider consideration of the impact of the law at both a community and societal level.

The doctrinal contextual analytical approach adopted in tutorials, which consists of being provided with a scenario from which to extract the relevant facts and to apply the relevant law, is not dissimilar to Abbott's observations of professional behaviour. This can result in the pedagogy of the academy, and the practice of the legal profession, being intertwined and inextricably linked together within the sphere of formalism. The cultural capital of *being* a law student and *being* a lawyer both involves demonstratively being able to assimilate contextual information, categorise facts relevant to the legal sphere, from facts irrelevant to this sphere, and then apply the law to these facts, offering a legal solution or consequences of action[207]. However, whilst acknowledging the contextual nature of the law, this process often discards the reality that law has a real impact upon real people's lives, emotions and wellbeing[208]. When the field of legal education mirrors the field of legal practice so interchangeably and without any pause for consideration of the ramifications, there is the danger that this approach not only fails to impart values but actually imparts the wrong moral values[209]. The formalistic detached methodology, heralded of primary importance in

[206] *Ibid.* Mary A Luszcz, 'Theoretical Models of Everyday Problem Solving in Adulthood' in J D Sinnott (Ed), *Everday Problem Solving: Theory and* Applications (Praeger 1989) 24-39.
[207] Shin Imai points to the way that lectures are delivered, the class structures and the way that law is analysed communicates the role of the lawyer to the students through the law curriculum. Imai (n 41) 200.
[208] Jones (n184) 450.
[209] Susan Sturm & Lani Guinier, 'The Law School Matrix: Reforming Legal Education in a Culture of Competition and Conformity' [2007] 60 V and. L. Rev. 515 520. Julie MacFarlane argues that lawyers beliefs and values are first formed at law school and then refined in practice. MacFarlane (n 1) xiii.

many common law jurisdictions, has the consequence of separating emotion, morality and social context to a de-personalised, purported value neutral, clinical analysis of the rules, principles and procedures[210].

Whilst acknowledging that there is little, certainly recent, empirical literature in the UK on legal teaching in the academy, and the limited literature available may suggest, a more nuanced approach in the UK, due to the limited information available, caution must be exercised. There is however, a wealth of academic study in other similar common law jurisdictions such as North America and Australia. Critics, particularly in these common law jurisdictions, have suggested that the formalistic pedagogical doctrinal approach taken by many Law Schools, results in a disproportionate focus upon the logic and rules of the legal sphere, competiveness, achievement and aggression and a marked developmental egress over time from an interest in people and emotions[211] and the norms and conventions of general society[212]. It focuses on rationality to the exclusion of emotion[213]. The remaining part of this section will therefore focus on the more widely available empirical information and academic opinion from these common law jursidictions, which whilst not identical in nature to the UK, adopt similar methodological approaches to the teaching of law. The 'corrosive effect' on students' values and subsequent wellbeing, described in these jurisdictions, is the inevitable consequence of a concerted delineation of the personal and

[210] Granfield (n 172). Jones (n184) 450.
[211] Daicoff (n 172).
[212] Mertz (n 29).
[213] Melanie Poole, 'The Making of professional vandals: How law schools degrade the self' [2011] Legal Scholarship Network <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2029993> accessed 28 November 2019.

substantive sphere, combined with the transcension of the importance of the technical[214]. Margaret Thornton explores how this elevation of the technical (or technocentrism as she describes it) to the detriment of the particular has enabled corporatism to evade scrutiny and masks the partiality of the law towards a gendered masculinist, white, heterosexual, classed and corporatist partisanship[215]. Within this sphere, the depersonalisation of the student self in legal education, encourages the de-legitimisation of the subjective voice[216], giving way to the primary importance of a pervasive form of 'objective' knowledge.

The process of personification creates illegitimate hierarchies of power, discourages expansive critical thought and serves to indoctrinate students in subordination[217]. These hierarchies of power are not dissimilar to the disinterested value neutral approach that legal professionals adopt, involving the dialogical displacement of the client, from the narrative of a socially active participant, to a passive follower of instructions. The concept of disinterested service actually goes beyond just neutral detachment and amounts to the lawyer freeing herself from all self-interest, in order to strongly defend the client against threatening interests[218]. Through adopting this approach, the lawyer increases her status through a purification of any ulterior objectives and motivations for financial or personal

[214] Sheldon & Krieger (n 29). The case method approach has also been criticised as an inadequate teaching mechanism, which favours white male students; creates overly competitive orientations in students and does not satisfactorily prepare students for practice. Mertz (n 29) 26-27.
[215] Margaret Thornton, 'Technocentrism in the Law School: Why the Gender and Colour of Law Remain the Same' [1998] Osgoode Hall Law Journal 36 (2) 370 378.
[216] Thornton points to the use of the third person in legal writing. ibid.
[217] Duncan Kennedy, 'Legal Education and the Reproduction of Hierarchy' [1982] Journal of Legal Education 32 591 592. Also see Samuel Bowles and Herbert Gintis' description of the 'hidden curriculum' in education which serves a capitalist workforce through producing subservience, an acceptance of hierarchy, motivation through external rewards and fragmentation of course subjects into modules. Samuel Bowles and Herbert Gintis, *Schooling in Capitalist America* (Routledge & Kegan Paul, London, 1976).
[218] Douglas E Rosenthal, *Lawyer and Client: Who's in Charge?* (Russell Sage Foundation 1974) 22.

profit. The cultural capital of demonstrating this value was pushed to breaking point by early barristers who wertrationalitaet were prepared to endure a career stage of near poverty based upon its premise[219].

When undertaking the process of disinterested service, the lawyer adopts what she perceives as the (best) interests of the client as her own. Such an approach can be problematic, given that the lawyer's consideration of the best interests of the client will naturally be from a formalistic objective outlook and is unlikely to prioritise subjective, emotive considerations. However, this notion of neutrality and disinterest is not just limited on a micro level but is grounded in the class project itself[220]. Arguments that the neutral approach represents the epitome of an unbiased political approach, fail to observe the hidden innately political and right wing nature of this methodological position[221], which administers an oppressive system of power against persons based on gender[222] and race[223], significantly impacting upon those from the lower classes and most disadvantaged[224]. This is particularly pertinent at a time where shortcomings in legal education towards access to justice for the poorest in society, is suggested as correlative with a failure by the legal profession, to properly take its pro bono obligations seriously[225]. As confirmed by Deborah Rhode, whilst lawyers in America may pride themselves upon their commitment to the rule

---

[219] Abbot (n 152) 867.
[220] Larson (n 71) 168.
[221] Duncan Kennedy, 'Liberal Values in Legal Education' [1986] 10 Nova L.J. 603 608.
[222] Catherine MacKinnon, *Sexual Harassment of Working Women: a Case of Sex Discrimination* (Yale University Press 1979).
[223] Charles Ogletree, Jr., 'Reparations: A Fundamental Issue of Social Justice' [2002] The Black Collegian.
[224] Ian Grigg-Spall & Paddy Ireland 'Introduction' in Ian Grigg-Spall & Paddy Ireland (Eds) *The Critical Lawyers Handbook* (Pluto Press 1992) ix.
[225] Roy Stuckey *et al.*, *Best Practices for Legal Education: A Vision and a Roadmap* (Denver: Clinical Legal Education Association 2007) 18-19.

of law, approximately four-fifths of the civil legal needs of low income earners remain unmet[226].

The doctrinal nature of teaching law is therefore inherently positivistic and does not take account of context or the intrinsic values of the law[227]. The Critical Legal Studies movement, amongst others, have argued against such a decontextualised, positivistic approach to legal education, suggesting rather than a solitary focus upon rules abstracted from the structures of society, law should be taught in the context of social, political and economic structures where subjective values and politics can be more openly discussed[228]. This contrasting approach however has inevitably resulted in an agitation between the formalistic and substantive spheres or what the law *is* and what it *does*. This disjunction is described by David Trubek as the 'doctrinal-empirical dichotomy'[229] and by William Twining as a perennial tension between positivist doctrinal approaches and normative empirical perspectives[230]. The conflict represents not only a sociological battlefield but also a philosophical clash between the irreconcilable formalistic philosophical foundations of legal

---

[226] Deborah Rhode, 'Access to Justice: Connecting Practices to Principles' [2004] 17 Geo. J. of Legal Ethics 369. Amnesty International condemned the legal aid cuts in England and their impact on access to justice in their report: Cuts That Hurt: The impact of legal aid cuts in England on access to justice: <https://www.amnesty.org.uk/files/aiuk_legal_aid_report.pdf> accessed on 10 September 2020. The situation regarding pro bono provision in England and Wales is also far worse than America. The TrustLaw Index of Pro bono by the Thomson Reuters Foundation found in 2016 from its study of over 130 law firms and 64,500 lawyers internationally that whilst American lawyers contributed an average of 72.9 hours pro bono work in the previous year, English and Welsh lawyers only performed an average of 21.6 hours. Further, whilst 72% of American lawyers had undertaken pro bono work in the past year, only 27.6% of English and Welsh lawyers had done so <http://www.trust.org/contentAsset/raw-data/d31d8b72-0f82-4241-88e1-71abc90e3d72/file> accessed on 10 September 2020. J1-J2 & L1.

[227] Fiona Cownie, 'Exploring Values in Legal Education' [2011] Web Journal of Current Legal Issues 2.

[228] Grigg-Spall & Ireland (n 223) ix.

[229] David Trubek, 'Where the Action Is: Critical Legal Studies and Empiricism' [1984] Stanford Law Review 36 (1) 575 587, 597, 608-609.

[230] William Twining, 'Rethinking legal education' [2018] The Law Teacher 52 (3) 241 246. DOI: 10.1080/03069400.2018.1497260.

positivism with those of the more substantive legal realism. Whilst legal formalism and positivism prevails in law schools; realists question this methodology and whether an ideology based upon rules and abstract concepts should be the only pertinent considerations for legal education[231]. However, whilst this antagonism between the two different approaches may not be capable of complete cohesion, Duncan Kennedy does offer some hope in suggesting that the traditional 'value neutral' versus 'value laden' argument may delineate a false dichotomy. Whilst accepting that the CLS pedagogy may represent a form of inculcation with subjective values, he argues that the truth about law is only a partial one and a subjective one. The law does not represent an absolute truth. Through alerting students to this subjectivity, students can understand the law in a more nuanced fashion and be encouraged to consider the law whilst also seeking to discover some of the truth. Kennedy's own political truth of law is that the law is representative of many of the injustices faced in the world and through exposing the students to such 'truths', albeit subjective ones, the students are enabled to make their own choices over what to believe and what to do[232]. Through adopting such an approach, legal education can aspire to a much more critical perspective and pedagogy, rather than the prevailing linear technocratic dogma favouring neoliberalists and commerce[233].

This analysis and the propounded subjective perspective of the critical legal studies movement and objective standards of the traditional case method approach, allows an assimilation between Weber's theoretical lens of his substantive contextual perspective,

[231] Menkel-Meadow (n 164).
[232] Kennedy (n 220) 313.
[233] Margaret Thornton, 'Gothic Horror in the Legal Academy' [2005] Social & Legal Studies 14 (2) 267 269. DOI: 10.1177/0964663905051223.

and an acknowledgement of the existence of the formalistic sphere and the tensions and conflicts that arise between these two divergent domains. What remains clear is that the two alternate positions both represent value positions. However, as well as the substantive/formalistic dilemma, the public interest and marketization of the legal academic and practice field also represent a clash between substantive approaches and neoliberalist/commercial ones.

1.8 The influence of the Economic Sphere

Both the academy and practice are heavily influenced by the economic sphere[234] and the formalistic, doctrinal and technocratic approach is connected to a neo-liberalist market approach where individualism and consumerist approaches hold favour over humanistic public values[235]. Within such a system, students are educated as technicians of the law, where the rote learning of legal doctrine is favoured over understanding the reasons for the formation of legal rules and the impact that they have upon society and communities. Margaret Thornton emphasises the importance of retreating from the purely doctrinal methodology and adopting a more social, political and economic understanding, despite the

[234] Richard Abel laments how job anxieties for students pervades throughout the time at Law School; how in the 1970s private practice paid only approximately 50 per cent more than public interest firms but by 2002 that ratio was as high as five to one and how law school tuition fees have far exceeded inflation. Richard L. Abel, 'Choosing, Nurturing, Training and Placing Public Interest Law Students' [2002] 70 Fordham Law Review 1563 1568. Julian Webb also contrasts the cuts and decline in legal aid and public or third sector legal services with the disproportionate rewards of commercial practice. Webb (n 160) 100. See also Natalie Byrom, 'The State of the Sector: The Impact of Cuts to Civil Legal Aid on Practitioners and Their Clients' (illegal/University of Warwick 2013) <https://warwick.ac.uk/fac/soc/law/research/centres/chrp/spendingcuts/153064_statesector_report-final.pdf> accessed on 30 November 2019.

[235] Jeffrey McGee, Michael Guihot and Tim Connor, 'Rediscovering Law Students as Citizens: Critical Thinking and the Public Value of Legal Education' [2013] 38 Alternative LJ 77 81; also, see: Kim Economides, 'Cynical Legal Studies' in Jeremy Cooper & Louise G. Trubek (Eds) *Educating for Justice: Social Values and Legal Education* (Ashgate Dartmouth 1997) 26.

pressure from the neoliberal field. Her pedagogy, represents a pedagogy for understanding beyond the doctrinal rules, and examining not just the *is*, of law but also the *ought*[236]. She disagrees with the view that the academy should represent a conduit for corporatism and describes the role of the university as both a 'critic and conscience of society' and iterates its importance as a voice for the public good[237]. Such an argument is founded upon the premise of public values representing shared intentions and community goals, rather than private individual desires or satisfactions[238].

Advocating this type of approach is a huge aspiration for the academy, let alone the practitioners of law, who are heavily reliant upon the neoliberal market model for existence. As well as being predominantly formalistic in its outlook, over recent decades, legal practice has become increasingly commercialised[239] with the rise of the multi-national legal corporate entities or super firms[240] and with firms becoming increasingly more profit-oriented and business-minded[241]. This can be contrasted with the increasingly difficult financial conditions in which the smaller law firms operate in the more 'high street' areas of law, particularly following arbitrary and systematic reductionary state measures such as the

[236] Margaret Thornton, 'The idea of the University and the Contemporary Legal Academy' [2004] 26 Sydney Law Review 481 485.
[237] Margaret Thornton, *Privatising the Public University. The Case of Law* (Routledge, 2012) 228.
[238] Mark Sagoff, *The Economy of the Earth: Philosophy, Law, and the Environment* (2nd edn, Cambridge University Press 2008) 27.
[239] Sommerlad (n 159) 73-108.
[240] Abel (n 233) 1568.
[241] Nicolson (n 15) 53; Andrew Francis, 'The business context: legal ethics, the marketplace and the fragmentation of legal professionalism' [2005] International Journal of the Legal Profession, 12 (2) 173; Hilary Sommerlad, 'Managerialism and the legal profession: a new professional paradigm' [1995] International Journal of the Legal Profession, 2(2–3) 159–185; R G Lee, 'From profession to business, the rise and rise of the city law firm' [1992] Journal of Law and Society, 19(1) 31–48.

erosion of assistance for legal aid[242] and the proposed raising of the small claims court limit in certain types of personal injury claims[243]. It is beyond doubt that legal practice operates within the neo-liberal market driven economic sphere, and must make a financial profit in order to survive. This financial necessity however, conflicts with the substantive value of fairness where representing the public interest is often difficult without state support or with governmental obstacles imposed to making a profit. For many future practitioners, they are faced with the option of pursuing a social justice career, with little money and little respect, or pursuing the commercial paradigm, with better pay and higher esteem[244]. This chapter has already examined how important status and reputation is to the profession. Through interpreting and examining the literature through a Bourdieusian and Weberian theoretical lens aids understanding the external generative mechanisms can construct social phenomena. However, whilst life in the corporate world of law can be financially rewarding, it is also arduous with overarching pressure surrounding billing, costs and time targets, with the six minute charging unit reigning as supreme[245]. Consequently, even for the most ardent of corporate lawyers with a social conscience, to be able to satisfactorily balance both the

---

[242] Alan Paterson, *Lawyers and the Public Good: Democracy in Action* (Cambridge, Cambridge University Press 2011) Ch 3; Hilary Sommerlad, 'Reflections on the reconfiguration of access to justice' [2008] International Journal of the Legal Profession 15 (3) 179–193; Hilary Sommerlad, 'The implementation of quality initiatives and the New Public Management in the legal aid sector in England and Wales: bureaucratisation, stratification and surveillance [1999] International Journal of the Legal Profession, 6 311–343.

[243] This specifically relates to road traffic act personal injury claims where the previous limit of £1,000 will be raised to £5,000 and employers liability and public liability personal injury claims will be raised to £2,000. The impact of this is that solicitors will not be able to recover costs against responsible parties for claims falling below these limits, limiting the number of cases that can be assisted. See House of Commons Library Briefing paper, 'Small claims for personal injuries including whiplash' (23 August 2018) <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN04141> accessed on 25 October 2019.

[244] Hilary Sommerlad, 'Researching and Theorizing the Processes of Professional Identity Formation' [2007] 34 JL & Soc'y 190 202. Lawyers working in civil legal aid earn far less than their counterparts in corporate and commercial areas earn and make considerable financial sacrifices to assist often the most vulnerable and disadvantaged in society. See Young Legal Aid Lawyers, 'Social Mobility: New Report (undated) <http://www.younglegalaidlawyers.org/onestepforwardtwostepsback> accessed on 16 August 2019; and Conor James McKinney, 'Legal aid lawyers aren't on £200 an hour' (Full Fact [GB], 6 July 2015) <https://fullfact.org/law/legal-aid-lawyers-arent-200-hour/> accessed 16 August 2019.

[245] Colin James, 'Legal practice on time: The ethical risk and inefficiency of the six-minute unit' [2017] Alternative Law Journal 42(1) 61. DOI: 10.1177/1037969X17694786.

pressures of work and family life[246] is often unachievable, never mind dedicating additional time to substantive issues of fairness and public interest.

The very type of billing undertaken, relates to economic, rather than substantive value, and whilst providing an authentic reflection of the value of the solicitor to the owners of the law firm, in generating money, it does not provide any indication of the value of the work undertaken to the client[247]. Thus through the law being a subject of the market and economic field, the need to make a profit[248] may both compromise the protection of the public interest, and at times the exigency of the client's needs, whilst also systematically depersonalising services to time units of profitability[249]. The precarious symbiotic type relationship between the learning of law and practice of law, is overshadowed by these formalistic and neoliberal spheres, resulting in the academy and legal profession each providing a glazed mirror reflection of the other, without any pause for consideration of the '*ought*' of law.

1.9 The Rise of Clinical Legal Education

The Critical Legal Studies movement has demonstrated the possibility of, and the need to, consider the law in the context of social, political and economic structures. The beginning of

[246] Deborah L Rhode, *Access to Justice* (Oxford, Oxford University Press 2004) 166–173.
[247] Campbell & Charlesworth (n 125) 115-116. Keith Cunningham discusses how the legal practice field measures dedication in terms of hours logged and billed. Keith Cunningham, 'Father time: flexible work arrangements and the law firm's failure of the family' [2001]. Stanford Law Review 53 967 1008.
[248] Julia Evetts describes the practice of law as thoroughly marketised and dominated by profit expectations. See Julia Evetts, 'Professionalism, Enterprise and the Market: Contradictory or Complementary?' in Hilary Sommerlad, Sonia Harris-Short, Steven Vaughan and Richard Young (Eds), *The Futures of Legal Education and the Legal Profession* (Oxford: Hart 2015) 23 24.
[249] Nicolson (n 15) 52.

this chapter examines a vision of liberal education[250], as advocated by Martha Nussbaum, based upon thinking critically about accepted norms and values; welcoming diversity and questioning stereotypes; and assuming the 'narrative imagination' to understand, value and empathise with other's perspectives[251]. The aspiration of this pedagogical model is to encourage an active, autonomous, critical questioning of tradition and higher authorities, together with the permeating surrounding issues[252] and to foster a concern for substantive issues such as civic responsibility and social justice[253].

Business dominates in most capitalist countries; however, the social good of justice is also of hugely symbolic significance[254]. The extraordinary 'pull' of the economic sphere is undeniable to pragmatic and expedient legal practice but this should not prevent a consideration of the incorporation of more substantive considerations within the academy, in particular with its pedagogical approach. One area of the legal academy currently in the ascendency, which straddles both areas of the academy and practice[255], is the area of clinical legal education (CLE). However, as already considered this is not without difficulties as the legal field values the cultural capital of a black letter law degree.

---

[250] Bradney suggests that a liberal legal education requires law students considering "a variety of conversations which are going on within law": Anthony Bradney, *Conversations, Choices and Chances: The Liberal Law School in the Twenty-first Century* (Oxford, Hart Publishing 2003) 87.
[251] Nussbaum (n 16) 10-12.
[252] Martha Nussbaum, 'Education and Democratic Citizenship: Capabilities and Quality Education' [2006] Journal of Human Development, 7 (3) 385-395. DOI: 10.1080/14649880600815974.
[253] Nicolson (n 15) 55.
[254] Andrew Boon, *The Ethics and Conduct of Lawyers in England and Wales* (3rd edn, Hart 2014) 7.
[255] Phyllis Goldfarb, 'Beyond Cut Flowers: Developing a Clinical Perspective on Critical Legal Theory' (1992) 43 Hastings LJ 717 720.

The sharp rise in the popularity of the delivery of CLE in the UK, may ironically be embedded in neo-liberal roots. This increasingly coveted basis of learning[256] is likely to have been influenced by a combination of factors. This includes the large gap in legal help and assistance, following the state's economic decision to withdraw large swathes of legal aid provision and local authority funding[257], combined with the demand by students to have more 'value added' to their law degree following the introduction of student fees.

With the exception of this influence of the economic sphere, and it's additional pressure to focus upon a technocratic doctrinal approach however, clinical legal education does hold an advantage over learning in professional practice, in that it can challenge formalistic values and provide practical reflective learning without the additional market pressures of having to focus upon making a profit. This is useful as with practical training in a law firm, tension can arise between the trainee wanting to acquire knowledge and skills and the supervisor having to balance this with the necessity of seeking to maximise her income[258]. This

[256] LawWorks confirmed in their 2014 survey that 96% of institutions who responded to their survey (80 out of 99 institutions and 80 out of 109 Law Schools) confirmed they were undertaking pro bono work. This can be contrasted with the 2000 and 2003 figures where only 41% of responding Law Schools confirmed they were doing pro bono work. See Damien Carney, Frank Dignan, Richard Grimes, Grace Kelly and Rebecca Parker, 'The LawWorks Law School Pro Bono and Clinic Report 2014' (LexisNexis, 2014) <https://www.lawworks.org.uk/sites/default/files/LawWorks-student-pro-bono-report%202014.pdf> accessed on 20 February 2020 and James Sandbach and Clare Johnson, 'Impacting Justice: The contribution of clinical legal education and law school clinics to pro bono and access to justice in England and Wales' (Paper for the European Network for Clinical Legal Education and International Journal of Clinical Legal Education Conference, Comenius University, Bratislava, 2019) <https://www.lawworks.org.uk/sites/default/files/Impacting-Justice-Paper-INJCLE-ENfCLEpdf.pdf> accessed on 20 February 2020. As far back as 1999, The Association of American Law Schools recommended that all universities "make available for every student at least one well supervised pro bono opportunity and either require participation or find ways to attract the great majority of students to volunteer". See Association of American Law Schools (AALS) Commission on Pro Bono and Public Service Opportunities in Law Schools, *Learning to Serve: A Summary of the Findings and Recommendations of the AALS Commission on Pro Bono and Public Service Opportunities* (Washington DC: AALS 1999) and Deborah L. Rhode, 'An Agenda for Legal Education and Research' [2013] Journal of Legal Education 62 (4) 531 548.

[257] Whilst well established in North America and Canada, clinical Legal Education at the end of the twentieth century was largely undeveloped. Cooper & Trubek (n 56) 5.

[258] Abel (n 126) 117.

provides difficulties even, or it might be said especially, for supervisors of trainees in legal aid firms who interact with the vulnerable and disadvantaged, but do so within highly bureaucratic structures and the economic pressures[259] of having to make a profit within extremely slim economic margins. They also have little or no time to reflect upon the social, economic and political structures that generates this inequality.

Within the context of a professional law firm, the trainees are situated in an environment heavily influenced by the economic sphere which favours a purely entrenched formalistic approach, where the legal problem is elevated above all else and the client may be little more than a 'juridical abstraction'[260]. Skills and knowledge are learned but a predominant feature is the professional development of competent technocrats able to assimilate, interpret and analyse the legal sphere with a view to becoming competent generators of income and profits for their firm[261].

Academics, such as Deborah Rhode, have suggested that legal education should play a more important role in educating students about the impact of the law on those who cannot afford to access it[262]. University LACs provide students with such an opportunity and allow students to interact with and help vulnerable clients from disadvantaged backgrounds[263] without the economic pressure of income generation. When dealing with their clients,

[259] Sommerlad (n 240) 159–185.
[260] Simon (n 42) 490.
[261] Technocrats are portrayed as 'cool' and 'tough' lawyers who do not allow emotions to get in the way of their legal practice. Sarah Buhler, 'Troubled Feelings: Moral Anger and Clinical Legal Education' [2014] 37 Dalhousie L.J. 397 414
[262] Rhode (n 255) 545.
[263] Nicolson (n 15) 57.

students are exposed to clients who are disproportionately impacted by the law and to whom, for many, the law is already over[264]. They experience and have time to reflect upon the injustices these clients face from the inordinate power structures, combined with the inaccessibility of the legal system. Within this experiential form of learning, they have the space to develop an important understanding that there is not necessarily a homology between the law and justice.

Clinical legal education, even in its most basic form, is acknowledged as good preparation for the professional role[265]. However, if aligned with reflection[266], the critical legal studies (CLS) movement and the foundations of liberal legal education, it can provide an instrument for the consideration of both the formalistic and the substantive and a valuable education independent of a simple training model for the profession[267]. However, as already considered the formalistic and economic spheres, together with the capital of the field is likely to raise barriers to such learning.

Law is taught doctrinally on many law courses but this fails to acknowledge that law is not a hard science and it does not operate in a vacuum; it operates within the context of social,

---

[264] Sarat (n 45).
[265] Sullivan *et al.* (n 15) 146-147.
[266] Michelle Leering argues that reflective practice includes "… questioning our professional values, what we believe and understand about access to justice, and broadening our base of actionable knowledge and innovative practices". Michelle Leering, 'Enhancing the Legal Profession's Capacity for Innovation: The Promise of Reflective Practice and Action Research for Increasing Access to Justice' (2017) 34 Windsor Yearbook of Access to Justice 189 191.
[267] It is important that involvement in clinical legal education involves a deep pedagogical process, rather than simply providing a market driven training model to enhance employability. Economides (n 234); Avrom Sherr and Julian Webb, 'Law Students, the External Market, and Socialization: Do we make Them Turn to the City?' [1989] Journal of Law and Society 16 (2) 225.

political and economic structures[268]. Both CLE and CLS, with their foundations in legal realism and a critique of formalism, offer complimentary standpoints particularly in relation to reducing hierarchy, increasing substantive justice and illuminating the assumptions, biases, values and norms embedded in the legal system and its actors[269]. As far back as thirty years ago, A J Goldsmith argued for CLE to incorporate a theoretical component beyond legal formalism and legal positivism, which would allow students to critically examine and evaluate legal practice[270]. On this subject, he referred to the work of three scholars, including one of the founders of CLS, Roberto Unger[271], and suggested that the case for incorporating social theory with CLE 'seems indisputable'[272]. Combined with a liberal educational approach, a university LAC can promote a critical perspective, challenging norms and values with the assumption of an empathetic 'narrative imagination'[273]. Within the type of perspective propositioned, reflective practice is integral and essential to an understanding beyond a formalistic outlook[274]. Whilst many pedagogies of professional education are very narrow in their technocratic focus on rationality or 'perceived' scientific knowledge, reflective practice offers an alternative epistemological approach beyond a narrow formalistic focus[275]. Corresponding with the ideals of liberal legal

---

[268] Grigg-Spall & Ireland (n 223) ix.
[269] Goldfarb (n 254) 722.
[270] A J Goldsmith, 'An Unruly Conjunction - Social Thought and Legal Action in Clinical Legal Education' [1993] 43 J Legal Educ 415.
[271] Roberto Unger, *Social Theory: Its Situation and Its Task* (Cambridge University Press 1988). The other two scholars referred to by Goldsmith include Donald Black, *Sociological Justice* (Oxford University Press 1994) and Sally Engle Merry, *Getting Justice and Getting Even: Legal Consciousness Amongst Working Class Americans* (University of Chicago Press 1990).
[272] Roberto Unger poses through questions the proposition that legal language may not be really indeterminate, legal reasoning may not be wholly autonomous from other forms of reasoning and other factors, legal doctrine may contain more than one view of human relations, and law may be only one variable in deciding how social actors will act. Goldsmith (n 269) 425.
[273] Nussbaum (n 16) 10-12.
[274] Donald A Schön, *Educating the Reflective Practitioner* (Jossey-Bass 1987); Nicolson (n 29) 145–173; Gary Rolfe, Dawn Freshwater & Melanie Jasper, *Critical Reflection for Nursing and the Helping Professions* (Palgrave 2001).
[275] Schön (n 30) 345.

education, reflective practice relocates learning from a linear one dimensional doctrinal ideology to a consideration of the contexts and perceptions of the different actors concerned; it incorporates feelings and emotions and allows for a more capacious approach, examining the impact of actions on a micro, meso and macro level[276]. This approach acknowledges the importance of imparting substantive values, through a process of inquiry, as commensurate to the learning and development of formalistic knowledge and skills[277]. Therefore, if constructed along a reflective social justice model[278] based on the concept of social values[279], CLE within a university setting can develop and promote substantive values, such as access to justice and seeking justice[280], which would simply not be possible within the neo-liberal confines of training within a legal firm. As confirmed by Arthur Kinoy, an early hero of the civil rights movement and advocate for "people's lawyers"[281], clinical programs allow students to:

> "… tak[e] on major cases and situations involving the relationship of the processes of the law to the fundamental problems of contemporary society... [so as to] provide a fascinating teaching tool for probing into the most fundamental theoretical,

[276] Graham Gibbs, *Learning by Doing: A guide to teaching and learning methods* (Oxford Brookes University 1988).
[277] Michelle Leering, 'Conceptualizing Reflective Practice for Legal Professionals' [2014] Journal of Law and Social Policy 23 83 88-89.
[278] Barry, Dubin & Joy (n 137); Jon C. Dubin, 'Clinical Design for Social Justice Imperatives' [1998] 51 SMU Law Review 1461; Imai (n 41).
[279] Cooper & Trubek (n 56) 2-5
[280] Stuckey *et al.* go so far as to suggest that providing access to justice and seeking justice are two of the most important values of the legal profession. Stuckey *et al.* (n 224) 145-146. Richard Abel states that "unequal justice is not lesser justice, it is injustice". Richard L Abel, 'An Agenda for Research on the Legal Profession and Legal Education: One American's Perspective' in Hilary Sommerlad, Sonia Harris-Short, Steven Vaughan and Richard Young (Eds), *The Futures of Legal Education and the Legal Profession* (Oxford: Hart 2015) 216.
[281] Frank Askin, 'Tribute to Arthur Kinoy' [2003] Rutgers Law Review, 56 (1) 1.

substantive, and conceptual problems, all within the context of the throbbing excitement of reality"'[282].

It is therefore through practice and reflexivity that the students can develop their cultural values and dispositions within the clinical field. However, whether culture informs values and dispositions or values and dispositions inform culture has long been debated. Whilst initially it was believed that dispositions were stable and internal[283], situationists suggest that this theory may be flawed[284]. Deborah Rhode points to the infamous and controversial Milgram experiment[285] as principal evidence of the ability of the situation or culture to influence social action[286]. This relational perspective of situationists conforms with Bourdieu's theory of habitus, capital and field. However, applying such theories does create the dichotomy that students values and dispositions can be developed within a reflective empathetic culture and specific epistemological outlook of the university LAC, but as soon as the students graduate and join a legal firm and different mini field, they may adopt the culture within this field or face hysteresis, where their developed habitus clashes with the values of this new field[287]. This thesis will not seek to answer such a complex question, not

[282] Arthur Kinoy, 'The Present Crisis in Legal Education' [1969] 24 Rutgers Law Review 1 7.
[283] Gordon W Allport, *Personality: A Psychological Interpretation* (New York: Henry Holt & Co 1937).
[284] Lee Ross and Richard Nisbett, *The Person and the Situation: Perspectives of Social Psychology* (London: McGraw Hill, 1991).
[285] Stanley Milgram, *Obedience to Authority* (New York: Harper & Row 1974).
[286] In the Milgram experiment, two-thirds of participants obeyed instructions to provide what they thought were dangerous electric shocks to an individual they could not see but could hear his cries of pain. This figure increased to 90 per cent when an actor working for Milgram became involved and carried out the instructions without complaint but when the actor refused to administer the electric shocks this figure fell to compliance by only 10%. See Deborah Rhode, 'Virtue and the Law: The Good Moral Character Requirement in Occupational Licensing, Bar Regulation, and Immigration Proceedings' [2018] Law & Social Inquiry 43 (3) 1027 1029-1030.
[287] See Peggy McDonough and Jessica Polzer, 'Habitus, hysteresis and Organizational Change in the Public Sector' [2012] The Canadian Journal of Sociology 357.

least, as the word count would not allow for this nor does its empirical foundations, which would need to be longitudinal in nature. However, taking Milgram as an example, the experiment did not consider the backgrounds and experiences of those who were able to more readily resist the pressure to undertake the necessary action. We do not know what had happened in their backgrounds, which enabled them to resist such pressure so effectively. Whilst it is acknowledged that there will be pressure to conform, the role of liberal education is not to prepare students to blindly comply with the views of a particular job or profession[288], but to educate students in wider thinking and to develop autonomous critical minds that challenge common perceptions and methods[289]. With such an approach comes responsibility where phronesis or practical wisdom is important for when and how to try to invoke change. However, the negative impact on the wellbeing of both law students[290] and lawyers[291] based upon the current pedagogical and practice framework is well documented and is overwhelming, as is the alternative positive impact of CLE[292] and liberal education. As suggested by James Freedman:

---

[288] Jessica Guth & Chris Ashford, 'The Legal Education and Training Review: regulating socio-legal and liberal legal education?' [2012] The Law Teacher, 48 (1) 5 6. DOI: 10.1080/03069400.2013.875304.

[289] Philip Drake, Natasha Taylor & Stuart Toddington, 'Ethical Engagement, Embedded Reflection, and Mutual Empowerment in the Clinical Process' in Chris Ashford and Paul McKeown (Eds), *Social Justice and Legal Education* (Cambridge Scholars 2018).

[290] Molly Townes O'Brien, Stephen Tang and Kath Hall, 'No time to lose: Negative impact on law student wellbeing may begin in year one' [2011] The International Journal of the First Year in Higher Education 2 (2) 49; Sheldon & Krieger (n 29) 883-897; Natalie K Stead & Shane L Rogers, 'Do law students stand apart from other university students in their quest for mental health: A comparative study on wellbeing and associated behaviours in law and psychology students' [2015] International Journal of Law and Psychiatry 42-43 81-90; Colin James, Caroline Strevens, Rachael Field & Clare Wilson, 'Student Wellbeing Through Teacher Wellbeing: A Study with Law Teachers in the UK and Australia' [2019] Student Success 10 (3) 76.

[291] Lawrence S Krieger & Kennon M Sheldon, 'What Makes Lawyers Happy?: A Data Driven Prescription to Redefine Professional Success [2015] The George Washington Law Review 83 (2) 554; American Bar Association, *The report of At the Breaking Point: a national conference on the emerging crisis in the quality of lawyers' health and lives: its impact on law firms and client services* (Chicago: American Bar Association 1991).

[292] Colin James, 'Lawyers' wellbeing and professional legal education' [2008] The Law Teacher 42 (1) 85 92-97. DOI: 10.1080/03069400.2008.9959763.

> "… a liberal education conveys to students a sense of joy in learning - joy in participating in the life of the mind; joy in achieving competence and mastery; joy in entering the adult world of obligations, intimacies, and relationships; joy in engaging in the converse among our several generations."[293]

The paradox with CLE is that whilst appearing vocational, and acknowledging its practical base, when situated within a reflective social justice model, it has the potential to guide students within a liberal educational ideology, that will benefit them regardless of whether they decide to enter the legal profession or not. Within the clinical environment, the substantive values of fairness, equality and charity may be fostered and it is hoped that such investment can help foster both the next generation of advocates for access to justice in the legal field[294] but also advocates for all forms of social justice in whatever field they choose to enter[295].

Through the transformative practice of working in the clinical environment[296] and reflecting upon their practice, the students learn transferable skills such as 'cultural competence'[297] and essential non-generic skills for working with marginalised communities. The founder of the 'rebellious lawyering' movement, Gerald Lopez, confirmed:

---

[293] James O Freedman, *Idealism and Liberal Education* (University of Michigan Press 1996) 2.
[294] Scott Cummings & Deborah Rhode, 'Access to Justice: Looking Back, Thinking Ahead' [2017] 30 Georgetown Journal of Legal Ethics 485 500
[295] It is possible that involvement with the university legal advice clinic and the corresponding experiences of the formalistic legal field and its economic attachments, will actually dissuade some students from entering the legal field and to pursue fields where social justice ends may be more readily achieved.
[296] Howard S Erlanger & Gabrielle Lessard, 'Mobilising Law Schools in Response to Poverty: a Report on Experiments in Progress' [1993] Journal of Legal Education 43 199.
[297] Rhode (n 255) 545.

> "In sum, anticipating and responding to the problems of the politically and socially subordinated requires training that reflects (and, in turn, helps produce) an idea of lawyering compatible with a collective fight for social change - a "rebellious idea of lawyering," at odds with the conception of practice that now reigns over legal education and the work of lawyers."[298]

The students learn that unlike the 'well-structured' problems they face in tutorials, with one logical single answer, the students have to work across both the substantive and formalistic spheres, accounting for the contradictions that lie between them[299]. The role of the law teacher also shifts from an all-knowing, power-based disseminator of information and answers[300], to a learning facilitator whose role is to assist the students in reflecting upon the information, organising their thoughts, identifying the clients' problem(s), maximising their focus and generating ideas[301]. Within this model, the relationship between students also changes from competitiveness[302] to collaboration[303], where instead of competing against each other, they work collaboratively together to achieve a common goal of assisting

---

[298] Gerald Lopez, 'Training Future Lawyers to Work with the Politically and Socially Subordinated: Anti-Generic Legal Education' [1989] 91 West Virginia Law Review 305 356.
[299] Luszcz (n 206) 35.
[300] Kennedy (n 216) 592.
[301] Barbara J Duch, Susan E Groh & Deborah E Allen, *The power of problem-based learning: a practical "how to" for teaching undergraduate courses in any discipline* (Stylus Publishing 2001); Boud & Feletti (n 195). Vygotsky talks about this type of facilitation as scaffolding individuals towards their zone of proximal development. Vygotsky (n 61); Lev S Vygotsky, *The History of development of higher mental functions* (New York: Plenum Press 1997).
[302] Daicoff (n 172).
[303] Cindy E Hmelo-Silver & Catherine Eberbach, 'Learning Theories and Problem-Based Learning' in Susan Bridges, Colman McGrath & Tara L Whitehill, *Problem-Based Learning in Clinical Education The Next Generation – Innovation and Change in Professional Education* (Springer 2012] 3; Christina Samuelsson, Inger Lundeborg and Anita McAllister, 'Experiences from Two Swedish Speech and language Pathology Education Programmes using Different Approaches to Problem-Based Learning' in Susan Bridges, Colman McGrath, Tara L Whitehill (Eds), *Problem-Based Learning in Clinical Education, The Next Generation* (Springer 2012) 47. See also Janet Weinstein, Linda Morton, Howard Taras and Vivian Reznik, 'Teaching Teamwork to Law Students' [2013] 63 Journal of Legal Education 36.

someone else. Unlike in the lecture theatre and the tutorial, a dialectic involving emotions and feelings, combined with pragmatism and logic, is encouraged and seen as conducive to problem solving[304], rather than being seen as directly irreconcilable. Whereas in legal practice, where the formal sphere is venerated over the substantive sphere, and cool rationality over feelings[305], critical analysis of emotions is encouraged as a means to resist 'epistemological imperialism' and the formalistic practices that can obstruct critical reflection[306]. Recognising and understanding emotions is essential to engaging with and empowering clients. Unlike the formalistic 'rational' method of inquiry, it allows clients to relay their own story, without the displacement of their narrative.

Whilst legal education and practice remain largely symbiotic in their formalistic, capitalistic and neo-liberalist substructure, CLE provides for the consideration of different values and identities, incorporating substantively critical viewpoints and a recognition of context, as well as the social, political and economic fields amongst which the law operates. The values relayed within the field of CLE, as well as the students' perceived role, are important to the characteristics and dispositions that construct the professional identity of the students and are valued as cultural capital within this mini field.

[304] Luszcz (n 206) 36.
[305] Patricia Williams, *The Alchemy of Race and Rights* (Harvard University Press 1991) 140.
[306] Buhler (n 260) 414.

1.10 Incorporating Values into Legal Education and Practice

1.10.1 The English and Welsh perspective

Whilst the Legal Education Training Review in England and Wales[307] recognised 'ethics, values and professionalism' as important[308] and the review proposed that the qualifying law degree should include assessable outcomes advancing an understanding of values embedded in the law and the role of the lawyer[309], this until only very recently, was largely ignored[310]. However, with the recent publication of a new Quality Assurance Agency for Higher Education (QAA) Benchmark statement for law in November 2019, there is tentative hope that values may play an increasingly more important role within the law curriculum. The statement, which defines the academic standards expected of a law graduate, requires an understanding of legal values as well as principles, rules, doctrine and skills[311]. It also states that students should be "… aware of the consequences of law as a human creation and that it is subject to the ethics and values of those that make and apply it" and "the implications of this in the context of securing justice and the public interest are considered as part of legal study"[312]. It requires law graduates to be able to demonstrate an "awareness of principles and values of law and justice, and of ethics" and "knowledge and understanding of theories, concepts, values, principles and rules of public and private laws

[307] Announced by the Legal Services Board and funded by the three largest regulators of legal practice: The Bar Standards Board, ILEX Professional Standards and the Solicitors Regulation Authority within statutory defined objectives and standards (Legal Services Act 2007, s1 & s4).
[308] The Legal Education Training Review (LETR) identified that their online survey rated 'ethics, values and professionalism' as the most important knowledge area. Webb, Ching, Maharg & Sherr (n 185).
[309] ibid 144, 151.
[310] As one of the co-authors of the Legal Education Training Review (LETR), Julian Webb questions whether the Quality Assurance Agency for Higher Education (QAA)'s benchmark statement places sufficient emphasis on legal values, law in context and student self-management, including reflection and resilience as recommended in LETR. Webb (n 160) 122.
[311] Quality Assurance Agency for UK Higher Education (QAA), 'Subject Benchmark Statement Law' (November 2019) <https://www.qaa.ac.uk/docs/qaa/subject-benchmark-statements/subject-benchmark-statement-law.pdf?sfvrsn=b939c881_16> accessed on 30 November 2019 para 1.2, 4
[312] ibid para 1.4, 4.

within an institutional, social, national and global context" [313]. It has long been appreciated that understanding how society is constructed and shaped and the underpinning values in which law operates is an important part of legal education[314]. However, how far Law Schools will change to adapt their curriculum to these proposals remains to be seen, particularly as the benchmark statement does not represent a national curriculum and is only intended as guidance[315].

On the alternative side of the coin, and whilst accepting that regulation, with its formal boundaries and strict rules, is integral to an occupation being regarded as a profession[316], the revolutionary neo-liberal force[317] that regulates the solicitor profession in England and Wales, has imposed[318] a new process to qualify as a solicitor, without the necessity of a qualifying law degree[319]. Whilst listing business law and practice as one of the functioning legal knowledge requirements and outlining the necessity of assessing the principles of

[313] Ibid para 2.4 (iii) & (iv) respectively, 5.
[314] Andrew Sanders, 'Poor Thinking, Poor Outcome? The Future of the Law Degree after the Legal Education and Training Review and the Case for Socio-legalism' in Hilary Sommerlad, Sonia Harris-Short, Steven Vaughan and Richard Young (Eds), *The Futures of Legal Education and the Legal Profession* (Oxford: Hart 2015) 148.
[315] QAA Subject Benchmark Statement, Law (November 2019) <https://www.qaa.ac.uk/quality-code/subject-benchmark-statements> accessed on 30 November 2019.
[316] Julia Evetts, 'The Sociological Analysis of Professionalism Occupational Change in the Modern World' [2003] International Sociology 18 (2) 395. DOI:10.1177/02685809 03018002005.
[317] Andrew Sanders explains how the Legal Services Board perpetuates a neo-liberal ideology of privileging powerful economic interests, whilst simultaneously diminishing key public values. Sanders (n 313) 146.
[318] Against much objection by both the Academy and the Profession. See Law Society, 'Proposals to widen access to the legal profession could have the opposite effect' (undated) <http://www.lawsociety.org.uk/news/press-releases/proposals-to-widen-access-to-the-legal-profession-could-have-the-opposite-effect-warns-law-society/> accessed on 5 August 2016.
[319] This new process of qualification will still require education to an undergraduate level but not necessarily in law and is due to commence in September 2021. The centralised Solicitors Qualification Examination will replace the current Legal Practice Course with a centralised multiple choice and skills based assessment comprising of two stages – SQE 1, which is a multiple choice question assessment of legal knowledge and SQE 2 which focuses on practical legal skills. Solicitors Regulation Authority (n 156).

taxation[320], this new exam does not have any requirement, or indeed option, to study areas of social welfare law, such as employment, human rights, immigration, housing or family[321] .

Further, and in relation to the actual regulation of the profession, whilst acknowledging that the Solicitor Regulation Authority (SRA) concedes its statute imposed regulatory objective to "improve access to justice"[322], very little discernible action has been taken towards achieving this. The SRA moved towards an outcomes based regulation in 2011[323], however regulation remains an overly objective formalistic approach gripped in the positivist and instrumentalist tradition of law[324]. Whilst the change from rules to outcomes was heralded as a new innovative and less prescriptive approach, many of the outcomes are simply the rules re-written and re-labelled as outcomes[325]. Further, and with the exception of A1E of the Solicitor Regulation Authority's (SRA) competency statement: "Respecting diversity and acting fairly and inclusively", the SRA's statement of solicitor qualification requirements is entirely formalistic in its composition[326]. Rules and outcomes are skeletal with little depth

---

[320] As was, and still is, the position with the Legal Practice Course.

[321] LawWorks, 'LawWorks Briefing: A new route to qualification for solicitors – Solicitors Qualifying Exam (SQE) (undated)' <https://www.lawworks.org.uk/sites/default/files/LWBriefing-A-new-route-to-qualification-for-solicitors.pdf> accessed on 30 November 2019. 10. Whilst the SQE is more biased towards commercial law than the Legal Practice Course, the LPC has not been beyond criticism for its bias towards commercial practice. See Hilary Sommerlad & Peter Sanderson, 'Summary: Training and regulating providers of publicly funded legal advice' (Ministry of Justice, 2009) 18 32.

[322] See Solicitors Regulation Authority, 'Approach to regulation and its reform (undated) <https://www.sra.org.uk/sra/policy/regulation-reform/> accessed on 30 November 2019. The Legal Services Act 2007, s1(1)(c) also states improving access to justice as a regulatory objective.

[323] Solicitors Regulation Authority, 'SRA Handbook' (undated) <https://www.sra.org.uk/solicitors/handbook/code/>, Solicitors Regulation Authority, 'Student Information pack' (undated) <https://www.sra.org.uk/students/resources/student-information/> both accessed on 26 November 2019.

[324] William Twining, *Globalisation and Legal Theory* (London: Butterworth 2000) 232.

[325] See Lawrence A Cunningham, 'A Prescription to Retire the Rhetoric of ''Principles-Based Systems'' in Corporate Law, Securities Regulation and Accounting' [2007] Vanderbilt Law Review 60 1409.

[326] A1E may have been included to reflect anti-discrimination employment laws, rather than a substantive desire by the profession to promote equality, justice or fairness. This view is supported from the conspicuous absence of mention of this throughout the statement.

and consequently any consideration of substantive values is subsumed by a solitary formalistic focus.

Control over the profession is not only exerted by the regulatory body but also funding bodies such as the Legal Aid Agency[327]. Legal aid provision operates according to market principles involving the tendering of contracts for the provision of legal advice and according with a concept of 'best value' through efficiency[328]. The primacy of the market exudes influence over these funding bodies, as well as the regulators[329], and clients are expressed by funding bodies in terms of their monetary cost. Such perceptions inevitably lead to the imposition of over bureaucratisation and control over time, through time and cost allocation for activities. Consequently legal aid lawyers and not for profit advisors, are distracted from their legal work through form filling[330] and have little time to talk with their clients through the application of auditing time standards[331]. This has the consequence of bleaching out the opportunity for an account of emotions and the substantive narrative and resulting in the necessity of having to colligate[332] and process the client's information as quickly as possible. This will likely mean that even if the Law Society's mooted initial letter of advice funded by legal aid, and considered at 1.4, will unlikely represent a viable empowerment model, given the likely auditing and restriction of time that would follow its implementation.

[327] Replaced the Legal Services Commission in 2013.
[328] Sommerlad & Sanderson (n 55) 309.
[329] Julia Black, 'Reconceiving Financial Markets - From the Economic to the Social' [2013] 13 Journal of Corporate Law Studies 401.
[330] Sommerlad & Sanderson (n 320) 25.
[331] Ibid 27-28.
[332] Abbott (n 36) 40-44.

1.10.2 The American perspective

In America, regulation is undertaken on a state-by-state basis. However, and whilst being meticulously careful not to criticise the academy or legal profession[333], the MacCrate Report sought "to create a conceptual vision of the lawyering skills and professional values that lawyers should seek to acquire"[334] and recommended four fundamental professional values. The focus of the report was upon legal education as preparation for legal practice[335], but these values notably included the substantive values of 'justice, fairness and morality' amongst the four[336]. Rather radically, it also suggested that success in the law did not only relate to financial rewards but also a commitment to a 'just, fair and moral society'[337]. Other somewhat controversial recommendations included, and in notable conflict with the zealous advocate principle, that lawyers should consider the negative consequences of the client's goals and action on 'others'[338] and that *pro bono* work should be a fundamental obligatory 'public aspect' of the profession[339]. The report also lauded CLE as making an invaluable contribution towards the goal of the report[340].

---

[333] American Bar Association (n163). The Report rejected that a serious gap existed between the Bar and the Academy [8] and suggested that any problem of communication and perception could be solved by academics and practitioners being more appreciative of each other's role and contributions [4-6]. The Report also applauded law schools for "tak[ing] seriously their responsibilities with regard to the teaching of ethical standards and professional values." [235]. See also Russell G Pearce, 'MacCrate's Missed Opportunity: The MacCrate Report's Failure to Advance Professional Values' [2003] Pace Law Review 23 (2) 574 578.
[334] Robert MacCrate, 'Educating a Changing Profession: From Clinic to Continuum' [1997] 64 Tennessee Law Review 64 (4) 1099, 1127.
[335] Not least as the Juris Doctor degree in America is a graduate specialist professional degree in law, in contrast to England and Wales where it is an undergraduate degree.
[336] Although justice can be viewed in many different ways, i.e. procedural, substantive, social etc.
[337] American Bar Association (n 163) 333.
[338] ibid 177; 181 & 213.
[339] Ibid 214-215. Recommending lawyers spent at least 50 hours a year undertaking pro bono work.
[340] The report stated "Clinics have made, and continue to make, an invaluable contribution to the entire legal education enterprise. They are a key component in the development and advancement of skills and values throughout the profession. Their role in the curricular mix of courses is vital. Much of the research leading to the advancement of knowledge about lawyers, the legal profession and its institutions is found in the work of clinicians, and many are recognized to be among the most dedicated and talented teachers I law schools. Clinics provide students with the opportunity to integrate, in an actual practice setting, all of the fundamental lawyering skills. In clinic courses, students sharpen their understanding of professional responsibility and

Whilst the report made forward steps towards including substantive values in the education and practice of legal professionals, in reality, many law schools embraced the fundamental skills recommended in the report but failed to embrace the teaching of fundamental values, with the integration of justice into practice and education largely ignored[341]. A multitude of reasons have been offered for the non-fulfilment of its promise. However, notably a major reason included the fundamental conflict between a substantive values based outlook and a formalistic, perceived scientific, facts based neutral approach to legal pedagogy[342]. The technocratic approach within both the educational and practice fields still remained prevalent, representing supreme capital within the field and acted as a significant obstacle to the incorporation of substantive values such as social justice or fairness. The law thus in both education and practice maintained, through its technocratic neutral based approach, its hierarchy[343] of tutor to student in education and lawyer to client in practice perpetuating inequality, 'symbolic violence'[344] and domination by the most powerful.

Seeking to build upon the findings of the MacCrate report, leaders of the Clinical Legal Education Association in 2001 sought to develop a 'Statement of Best Practices for Legal

---

deepen their appreciation for their own values as well as those of the profession as a whole". American Bar Association (n 163) 238.

[341] Pearce (n 332) 584-585. cf Russell Engler who argues that the MacCrate Report provided a useful tool for clinical legal education. Russell Engler, 'The MacCrate Report Turns 10: Assessing its Impact and Identifying the Gaps We Should Seek to Narrow' [2001] 8 Clinical Law Review 109 111.

[342] Pearce (n 332) 594-595. Other reasons included a failure by the report to confront the obstacles created by the dominatory Bar and Academy culture; the perceived demotion of values to skills; the confusing integration of values and skills; the conflict between a commitment to the public good and the hired gun approach and the Law School's disdain for anything legal ethics based: 585-592.

[343] Kennedy (n 216) 591.

[344] Bourdieu (n 93) 850.

Education' (herein referred to as 'the Statement of Best Practices'), which was published in 2007[345]. Contemporaneously, the 'Carnegie Report' was also published in 2007 with a similar impetus to augment MacCrate's recommendations. Stuckey et al.'s Statement of Best Practices was deeply critical of the adoption of the case method approach, particularly from the perspective of the damage it necessitated to students values and attitudes. The Statement of Best Practices argued for a deeper form of contextual based learning, as preparation for the legal profession[346] and outlined an extensive list of professional values including the MacCrate Report's value of 'justice, fairness and morality'[347]. Providing access to justice was explicitly included as a value within the aims of the legal profession and considering 'others', as well as the client, was included, as a value contributing to a core value of 'handling cases professionally'[348].

Whilst the Statement of Best Practices was overtly critical of the case method approach, the Carnegie Report was less critical and did recognise the benefits of providing law students with the capacity to understand and translate the legal sphere through a systematic process of abstracting the legally relevant from the everyday context. However, whilst acknowledging this benefit, the report did note that this learning process had a solitary focus upon understanding law as a formal and rational system and ignored the rich complexity of actual situations with real people, together with the ethical and social

[345] Stuckey *et al*. (n 224).
[346] This might not be considered as particularly surprising, given that it had been commissioned by the Clinical Legal Education Association.
[347] Although this was packaged as a component for supporting the aims of the legal profession
[348] Stuckey *et al*. (n 224) 61.

consequences of the law[349]. The report focused on a number of aspects, considering the Law School from the perspective of it being a transitional space for professional identity formation and linking this into the purpose of the legal profession, argued for an ethical-social apprenticeship of professionalism, as well as intellectual/cognitive and practice/skills apprenticeships[350].

Such reports have assisted in bringing more substantive values into the academic field, although the field remains heavily laden with its formalistic foundations. Whilst recognising that legal doctrine served a purpose, and should not be jettisoned altogether, the report recommended a re-conceptualisation of the law school curriculum, comprising a three part, interactive model including:

1. "The teaching of legal doctrine and analysis, which provide the basis for professional growth;
2. Introduction to the several facets of practice included under the rubric of lawyering, leading to acting with responsibility for clients;
3. A theoretical and practical emphasis on inculcation of the identity, values, and dispositions consonant with the fundamental purposes of the legal profession".

[349] William Sullivan *et al*. (2007) Educating Lawyers, 'Preparation for the Profession of Law Summary' (The Carnegie Foundation for the Advancement of Teaching 2007) http://archive.carnegiefoundation.org/pdfs/elibrary/elibrary_pdf_632.pdf> accessed on 27 November 2019.
[350] Sullivan *et al.* (n 15) ch 4, 27-29.

The suggestions were widely welcomed, particularly within the CLE community. There were calls to include value based learning within clinical legal education[351] and to integrate a greater focus upon CLE within the curriculum[352]. However, it is the final part of the model that may create difficulty in its interpretation and consequently, difficulty with its application. The 'fundamental purposes of the legal profession' may mean different things to different people depending upon their outlook. If the viewpoint is a substantive one, then the identity, values and dispositions necessarily reconcilable with this will likely be values such as social justice, fairness and equality. However, if the viewpoint is formalistic, i.e.' to uphold the constitutional principle of the rule of law, and the proper administration of justice'[353] then the identity, values and dispositions will likely be correspondingly technocratic. Further concern arises, as when these two value spheres conflict, it is generally the formalistic that dominates over the substantive.

1.11 Professional Role and Identity

The final element of the Carnegie Report's three part interactive model suggests that identity, values and dispositions are linked to the discernible *purpose* or role of the legal professional. Identity, values, dispositions and role are relationally interchangeable and help comprise each other but importantly are heavily influenced by the field and its cultural capital. As well as role influencing identity, values and dispositions, identity is influenced by role, values and dispositions. It is the field, and its cultural capital, that dictates what

[351] Nigel J Duncan, 'Ethical practice and clinical legal education' [2005] International Journal of Clinical Legal Education' 7, 7-19.
[352] Karen Tokarz, Antoinette S Lopez, Peggy Maisel and Robert F Seibel, 'Legal Education at a Crossroads: Innovation, Integration and Pluralism Required' [2013] 43 Washington University Journal of Law & Policy 11.
[353] Principle 1 of the SRA's new Principles <https://www.sra.org.uk/solicitors/standards-regulations/principles/> accessed on 28/11/19>.

practices, dispositions and roles are valued and therefore the valued professional identities. Whilst in a neo liberal society, heavily influenced by the economic field, the corporate technocratic lawyer represents the epitome of status and the aspiration for many law students[354], and as considered in chapter 1.9; it is by no means the only professional identity and role for aspiring students. There are many progressive lawyering identities including the community lawyer[355], critical lawyer[356], rebellious lawyer[357], cause lawyer[358] and mindful lawyer[359]. However, whilst law degrees implicitly and explicitly focus upon corporate lawyer identities, this type of lawyering is rarely considered within the field of legal education and if considered, the status of these identities is far less elevated, reflecting their association and primary purpose of helping the poor and subordinated, rather than the rich and powerful.

When considering these progressive lawyering identities further, it is clear that they are not homogeneous and overlap, in identities such as the community, rebellious and mindful

[354] MacFarlane (n 1) 5.
[355] Christina Zuni Cruz, '[On the] Road Back In: Community Lawyering in Indigenous Communities' [1999] 5 Clinical Law Review 557; Imai (n 41); Michael Diamond, 'Community Lawyering: Revisiting the Old Neighbourhood' [2000] 32 Colum. Hum. RTS. L. REV 67; Susan D. Bennett, 'On Long-Haul Lawyering' [1998] 25 Fordham Urb. L. J. 771; Andrea M Seielstad, 'Community Building as a Means of Teaching Creative, Cooperative, and Complex Problem Solving in Clinical Education' [2002] 8 Clin. L. Rev. 445; William P Quigley, 'Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations' [1995] Ohio N. U. L. Rev. 21 455, 457.
[356] Melanie Abbott, 'Seeking Shelter Under a Deconstructed Roof- Homelessness and Critical Lawyering' [1997] 64 Tenn. L. Rev. 269.
[357] Gerald Lopez, *Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice* (Westview Press 1992); Paul R. Tremblay, 'Rebellious Lawyering, Regnant Lawyering, and Street-Bureaucracy' (1992) Hastings Law Journal 43 947; Gerald Lopez, 'Reconceiving Civil Rights Practice: Seven Weeks in the life of a Rebellious Collaboration' [1989] 77 GE. L.J. 1603.
[358] Austin Sarat & Stuart Scheingold, *Cause Lawyering, Political Commitments and Professional Responsibilities* (Oxford University Press 1998); Austin Sarat & Stuart A Scheingold, *Cause Lawyers and Social Movements* (Stanford University Press 2006).
[359] Harris, Lin & Selbin (n 1); Alfieri (n 1); Leonard L Riskin, 'The Contemplative Lawyer: On the potential contributions of mindfulness meditation to law students, lawyers, and their clients' [2002] 7 Harvard Negotiation Law Review 1; Steven W Keeva, 'Practicing from the Inside Out' [2002] Harvard Negotiation Law Review 97; Peter Gabel, 'Critical Legal Studies as a Spiritual Practice' [2009] 36 Pepperdine Law Review 515.

lawyer[360]. Rebellious lawyering involves seeking to empower subordinated clients[361], which similar to community lawyering, serves a theme of empowering communities from within. Mindful lawyering can therefore play an important part in both of these elements by standing aside from the often adversarial stance and exercising co-operative power in order to achieve long term goals[362]. The identities are progressively left in their ideological origins and represent a more innately left wing approach of *social* responsibility, as opposed to the politically right wing ideology of *individual* responsibility[363]. However, whilst many of the progressive professional identities may be similar in political outlook, such as critical lawyering and cause lawyering, they do not necessarily all fit seamlessly together in their values. The client centred and focused outlook for rebellious lawyering is in sharp contrast to the goal of changing the law for the better for cause lawyers[364], where the best interests of the client may serve a secondary purpose to this primary aim. Christine Parker examines how the perceived role and identity of the lawyer can determine the lawyer's professional values and dispositions, their relationship with the client and 'others' and their obligation towards law and justice[365]. She provides four separate and distinct identities and provides the following table outlining the social role and relationship to the client and the law of the Adversarial Advocate, the Responsible Lawyer, the Moral Activist and the Ethics of Care.

---

[360] Gonzalez (n 1).
[361] Lopez (n 356) 951.
[362] By co-operative power, Harris, Lin and Selbin call upon the co-operative power achieved by the likes of Gandhi, Martin Luther King and Nelson Mandela. Harris, Lin & Selbin (n 1) 2077, 2129-2130.
[363] Freedman (n 292) 55. Western legal systems are also innately individualistic in their approach: see Kerry Dunn & Paul J Kaplan, 'The Ironies of Helping: Social Interventions and Executable Subjects' [2009] 43 Law & Soc'y Rev. 337 341–43.
[364] Sarat & Scheingold (n 357).
[365] Christine Parker, 'A Critical Morality for Lawyers: Four Approaches to Lawyers' Ethics' [2004] Monash University Law Review 30 (1) 49.

	Social Role of Lawyers & Relationship to General Ethics	Relationship to Client and Law
Adversarial Advocate	Advocate in adversarial legal process; partisanship, loyalty and non- accountability.	Advocating client's interests as vigorously as possible.
Responsible Lawyer	Facilitating the administration of justice according to law.	Ensuring integrity of and compliance with the spirit of the law on substantive merits.
Moral Activist	Promoting substantive justice.	Changing the law and legal institutions to make the law more substantively just (in the public interest). Persuading clients of the moral thing to do.
Ethics of Care (Relational lawyering)	Responsibilities to people, communities and relationships.	Preserving relationships and avoiding harm are more important than impersonal justice.

Table adapted from Parker (n 334) 56[366].

Whereas the adversarial advocate adopts a hired gun role, the responsible lawyer sees her role as ensuring the administration of justice on both a formalistic and substantive basis. The moral activist sees her role as the promotion of substantive justice, with such an aim taking priority over the client. The ethics of care sees the role as helping people and communities but rather than wanting to 'win', values the importance of avoiding harm to the client and preserving relationships. Whilst these identities and roles are

[366] Table used in Philip Drake & Pete Sanderson, 'Transactional ethics and ethical transactions in clinical legal education' [2019] Colloquium: A need for clinical work? Theoretical and practical concerns, University of Southern Denmark.

compartmentalised as separate and distinct, in truth they are convergent i.e. the moral activist who wants to promote substantive justice through the vigorous adversarial pursuit of a company or the moral activist who wishes to preserve relationships and avoid harm to her clients. However, this table does serve an important purpose of highlighting how the perceived professional identity and role can influence the values and dispositions of the practitioner.

1.12 The Relational Lawyer and a Hybrid Approach to Professionalism

An increasing amount of academic literature suggests that legal practice is moving away from the values, dispositions and approach of Parker's adversarial advocate towards a more client-centred[367] and relational lawyer approach[368]. This transition is in part, as a consequence of the CLE movement having embraced this approach[369], together with legal practice witnessing an increasing number of civil cases settling through negotiation and alternative dispute resolution and diminishing numbers reaching court trial hearing[370].

Whilst acknowledging it may not be without controversy, Christine Parker describes the foundations of her ethics of care/relational lawyer as being in a feminist[371] and humanist[372]

[367] Binder & Price (n 28).
[368] Julie Macfarlane, 'Bringing the Clinic into the 21st Century' [2009] 27 Windsor YB Access Just 35 52; Jill Howieson and Lynn Priddis, 'A Relational Model of Family Lawyering: Exploring the Potential for Education, Practice and Research' [2014] 29 Can J Fam L 173;
[369] Barry, Dubin & Joy (n 137) 16-17.
[370] Galanter (n 19) 1256–63.
[371] Referring to the approach by Carol Gilligan, *In a Different Voice. Psychological Theory and Women's Development* (Harvard University Press 1982); Caroline Maughan & Julian Webb, *Lawyering Skills and the Legal Process* (Cambridge University Press 1995) 36.
[372] Thomas L Shaffer, *On Bring a Christian and a Lawyer: Law for the Innocent* (Brigham Young University Press 1981); Thomas Shaffer & Robert Cochran, *Lawyers, Clients and Moral Responsibility* (West Academic 1994).

approach to problem solving, involving an examination of the moral, emotional and relational dimensions of a problem[373]. She describes this collaborative dialogical approach can influence legal practice in three ways:

1. "Encouraging lawyers to take a more *holistic* view of clients and their problems… consider[ing] the non-legal and non-financial consequences of different legal options;
2. Emphasis[ing] dialogue between lawyer and client and *participatory* approaches to lawyering… [with] the lawyer spending time listening to the broader concerns of the client so that the legal solution they offer fits in with the other aspects of the client's life;
3. Encourag[ing] lawyers (and clients) to see themselves within a network of relationships and to understand the feelings and experiences of others within those relationships… [and] to look for *non-adversarial ways to resolve disputes* and preserve relationships if possible"[374].

Both 'client-centred' and 'relationship-centred' lawyering[375] allows for a lawyer to transverse beyond the legally formalistic, to understanding and relating to the client within their substantive context'[376]. This approach requires altogether different professional identity, values[377] and dispositions, to those of the hegemonic technocrat. It warrants an

[373] Parker (n 364) 70.
[374] Parker (n 364) 70-71.
[375] Susan Brooks and Robert Madden suggest that relationship-centred lawyering builds upon and enhances the client-centred approach. Brooks & Madden (n 27) 342.
[376] Brooks & Madden (n 27) 342-343
[377] ibid 351.

understanding of both emotional intelligence[378] and empathy[379] and a more nuanced perspective, including consideration of the personal, social, cultural, and psychological aspects of a situation[380] in order to assist in empowering the client within the situation she finds herself[381].

Lawyers' norms, values and dispositions are linked to their habitus and what is learned at Law School, together with core beliefs about professional identity and professional role[382]. Beliefs are shaped by professional culture formed within a number of intersecting fields, including legal education, legal practice and the economic field of power, which promotes a technocratic identity where value neutrality and rational logic prevail over feelings and emotions. Within the law firm field, traditional lawyering identity is based upon a belief in a paternalistic and individualistic rights based adversarial model invested in procedural justice, however relational lawyering requires different skills such as communication, emotional intelligence and client/lawyer collaboration[383]. The three American progressive reports into changing legal education have created some momentum for change though, as a consequence of the habitus of the profession and academy, together with the deemed cultural capital of the field, there still remains a long way to travel. Legal education remains reluctant to move beyond a logic based upon formalistic knowledge and training. However,

---

[378] John Montgomery, 'Incorporating Emotional Intelligence Concepts into Legal Education: Strengthening the Professionalism of Law Students' [2008] 39 U. Tol. L. Rev. 323.
[379] Marjorie A. Silver, 'Emotional Intelligence and Legal Education' [1999] 5 Psychol. Pub. Pol'y & L. 1173.
[380] Brooks & Madden (n 27) 348.
[381] Katherine Hunt Federle, 'The Ethics of Empowerment: Rethinking the Role of Lawyers in Interviewing and Counseling the Child Client' [1996] 64 Fordham L. Rev. 1655; V Pualani Enos and Lois H Kanter, 'Who's Listening – Introducing Students to Client-Centred, Client-Empowering, and Multidisciplinary Problem-Solving in a Clinical Setting' [2002] 9 Clinical L Rev 83; David Binder, Paul Bergman and Susan Price, 'Lawyers as Counselors: A Client-Centered Approach' (1990) 35 N Y L Sch L Rev 29.
[382] MacFarlane (n 1) 13, 18 & 25.
[383] Ibid 22-23, 47-65.

with a combination of the economic unviability to most of pursuing a civil case to a trial hearing and the lack of government funded legal aid support, legal representation by the technocrat in the traditional role of adversarial advocate is no longer an option. Combined with the use of less adversarial methods of alternative dispute resolution being on the increase[384] and these methods not just being limited to those who cannot afford the services of a lawyer[385], there does seem to be an appetite for change based upon this new relational model of lawyering and a different approach to lawyer/client interaction.

CLE provides an opportunity to both consider and put into action a social justice and relational model. However, as has already been outlined, attempts to combine both formalistic and substantive approaches is not without difficulties. Alfieri describes his own pedagogical approach through CLE as a 'pedagogy of community and public citizenship'[386]. Through contrasting a 'substantive' approach, which he describes as 'infidelity to law', with Bradley Wendel's formalistic and positivistic approach[387], which he sets out as a 'fidelity to

[384] Thomas J Stipanowich, 'ADR and the Vanishing Trial: The Growth and Impact of Alternative Dispute Resolution' [2004] 1 J Empirical Legal Stud 843; Marc Galanter, 'A World without Trials' [2006] Journal of Dispute Resolution 7; John H Langbein, 'The Disappearance of Civil Trial in the United States' [2012] 122 Yale L J 522.

[385] As a consequence of increased multi-jurisdictional transactions, commercial litigators have seen a sharp rise in the use of ADR over the last twenty years. See The Lawyer, 'What's the deal with… Alternative Dispute Resolution' (2017) <https://www.thelawyer.com/alternative-dispute-resolution-adr/> accessed on 28 November 2019. Dealing with subordinated and disadvantaged clients is in no way comparable to handling commercial clients but the symbolic influence of the economic field, means that a shift in commercial practice generally results in changes in legal educational approaches, albeit from a commercial perspective. Dispute Resolution will form part of the assessed functioning legal knowledge for the Solicitor Regulation Authority's new Solicitors Qualifying Examination, see Solicitors Regulation Authority, 'SQE1 Functioning Legal Knowledge Assessment Specification (undated) <https://www.sra.org.uk/sra/policy/sqe/sqe1-functioning-legal-knowledge-assessment-specification/> accessed on 28 November 2019.

[386] Alfieri (n 1) 118

[387] William H. Simon, 'Authoritarian Legal Ethics: Bradley Wendel and the Positivist Turn' [2012] 90 Tex. L. Rev. 709; W Bradley Wendel, 'Legal Ethics as "Political Moralism" or the Morality of Politics' [2008] 93 Cornell L. Rev. 1413; W Bradley Wendel, 'Legal Ethics and the Separation of Law and Morals' [2005] 91 Cornell L. Rev. 67; Alice Woolley & W Bradley Wendel, 'Legal Ethics and Moral Character' [2010] 23 Geo. J. Legal Ethics 1065.

law', he recognises the tensions that arise from the two seemingly dichotomous propositions. Within this framework, he promotes reconciliation rather than adversarial conflict[388] and identifies both emotional and intellectual reflection, as well as ethical judgement and civic engagement, as fundamental to legal education and empowering individuals and communities. However, whilst contending for a greater client centred substantive ideal, he does not rule out the two seemingly dichotomous positions operating in tandem and suggests that a substantive approach to justice and morality can supplement legal reasoning[389].

As recognised by Gitte Sommer Harrits, and particularly pertinent to professionals predominantly dealing with welfare and human services, such as social work[390], a different more personalised relationship may develop over time involving different challenges and dynamics[391]. Such a relationship draws upon substantive, as well as formalistic knowledge and is described as a blended hybrid form of professionalism, which incorporates both functionally specific formal and practical knowledge, with a more subjectively substantive, personal, relational and emotion-based logic[392]. This type of professional is a reflective practitioner[393] who operates outside of traditional (pure) professional domains in order to

[388] Alfieri describes this as 'mindful lawyering' based upon the mindful lawyer described in Harris, Lin & Selbin (n 1). However, such a notion complies with our understanding of relational lawyering and the interwoven nature of these identities. Alfieri (n 1) 118.
[389] Alfieri (n 1) 149.
[390] It is perhaps unsurprising, that whilst Susan Brooks and Robert Madden who call for 'relationship-centred' lawyering operate within the field of law, both have backgrounds in social work. Brooks & Madden (n 27) 343.
[391] Gitte Sommer Harrits, 'Being Professional and Being Human. Professional's Sensemaking in the Context of Close and Frequent Interactions with Citizens' [2016] Professions & Professionalism 6 (2) 2; Also see Noordegraaf (n 30) 776.
[392] ibid.
[393] Schön (n 30) 21.

enact both meaningful and legitimate connections between clients, work and social action[394].

1.13 My Research Question

This is perhaps a good point at which to return to the 'Carnegie Report', and the questions raised by Sullivan et al. within this:

> "Who am I as a member of this profession? What am I like, and what do I want to be like in my professional role? and what place do ethical-social values have in my core sense of professional identity?"[395]

Whilst Sullivan et al. suggest most law schools do not even ask the question, let alone consider what the answer may be; CLE can provide an important opportunity to consider such professional identity development further[396] within a framework of hybrid professionalism.

Whilst in legal practice I observed the often oppressive influence of the formalistic sphere and neo-liberalism, I was not aware of sociological theories, which might have assisted in understanding the reason why formalism and the economic field hold so much power. This

[394] Noordegraaf (n 30) 776.
[395] Sullivan *et al.* (n 15) 135.
[396] Susan L. Brooks, 'Fostering Wholehearted Lawyers: Practical Guidance for Supporting Law Students' Professional Identity Formation' [2018] St. Thomas L.J. 412 420-421; Phyllis Goldfarb, 'Back to the Future of Clinical Legal Education' [2012] 32 Boston College Journal of Law & Social Justice 32 279 283; 291; 293; 301; 307.

chapter has discussed three theories which assist in understanding why formalism and neoliberalism has impacted upon both legal education and practice embracing a value neutral case method approach and how the influence of the field of power impacts upon the actions of the actors constrained within it. The foundations of the formalistic approach is both in the economic sphere and, as considered in chapter 1.6, in the profession's historical focus on status and honour from the perspective of a white, middle or upper class, heterosexual male, where emotions or feelings are related to the female gender and inferiority with negative cultural capital[397]. Within this professional field, the narrow dissection of information to compartmentalise the legally relevant, from the legally irrelevant is culturally valued and clients, particularly those from impoverished backgrounds, find their own narratives, as well as themselves subordinated within a symbolically violent interpretative struggle. Whilst a number of academics and reports have highlighted and have been critical of how law school's perpetuate this notion of de-contextualised value neutrality, the case method approach to analysis is iterated and perpetuated in law school's and remains the dominant method of learning.

The chapter identifies alternative methods of learning, including the combination of CLS perspectives, with liberal education foundations in a clinical legal education approach. It also identifies different more progressive professional identities and the values, characteristics and dispositions that incorporate such identities, in contrast to the pre-dominant technocratic identity. A relational lawyering identity has been identified, together

[397] Margaret Thornton, (1996) *Dissonance and Distrust: Women in the Legal Profession* (Melbourne: Oxford University Press)*;* Sommerlad (n 243) 212-213.

with an approach of hybrid professionalism which incorporates both functionally specific formal and practical knowledge with a more subjectively substantive, personal, relational and emotion based logic. This research will examine the professional identities that emerge within a university LAC setting, away from the dominance of the economic sphere in practice, and examine how the students and supervisors make sense of their professional roles and identities. Recognising from a Weberian understanding that formalism will usually seek to dominate the substantive, this research analyses if the two spheres intertwine and interact, if at all, and the tensions, conflicts and dilemmas that emerge between these two seemingly dichotomous and diametrically opposed value spheres, when promoting a substantive relational approach within a technocratic formalistic field.

This thesis will therefore consider the following questions:

1. How do the participants make sense of their professionalism within the LAC setting?

2. What conflicts and tensions arise between substantive and formalistic logics in the participants sense making, how do they arise, why do they arise and what dilemmas to legal education and practice do they create?

CHAPTER TWO: METHODOLOGY

2.1 Introduction

2.1.1 Research Questions

Before discussing the ontological, epistemological or methodological approaches the research will adopt, it is necessary to consider the focus and purpose of this research. The research was primarily focused on the participants in a LAC based in a university in the north of England. The purpose of the research is to explore the cultural and individual meaning that the participants of a university LAC give to the work that they undertake and to answer the following research questions:

1. How do the participants make sense of their professionalism within the LAC setting?

2. What conflicts and tensions arise between substantive and formalistic logics in the participants' sense making, how do they arise, why do they arise and what dilemmas to legal education and practice do they create?

Whilst a number of categories of participants are involved in the LAC, such as solicitors, administrators, students, academic supervisors and clients, the research primarily focuses upon interactions between the two categories of students and academic supervisors.

2.1.2 Approach to the Research

Having decided to approach the research using a Bourdieusian, Weberian and epistemic cultures framework, it was incumbent on me to consider the philosophical and methodological direction that the research would undertake. This methodology chapter follows a logical order of ontology, epistemology, methodology, methods and sources of data, with each level acting as a building block towards the next level[398]. The approach proposed by Grix is demonstrated in the diagram below:

Ontology	Epistemology	Methodology	Methods	Sources
What's out there to know?	↓	↓	↓	↓
	What and how can we know about it?	↓	↓	↓
		How can we go about acquiring that knowledge?	↓	↓
			Which precise procedures can we use to acquire it?	↓
				Which data can we collect?

The interrelationship between the building blocks of research. Source: Figure adapted by Grix[399] from Hay's model[400].

[398] See Jonathan Grix, 'Introducing Students to the Generic Terminology of Social Research' [2002] Politics 22 (3) 175 179–181. DOI:10.1111/1467-9256.00173.
[399] ibid 180.
[400] Colin Hay, *Political Analysis. A Critical Introduction* (Basingstoke: Palgrave 2002) 64.

2.2 Philosophical Approach

2.2.1 Ontological and Epistemological Position

The researcher's ontological and epistemological positions are important to both the research undertaken and methodology of the research. Ontology represents the 'science or study of being', whilst epistemology is the 'the theory or science of the method or grounds of knowledge'[401]. The position adopted by the researcher should provide an 'answer to the question: what is the nature of the social and political reality to be investigated?'[402], as the social reality is intrinsically connected to the ontological claims and assumptions. As confirmed by Blaikie:

> '… claims and assumptions that are made about the nature of social reality, claims about what exists, what it looks like, what units make it up and how these units interact with each other. In short, ontological assumptions are concerned with what we believe constitutes social reality'[403].

The difficulty I faced with adopting a Bourdieusian approach to the ontological considerations of this research was that Bourdieu's theory acknowledges a subjective and objective consideration of both the 'inner' self and 'outer' social and how these shape reality[404]. Difficulty arose as ontological positions are roughly split into objective (i.e. positivist) and subjective (i.e. constructivist) approaches. For example, positivism 'implies that social phenomena confronts us as external facts' and sees organisations 'as a tangible object'[405]. This is not entirely dissimilar to Bourdieu's position relating to field, and this may

---

[401] Blaikie (n 63) 6.
[402] Hay (n 399) 63.
[403] Norman Blaikie, *Designing Social Research* (Cambridge: Polity 2000).
[404] K Maton, 'Habitus' in M Grenfell (Ed), *Pierre Bourdieu Key Concepts* (2nd edn, Acumen Publishing Limited, 2012) 49.
[405] Alan Bryman, *Social Research Methods* (3rd edn, Oxford University Press 2008) 18.

be the reason why some researchers applying a Bourdieusian framework adopted an objectivist or functionalist standpoint[406]. However, the Bourdieusian position taken with this research was that whilst organisations and culture were important they were not necessarily a stand-alone pre-given[407]. The field and Bourdieu's rules of the game are important but not in isolation from the habitus and agency of the participants. This created a positivist/constructivist dichotomy and whilst some constructivists are willing to consider the influence of organisations and cultures on personal agency[408], this is not without controversy, and many constructivists simply do not accept that constructivism acknowledges the importance of external structures[409]. My philosophical foundations based upon my theoretical approach, therefore needed to acknowledge both personal agency and the influence of the field as important, as the institutional structures and modes of approaches matter in relation to the maintenance and creation of the dispositions that form the actors' habitus.

I identified an alternative ontological and epistemological approach to the traditional positivist/constructivist dichotomy as critical realism. This approach has its theoretical

---

[406] Peter A Hall, 'Social Capital in Britain' [1999] *British Journal of Political Science* 29(3) 417; P Whiteley, (1999), 'The Origins of Social Capital' in Jan van Deth, Marco Maraffi, Ken Newton & Paul F Whiteley (Eds), *Social Capital and European Democracy* (London and New York: Routledge 1999) 25-44; D Stolle & T R Rochon, 'The Myth of American Exceptionalism' in in Jan van Deth, Marco Maraffi, Ken Newton & Paul F Whiteley (Eds), *Social Capital and European Democracy* (London and New York: Routledge 1999) 192-209. DOI:10.1111/1467-9256.00173.

[407] Bryman (n 404) 19.

[408] Judith E Sturges & Kathleen J Hanrahan, 'Comparing Telephone and Face-to-Face Qualitative interviewing: A Research Note' [2004] Qualitative Research 4 (1) 107-18; Howard S Becker, 'Culture: A Sociological View' [1982] Yale Review, 71 513.

[409] D Walsh, 'Sociology and the Social World' in Paul Filmer, Michael Phillipson, David Silverman, and David Walsh, *New Directions in Sociological Theory* (London: Collier-Macmillan 1972).

foundations in Roy Bhaskar's 'A Realist Theory of Science'[410] and allows for a passage between the empirical/objective and idealistic/subjective dichotomy[411], which whilst recognising both as phenomenally distinct, acknowledges the existence of both social structures and personal agency. It posits that whilst structures present conditions for the way that people live, agency creates causality for what happens[412]. Reality exists objectively and independently of our knowledge, but any knowledge of reality is conceptually mediated through theory. As confirmed by Archer *et al*.: 'critical realism claims to be able to combine and reconcile ontological realism, epistemological relativism and judgemental rationality'[413]. Therefore, as reality exists independently out of our epistemological view, and whilst acknowledging that knowledge of it is always fallible[414], critical realism allowed for the application of a theoretical conceptual approach to examine the underlying mechanisms in order to produce empirically observable structures, beyond the mere accumulation of facts and experiences. These generative mechanisms or 'hypothetical entities' were not directly observable however and could only be accessed through theory[415]. A critical realist approach therefore provided for a transition from the observed phenomena to the

---

[410] Roy Bhaskar, *A Realist Theory of Science* (Brighton: Harvester Press 1978). Although, this may have been heavily influenced by the criticism of positivism by Bhaskar's teacher, Rom Harre. See Rom Harré, *Principles of Scientific Thinking* (Chicago: University of Chicago Press 1970).
[411] Andrew Sayer, 'Alternatives and counterfactuals in critical social science' [1994] Thirteenth World Congress of Sociology, Bielefeld.
[412] Berth Danermark, Mats Elkstrom, Liselotte Jakobson and Jan C Karlsson, (2005) *Explaining Society. An Introduction to Critical Realism in the Social Sciences* (Routledge: London and New York 2005) 14. Danermark *et al*. have also commented upon how closely aligned this approach is to Pierre Bourdieu's writing: 5.
[413] Roy Bhaskar, 'General Introduction' in Margaret Archer, Roy Bhaskar, Andrew Collier, Tony Lawson & Alan Norrie (Eds), *Critical Realism: Essential Readings* (London: Routledge 1998) xi.
[414] Theories are often the best truth at the given time but can always be transcended with new theories and as described by Danermark *et al*. knowledge is theory-dependent, rather than theory determined. Danermark, Elkstrom, Jakobson & Karlsson (n 4111) 15, 23. See also Sam Porter, 'Critical Realist Ethnography' in Tim May (Ed), *Qualitative Research in Action* (Sage: London Thousand Oaks New Delhi 2002) 61.
[415] Bryman (n 67) 25.

generative structure[416] and an examination of how the underlying mechanisms of the social structure had consequences for both the conscious and subconscious action of individuals. As confirmed by Roy Bhaskar:

> "… people in their conscious human activity, for the most part unconsciously reproduce (or occasionally, transform) the structures that govern their substantive activities of production. Thus people do not marry to reproduce the nuclear family, or work to reproduce the capitalist economy. But it is nevertheless the unintended consequence (and inexorable result) of, as it is also the necessary condition for their activity[417].

Such actions based upon notions of 'false consciousness' or 'lack of consciousness' create a dialectical relationship between structure and action, which has the reciprocal effect of social action reproducing structures, which may be oppressive[418]. Critical realism therefore provides an instrument to reveal these generative structures and their relationship with human activity. Roy Bhaskar described the relationship between structure and action and how temporally the pre-existent structures are reproduced through social action:

> "… the existence of social structure is a necessary condition for any human activity. Society provides the means, media, rules and resources for everything we do… We do not create society… But these structures which pre-exist us are only reproduced

[416] Roy Bhaskar, *The Possibility of Naturalism: A Philosophical Critique of the Contemporary Human Sciences* (2nd edn, London: Harvester Wheatsheaf 1989).
[417] Roy Bhaskar, *Reclaiming Reality: A Critical Introduction to Contemporary Philosophy* (Routledge 1989) 80.
[418] Porter (n 413) 63. Sam Porter gives the examples of false consciousness such as 'a woman's place is in the home' or 'wages are fair exchange for labour' and differentiating provides 'I got married because I loved him' as an example of a lack of consciousness.

or transformed in our everyday activities; thus society does not exist independently of human agency… The social world is reproduced and transformed in daily life".

This relational approach between social structures and social action corresponded with a theoretical Bourdieusian lens and with his corresponding concepts of field, habitus, capital and doxa, as examined in the previous chapter. The consideration of generative structures and their connection with human activity also allowed for an examination of the formalistic and substantive relationship between, and influence of, Weber's value spheres and the participant's rationality for social action, together with an understanding of epistemic practice and the mechanisms for knowledge[419].

2.3 Methodology

2.3.1 An Ethnographic and Idiographic Approach

There has been much debate over whether ethnography, in particular, is a research methodology or a method[420]. This chapter will not add to the debate, other than to suggest that it is a style of thinking and doing and not just a technique[421] and therefore appropriate to consider, particularly following a consideration of philosophical foundations, for the methodology. The approach was linked to my epistemological and ontological beliefs and it was entirely for wanting to grasp the subjective meaning of social action and the cultural

[419] Jensen, Nerland & Enqvist-Jensen (n 114) 867.
[420] Paul Atkinson & Martyn Hammersley (1994) 'Ethnography and Participant Observation' in Norman K Denzin and Yvonna S Lincoln (Eds) *Handbook of Qualitative Research* (Sage Publications 1994) 248
[421] Giampietro Gobo, *Doing Ethnography* (Sage 2008) ch 2.

external influence of the field, that the research adopted an ethnographic[422] approach, with idiographic elements. Idiography was incorporated into the methodology as it took into account how messy and chaotic human emotion, thought and action could be and enabled me to adopt a subjective and interpersonal approach to the investigation[423] that examined the individual case and experience[424]. However, as the main focus of the research was the inter-relations between social structure, its generative mechanisms and the activity of individuals, ethnography was my main methodological tool for extracting, collecting and analysing the data.

Critical realism provided firm philosophical foundations for an ethnographic approach in line with Bourdieu's relational structures[425] and an examination of the social structures and their relationship with social action[426]. By undertaking both an ethnographic study observing the actors' behaviours and experiences within the cultural setting of the LAC, as well as an idiographic approach of interviewing the actors, the two approaches complemented each other and also provided a means of comparison for analytic purposes. For example, the research analysed both the participants' action and considered the 'what', 'when' and 'how' questions (through the ethnographic approach), as well as exploring the participants' thoughts and examining the 'why'.

---

[422] See Margaret Archer, 'Morphogenesis versus Structuration: On Combining Structure and Action' [1982] British Journal of Sociology 33(4) 455.See Claire L Decoteau, 'The AART of Ethnography: A Critical Realist Explanatory Research Model' [2016] Journal for the Theory of Social Behaviour 58. DOI. 10.1111/jtsb.12107.
[423] See Virginia Eatough and Wendy Stainton-Rogers, 'Interpretative Phenomenological Analysis' in Carla Willig, & Wendy Stainton-Rogers (Eds), *The SAGE Handbook of Qualitative Research in Psychology* (SAGE Publications Limited 2013) 183
[424] Gordon W Allport, 'The psychologist's frame of reference' [1940] Psychological Bulletin, 37 (1) 28.
[425] Porter (n 413) 70.
[426] ibid 53-72.

The ethnography considered not only the subjective individual meaning but also the cultural meaning of working in the LAC from the actors' perspective[427]. Through elucidating the culture from the individual attitudes and acts of the actors, it was possible to consider the generative structures within the LAC field and wider field of legal practice that influenced discussions and reflections upon cases. It was also possible to examine through the supervisor and student interaction, whether the actors adopted substantive ideologies towards the client and her case; the tensions between substantive and formalistic approaches and the strategies the actors adopted to cope with such conflicts. Whilst recognising that the relationship between action and structure is elaborate, the ethnographic approach allowed for consideration of the structures and actions that reinforced or undermined them through the *doxa*[428] that was advanced. It allowed for consideration of how the actors' individual actions maintained or sought to transform the social structures inherent within the fields that they operated within. Tim May set out the necessary requirements to elucidate a multi-layered social situation within an ethnographic study with critical realism as its foundational base:

1. "… a clear picture of the interactions of individuals, both at the level of action and motivation. Such a picture can emerge only through the utilisation of close observational techniques.
2. … theoretical work to explain why individuals' interactions take the patterns that are observed using those techniques.

[427] James P Spradley, *The Ethnographic Interview* (Holt, Rinehart and Winston 1979) 3. Spradley defines culture as 'the acquired knowledge that people use to interpret experience and generate social behaviour' [5].
[428] Bourdieu (n 69).

3. … acceptance of the existence of structured, but non-determining social relations”[429].

It was important therefore that the research method allowed for a proximate observation of the supervisor and student interactions in a number of different situations. When interpreting the data it was also necessary to view and interpret the data through a philosophical footing of critical realism and a Weberian, Bourdieusian and epistemic practice theoretical framework and lens, considering the underlying structures and generative mechanisms for social action.

Before commencing the research, I acknowledged that difficulties might arise from my position within the LAC field as Director of the LAC. Whilst as the researcher, I did not approach the research from a position of complete ignorance[430], I did approach the research from a position of power and a very specific value position. However, examining this particular LAC did hold particular advantages. I was effectively the gatekeeper to the LAC and its participants, so access to the field and participants was not problematic. I was also already an acknowledged member of this community and not seen as an outsider. However, I did adopt a reflexive approach to the research which was integral to my analysis.

[429] Porter (n 413) 71.
[430] Spradley (n 426) 4.

2.3.2 Uncomfortable Reflexivity

As recognised earlier, as a consequence of my position of power within the LAC as Director; my familiarity with the participants of the LAC; and having my own views on CLE, it was imperative that I adopted a reflexive approach to the research. I acknowledged the influence that my presence may have had upon the research outcome and reflected upon my own feelings in the data analysis and research outcomes. I rejected notions that it was possible to be completely neutrally detached in any research but it was possible to limit bias through reflexivity even in situations where I already played an active role within the field. As confirmed by Mason:

> "Qualitative research should involve critical self-scrutiny by the researcher, or active reflexivity. This means that the researcher should constantly take stock of their actions and their role in the research process, and subject these to the same critical scrutiny as the rest of their 'data'. This is based on the belief that a researcher cannot be neutral, or objective, or detached, from the knowledge and evidence they are generating. Instead, they should seek to understand their role in that process. Indeed, the very act of asking oneself difficult questions in the research process is part of the activity of reflexivity"[431].

In line with this approach, I decided to write the thesis in the first person and also to adopt the uncomfortable reflexivity approach advocated by Youdell[432] and Pillow[433]. Such an approach involved exploring the discomfort provoked by the telling of uncertain stories of

[431] Jennifer Mason, *Qualitative Researching* (2nd edn, London: Sage 2002) 7
[432] Youdell (n 2) 87-100.
[433] Pillow (n 2) 175-196.

the sort that are usually left untold about ethnography, its subjects and their encounters. This formed a separate but integrated dialogue to the rest of the research and my interpretation of the data (see appendices 10, 11 and 12) . By using reflexivity it was possible to see into the process of knowledge production by exposing my positionality as the researcher and LAC Director and through my re-encounters with the stories these assisted not only with my engagements in the field and with the data but also with my glimpses of the silenced familiar or as described by Youdell the 'uncanny'. The idea of 'uncanny' is taken by Youdell from psychoanalysis and considers the place of the unconscious and psychic processes such as 'recognition, identification, desire and abjection'[434]. As a consequence of my dual role within the field as both a researcher and the Director of the LAC and being involved with the constitution of the participants I was researching, I sought to reflect these constitutions in the data that was generated and in its analysis. By undertaking the 'uncomfortable reflexivity'[435] of being vigilant over my practices and their effects, including my discomforts, it was possible to glimpse the 'uncanny'. My research findings therefore split into 'ethnographic detail' and 'the reflective and the place of anxiety'[436]. The former is the information taken from the transcripts and field notes, and the latter provided my own reflective thoughts and feelings and how I related and interpreted these to my findings. By taking such an approach, the research engaged with practices and feelings outside of the ethnographic records and made such feelings and discomforts an insightful and important account of the research.

---

[434] Youdell (n 2) 89.
[435] Youdell (n 2) 87-100.
[436] Deborah P Britzman, *Lost subjects, contested objects: Towards a psychoanalytic inquiry of learning.* (Albany, NY: State University of New York Press 1998).

My first uncomfortable reflexive moment arose from my fear of sounding immodest and having to admit that whilst I was the researcher, I was also a research participant who had a major influence over the LAC, the participants within the LAC and the policies of the LAC, having written most of them myself. This uncomfortable reflexivity signified that I must accept that my feelings and ideas were relevant to this research and formed a part of the research. I also had to deal with observing and hearing both views that I agreed with and views that I did not. The uncomfortable reflexivity meant that whilst participants' views were recorded, my own reflections, feelings and views also took a place as a separate narrative within the research.

2.3.3 Rigorous Iterative Analysis of the Data and Spradley's Developmental Research Sequence Method

The first cycle of this research drew upon a carefully structured and rigorously iterative analysis of the data, which extracted the individuals from their social setting. It was an iterative process similar to the grounded theory approach advocated by Charmaz[437] and drew upon some of these elements. I applied an iterative approach, as I already had a theoretical framework for the study. My predominant reason for drawing upon this approach was as a consequence of my position within the LAC and served as recognition that I might have had preconceived ideas or prejudices, even subconsciously, in relation to the research that I undertook. I recognised the danger that with a preconceived theory or idea that the data could be made to fit the theory. My research method therefore started

[437] Kathy C Charmaz, *Constructing Grounded Theory* (London: Sage 2006).

with an initial line-by-line coding of the data[438]. By taking such an approach, I remained open to the data and the observation of any subtle nuances[439]. This also meant that any potential bias that I brought to the research was reduced, and lessened the likelihood of me superimposing any preconceived notions that I held upon the research[440].

Following my initial approach of line-by-line coding, the coding took a more focused method where I developed more selective and conceptual codes[441] using the most significant or frequent earlier codes from my earlier line-by-line coding. This iterative analytical process involved memo writing to catch thoughts, connections and comparisons and to crystallise questions and directions[442] (see appendix 4 for an example) and clustering to help map out my findings[443] (see appendix 7 for an example) and in particular the relationships between data. The analytical software NVIVO was used to assist in undertaking this research.

As the Bourdieusian framework of this research was relational and the purpose of the focused coding was to identify relationships between the data, I adopted Spradley's Developmental Research Sequence Method[444] to further analyse my findings from my focused iterative approach. This research method was primarily concerned with providing a

[438] Barney G Glaser, *Theoretical sensitivity* (Mill Valley, CA: The Sociology Press 1978).
[439] Charmaz (n 436) 50.
[440] ibid 50.
[441] Glaser (n 437).
[442] Charmaz (n 436) 72.
[443] ibid 86.
[444] Spradley (n 426).

relational theory of meaning whereby people order their lives in terms of what things mean[445]. As confirmed by Spradley:

> "Walk into a room and the furniture has a variety of meanings. Someone is sitting in a chair with his eyes closed and we take it to mean (s)he is tired or sleeping. Someone laughs in our presence and we seek its meaning; did she laugh at us or with us? A friend across the street raises her hand in our direction and her gesture means a greeting. A bell rings and we know its meaning: to end a class. The noon hour means eating lunch; certain foods mean breakfast or dinner or a holiday celebration. A friend appears in shorts and brightly colored shoes that tell us (s)he plans to run."

In accordance with Spradley's views, cultural meaning was explored through symbols[446] and his relational theory of meaning is based upon a symbols relationship to other symbols. For example, in the research a number of participants relayed a symbolic sense of belonging and affiliation with the LAC.

Spradley separated his categories of analysis into domain analysis, taxonomic analysis and componential analysis. Starting with domain analysis, a domain is a symbolic category that includes other categories, which share at least one feature of meaning. It can be separated into three elements:

- Cover term;

[445] ibid 95.
[446] 'A symbol is any object or event that refers to something'. Spradley (n 426) 95.

- Included terms; and
- Semantic relationship.

A cover term describes the name of a category, such as 'emotions' for example. Included terms are terms that are linked to the cover term such as embarrassment, feeling stupid and sensitivity. The semantic relationship is the relationship between the cover term and included term. So for example, embarrassment, feeling stupid and sensitivity 'is a kind of emotion'. It is important to acknowledge that every domain has a boundary, so for example a response from a research participant outlining a boundary might be "that isn't an emotion, that is a characteristic". Therefore this establishes that whilst embarrassment, feeling stupid and sensitivity were a kind of emotion and belong inside the domain, altruism may be a characteristic and fall outside of the domain. An example of a domain is outlined below[447]:

(Cover term)

EMOTION
/\
I
(Semantic Relationship)
'is a kind of'
I
/\
(Included terms)

Embarrassment

[447] This example and the future examples I give, relate to the cover term of the noun, 'emotion', and a 'strict inclusion' relationship. The 'included terms' are therefore nouns and identify types of emotions. However, with other relationships such as 'means-end', which will be addressed shortly, the cover terms and included terms will be predominantly verbs detailing actions, states or occurrences. My reason for using a 'strict inclusion' relationship is purely for simplicity of explanation.

Feeling stupid	Sensitivity

The principle outlined in this example applied to many other semantic relationships. Spradley proposed the following nine universal semantic relationships as most useful:

1. Strict inclusion	X is a kind of Y
2. Spatial	X is a place in Y, X is a part of Y
3. Cause-effect	X is a result of Y, X is a cause of Y
4. Rationale	X is a reason for doing Y
5. Location for action	X is a place for doing Y
6. Function	X is used for Y
7. Means-end	X is a way to do Y
8. Sequence	X is a step (stage) in Y
9. Attribution	X is an attribute (characteristic) of Y[448]

Having identified important themes in my line-by-line and focused coding, I then applied Spradley's method to identify cultural meaning through applying appropriate semantic relationships to the data. From this analysis, I conducted an in-depth analysis of a limited number of selected domains[449]. The ethnography did not therefore cover the whole of the workings of the LAC, as this would represent by far too large an area to cover in this thesis, but covered specific domains, such as the selection panel meetings, that arose from the research as important. This allowed me to study the relevant domains more intensively to

[448] Spradley (n 426) 111.
[449] Spradley (n 426) 133.

establish the participants' points of view[450]. This next stage, known as taxonomic analysis was to establish *all* the included terms in a domain. Therefore, in my previous example, I needed to list all the types of emotions in my taxonomic analysis. However, by doing so, I found further categories such as client or student advisor types of emotion, so the taxonomy began to look like the following:

Kinds of Emotions	Client	Embarrassment
		Feeling stupid
		Sensitivity
	Students	Anxiety
		Concern
		Empathy
		Sympathy

With this example, I found there were different types of emotions and thus took the taxonomic analysis to a further level. The purpose of taxonomies was to reveal the different levels from the cover term[451] and this was an ongoing approach throughout the research. Such an approach ensured the information gathered was representative of the participants own views. Through considering both direct and contrast questions, I verified differences and similarities between included terms. The differences in particular that emerged

[450] ibid 134.
[451] ibid 138.

represented components of meaning and through componential analysis all the contrast was organised into a systematic paradigm[452] identifying any missing contrasts and setting out the dimensions of contrast and components of meaning for a contrast set. Through setting out the components of meaning, it was possible to discover the different attributes of agents and phenomenon within the LAC field. A very basic example of a componential analysis is provided below for the cover term of emotions:

CONTRAST SET	**DIMENSIONS OF CONTRAST**					
	Embarrassment	Feeling stupid	Sensitivity	Anxiety	Concern	Empathy
Clients	Yes	Yes	Yes	Yes	No	No
Students	Yes	No	Yes	Yes	Yes	Yes
Solicitor Supervisors	No	No	No	No	Yes	No
Non-solicitor Supervisors	No	No	?	Yes	Yes	Yes

Through this example dimension of contrast, it was also possible to move from binary answers to develop further questions such as what type of emotions the different categories of participants were demonstrating. Such a question consequently developed further categories. The paradigm also identified if information was not known, such as did

[452] Spradley uses the concept of paradigm as it was originally used in linguistic analysis, not in the broader sense of "world view" made popular by Thomas Kuhn in his *The Structure of Scientific Revolutions*. Spradley (n 426) 221.

non-solicitor supervisors demonstrate the emotion of sensitivity, and this was a question that would need to be addressed.

The analytical software program NVIVO was used for the domain, taxonomic and componential analysis[453].

2.3.4 A Hybrid Professional Framework Analysing Epistemic Practice and Applying Dilemma Analysis

2.3.4.1 A Hybrid Professional Methodology

My research questions specifically required an inquiry into how the students and supervisors made sense of their professionalism within the LAC. Gitte Sommer Harrits when considering the concept of hybrid professionalism applied a three-part methodology for analysing the 'why, what and how' of professionalism:

- The participant's identity (why am I doing this?);
- Their role (what am I doing?); and
- The work and decisions of the participants (how do I do this?)[454].

In the context of professional identity, the research considered how the LAC participants saw themselves and how they described their own professionalism. In accordance with Bourdieu's theory of habitus, identity related to how an individual saw herself through her

[453] Nancy L Leech & Anthony J Onwuegbuzie, 'Beyond constant comparison qualitative data analysis: Using NVivo' [2011] School Psychology Quarterly, 26(1) 77.
[454] Harrits (n 390).

social relations, groups and contexts[455]. Therefore, professional identity related to how the individual saw herself as a professional in relation to her role and the work that she undertook. Harrits suggested a consideration of "how does the professional describe herself as… [a student advisor]? What does she like about her job, what is she preoccupied with and what does she think is her own special force in doing her job?"[456] Therefore, when analysing this question, and in accordance with Bourdieu's theory of habitus, Spradley's semantic relationships for rationality (X is a reason for doing Y) and attributes (X is an attribute (characteristic) of Y) were applied. It was also be possible to identify different types of participant identity (X is a kind of Y), according to the attributes displayed.

These considerations were placed within a framework examining how the participants expressed their perceived relationship with the clients and the knowledge, goals and experiences they considered important for the role. Through applying such a framework, it was possible to evaluate the student advisors' perceptions of their relationship with the client, together with the knowledge they saw as integral to their student advisor identity, through the research method's theoretical lens.

In contrast to professional identity, Harrit's description of professional role was a more stabilised task, position or function and related to what the participants were supposed to

[455] Richard Jenkins, *Social identity* (London: Routledge 2008); Gerry McGivern, Graeme Currie, Ewan Ferlie, Louise Fitzgerald, & Justin Waring (2015) 'Hybrid manager-professional's identity work: The maintenance and hybridization of medical professionalism in managerial contexts' [2015] Public Administration, 93 (2) 412.
[456] Harrits (n 369) 8.

do[457]. This was considered within the context of the participants' relationship with the client and their use of knowledge and authority. To this end, Spradley's means-end (X is a way to do Y) and cause-effect semantic relationship (X is a result of Y, X is a cause of Y) proved to be useful.

The final consideration of Harrits' methodology provided for the participants' sense making from what they did (X is a step (stage) in Y; and X is a way to do Y) and how they reasoned and reached specific decisions[458] and their rationality for making the decisions (X is a reason for doing Y) (See appendix 3 for an example). When considering the rationality for making decisions, Weber's rationality for social action through his concepts of wertrational and zweckrational and an examination of whether decisions were made based upon an instrumentally calculative rationality or based upon personal values proved to be helpful.

2.3.4.2 Epistemic Practice – A Methodology

In considering the final element of Harrits three stage analysis of professional sense making regarding work and decisions of the participants and 'how they do what they do', I incorporated Jensen, Nerland and Enquvist-Jensen methodology of analysis, examining the epistemic practices undertaken by the participants involved[459]. As outlined in the literature review, epistementalities dovetails with Bourdieu's relational concepts, particularly *doxa*.

---

[457] Vincent Dubois, *The bureaucrat and the poor. Encounters in French welfare offices* (Farnham: Ashgate 2010); Parsons (n 31).
[458] Peter Hupe, 'Dimensions of discretions: Specifying the object of street-level bureaucracy research' [2013] Der moderne staat – Zeitschrift für Public Policy, Recht und Management 6(2) 425.
[459] Jensen, Nerland & Enqvist-Jensen (n 114) 867–880.

Through adopting it, this allowed for a consideration of the relationship between historical knowledge, evolving institutional arrangements and the students' experience, when I analysed the mechanisms of knowledge and how these helped facilitate enrolment into the LAC culture[460]. The approach also fitted in with a Weberian consideration of the influence of the formalistic and substantive spheres and my critical realist philosophical outlook, which concerned the generative mechanisms that influenced formalistic structure and individual agency.

The analysis involved examining the domain of specialised knowledge and identifying how participants entered into these domains. It complimented and built upon Spradley's domain analysis and identified the special domains, the reasons that specialised knowledge was acquired, and the ways that this was acquired. This theoretical lens allowed me to examine how the students encountered the discourse of the different fields and adapted their way of thinking, as they developed their understanding of the field[461]. Through a consideration of this trajectory, I explored the principles that guided the students' entry into particular knowledge fields and how they participated[462]. These 'machineries of knowledge construction' helped to investigate the logic of how the knowledge came into being and how it was circulated and recognised within the field. Through a detailed consideration of the tools, artefacts and institutional arrangements, together with the specific strategies, visions and procedures I examined 'how the participants knew, what they knew'. Exploring epistemic practice involved considering what the participants *did* in their problem solving,

[460] Ibid 867.
[461] Janet G Donald, *Learning to think: Disciplinary perspectives* (San Francisco: Jossey-Bass 2002); Mertz (n 29).
[462] Johan Muller & Michael Young, 'Disciplines, skills and the university' [2014] Higher Education, 67 (2) 127.

through a focus upon how they constructed knowledge through acts such as exploration, specification and justification[463].

Whilst epistemic practice represented a consideration of how knowledge was developed and shared within the field, epistementalities required a consideration of the visions of knowledge and how the participants specifically reasoned and understood problems and collected beliefs within the field and how this understanding was mediated through supervisors, tasks and texts. This exposed what the participants saw as meaningful and relevant, together with the *doxa* of the field.

Both the concepts of epistemic practice and epistementalities are inter-relational[464] but through distinguishing them, it was possible to consider the mechanisms of enrolment. Epistementalities assisted in examining the way that the participants reasoned and understood problems, whereas epistemic practice was focused upon analysing what the participants *did* and how they went about doing it. This methodological framework was particularly useful as the lifetime of a case in the LAC had a specific structure of meetings and interactions between the supervisor, student advisors and client i.e. pre-interview; client interview; post-interview; selection panel meeting; and reflective meeting.

[463] Jensen, Nerland & Enqvist-Jensen (n 114) 870.
[464] ibid 869.

2.3.4.3 Dilemma Analysis

Through this whole process, I aimed to prepare a plausible document of practical value that could be used in further discussions with students, academics and professionals, which highlighted the tensions that arose in a LAC. I analysed my findings using Winter's 'dilemma analysis' approach[465]. Such an approach was a logical further step from Spradley's domain, taxonomic and componential analysis, within a hybrid professional framework, where conflicts between the substantive and formalistic spheres had arisen. Dilemma analysis is loosely based upon the sociological conception of 'contradiction'[466] and this form of analysis also fitted in with the Bourdieusian outlook of the research relating to the influence on social situations of the habitus, leading to contradictions between individual viewpoints. As confirmed by Winter:

> "Social organisations at all levels are constellations of (actual or potential) conflicts of interest; that personality structures are split and convoluted; that the individual's conceptualisation is systematically ambivalent or dislocated; that motives are mixed, purposes are contradictory, and relationships are ambiguous; and that the formulation of practical action is unendingly beset by *dilemmas*"[467].

For a number of opinions provided within the interview, there were opposing points of view. Therefore the analysis focused not on the opinions of the participant but the *issues* that arose from these opinions. Statements and transcripts were further analysed into

[465] Richard Winter, (1982) '"Dilemma Analysis": A contribution to methodology for action research' [1982] Cambridge Journal of Education, 12 (3), 161. DOI: 10.1080/0305764820120303.
[466] ibid 165.
[467] ibid 168.

expressions of 'dilemma, tension or contradiction', which were then further classified as 'Ambiguities, Judgements, and Problems'[468]. Ambiguities are described by Winter as '... background awarenesses of inevitable and deep-seated complexities of the situation, which are tolerable because they are not *directly* linked with any required courses of action'[469]. Judgements and problems are however linked with further courses of action. As confirmed by Winter, judgements are 'those courses of action which are rendered complex, but as it were 'interesting' by the tensions and ambiguities in the situation'[470]. However, importantly and fundamentally they were not viewed negatively.

Problems were however viewed negatively and considered troublesome, as they are 'those courses of action where the tensions and ambiguities actually seemed to undermine the validity, the rationality of the action required'[471]. Winter split the issues into perspective documents and in the case of his own research the perspectives of the students, teachers, supervisors and pupils. For illustrative purposes, an extract from Winter's teachers' perspective document is outlined below:

A) AMBIGUITIES

The Nature of Teaching

a. On the one hand teaching is an art, depending on instinctive feelings and reactions, which *cannot* directly be taught;
   On the other hand teaching is a science, depending on detailed skilful techniques, which *can* directly be taught.

B) JUDGEMENTS

Concerning How to Help Students

a. On the one hand teachers have superior experience, expertise and knowledge of the children (and so can give *direct* advice);

[468] ibid 169.
[469] ibid 169.
[470] ibid 169.
[471] ibid 169.

On the other hand, teachers and students are individuals and a teaching style is a highly personal matter (so that any advice must be *adapted* by the student).

C) PROBLEMS

Concerning the Gap between College Courses and Real Teaching

a. In college courses students learn about theories of education being taught them by theoretically orientated lecturers;

BUT

The craft of real classroom teaching is learned in schools by observing practitioners at work and by experience of a wide range of practical classroom situations.

Extract taken from Winter (n 434) 171-173.

Having adopted this approach to my own research, it enabled the consideration of the final research question and the conflicts and tensions that arose between substantive and formalistic logics in the participants' sense making, how they arose and the dilemmas they created (See Appendix 1 for the complete Dilemma Analysis document).

2.4 Ethics Approval

Before detailing the methods that were used for this research, it was of utmost importance to consider the question of ethics. The consideration of ethics in social research is crucial as by its very nature, the research involves human lives and had the potential to impact directly and indirectly upon human lives. It was not an experiment inside a laboratory but involved real people with real emotions and real feelings.

In accordance with university regulations, ethics approval was sought for this research from the Business School's Ethics Committee through completion and submission of a formal application on 8th September 2015. Unconditional and outright approval to the research was given by the committee on 1st October 2015.

My philosophical approach to ethics was a combination of deontological and virtue based[472] ideologies. I acknowledged my duty to follow the guidelines and ethical codes but in less clear areas adopted a virtuous approach considering the emotions with which I was performing an action, the motivation behind the action, the manner in which it was performed and the impact it may have upon others. I also drew upon Aristotle's helpful concept of phronesis or practical wisdom to solving ethical issues through the consideration and identification of the golden mean between extremes. The golden mean is the balance between deficiency and excess. For example, in the case of the deficiency of cowardice and excess of rashness, the golden mean would be courage. A virtue based approach provided a framework to consider and evaluate ethical issues as and when they arose and to also consider my reasons for taking or not taking an action.

Diener and Crandall[473] helpfully provided four key categories for considering potential ethical issues and it is within these categories, that I addressed any ethical concerns relating to this research and the appropriate measures to take. The four areas are:

[472] Aristotle, Harris Rackham (trans) (1996) *The Nichomachean Ethics* (Wordsworth Editions Limited).
[473] Edward Diener & Rick Crandall, *Ethics in Social and Behavioural Research* (Chicago: University of Chicago Press 1978).

1. Harm to participants;
2. Informed consent;
3. Privacy; and
4. Deception / Open approach.[474]

2.4.1 Harm to Participants

I initially identified four categories of potential research participants:

- Students;
- Academic Supervisors;
- Legal professionals; and
- Clients.

The latter category of clients was identified as the most vulnerable. Many clients of the LAC are from disadvantaged backgrounds and are facing life changing issues such as being deprived of contact with their children or losing their home. Whilst permission was requested and given to include clients in the research, upon reflection, and as it became clearer that the focus of my research would be the students and supervisors, I took the decision that I would take an approach that provided minimal disruption to the clients. I therefore decided that I would not sit in on or record the client interview. However, I believed it important to inform the clients about the research, as it would involve recording meetings where their case would be discussed. Whilst clients do, as part of their involvement with the LAC, give permission or not for their case to be used for educational

[474] ibid.

and research purposes, I thought it important that they were fully aware of the nature of my research and were able to make an informed decision whether they would permit the recordings of discussions about their case to be analysed and potentially form part of my thesis. It was of course made clear that in such circumstances the clients', as well as other participants', anonymity would be preserved. A full and detailed information sheet about my research was therefore provided to all clients which explained that discussions about their case may be recorded and written consent was requested, making clear to the clients that participation was voluntary and there was no obligation to consent.

It was also recognised that I approached the research in a dual role as both researcher and Director of the LAC. I therefore made clear to all student and academic supervisors that whilst honesty and candidness were encouraged and information provided should not adversely impact upon their role and involvement in the LAC, if breaches of protocol or procedure were witnessed, then I would be obliged to deal with them in my capacity as Director.

Finally, on this point, as the Director of the LAC, I recognised that in some situations where I was observing the meetings, the research participants would ask me for assistance or guidance or there might be issues that I was aware of that could help the client. As a consequence of my position, I believed it was ethical for me to provide my comments in such an instance. This position arose on a couple of occasions, notably in one instance, where I was asked for guidance and my guidance did shift the pattern of the discussion. The students and supervisor in this case asked me for my advice when they were deciding that

the client did not have a case and there was little they could do. I pointed out that advising the client of her position would be important, so the client could understand the issues and why she did not have a case. This led to a discussion particularly with one student recognising the need for the client to get closure. However, whilst my intervention did influence the direction of conversation, this research is not carried out in a vacuum and as Director of the LAC, I recognised that I was also an active participant in this research. Therefore, this intervention and other similar interventions were justifiable on both ethical and research grounds particularly when my advice was requested and would assist in the service provided to the client.

2.4.2 Informed Consent

An information sheet was provided to all participants informing the participants of categories including:

- Who I was;
- What the research was about;
- What was involved as a participant;
- Participation was voluntary and there is no obligation;
- How data would be stored;
- How anonymity would be preserved;
- How the participant's input and ideas for the research was welcome;
- That the participant could request reports, academic papers and/or the thesis for the research when completed.

A consent form was also prepared where the clients signed and indicated, by ticking a box, that they had read and understood the information sheet; understood that their participation was voluntary; that information may be used in future reports, articles or presentations; that their name would not appear in any reports, articles or presentations; that they agreed to take part in the study; and that the researcher agreed to treat all information as confidential.

2.4.3 Privacy

The preservation of anonymity was recognised as essential to the prevention of harm to both the direct and indirect participants to this research. The privacy of the participants was therefore respected and all data was and still is kept confidential and stored on a university protected drive. Paper records were stored in the researcher's locked office and only anonymised paper records were securely stored at the researcher's home. In relation to the preservation of anonymity, and whilst her involvement may have contributed greatly to the research, I took the difficult decision of not including the LAC Administrator in this research. As the LAC had only one longstanding LAC Administrator, she would be easily identifiable and it would not be possible to preserve her anonymity.

2.4.4 Open Approach

I adopted an open approach to my research, informing all participants of the nature of my research. When I was involved as an observer, interviewer or facilitator all participants (including the client to which the information related to) were informed that I would be recording data and their consent was obtained on all occasions.

2.5 Method

Having considered 'what there is out there to know'; 'what and how we can know about it'; and 'how we can go about acquiring that knowledge'; the next stage of this chapter will consider the procedures I used to acquire it.

This research took an ethnographic approach; therefore as with nearly all ethnographic approaches; the research methods involved participant observation and interviews. The research method also included focus groups consisting of current and former LAC students.

2.5.1 Participant Observation

Participant observation is an essential element of any ethnographic research. To ensure the precision of the data recorded, and whilst field notes of observations were kept, meetings between academic supervisors and students were audio recorded and transcribed. Whilst I recognised this may conflict with Glaser's[475] 'pure' approach, where he suggested that no audio devices should be used, I was not adopting a pure grounded theory approach and was only drawing upon a similar iterative approach for my initial analysis of data. Glaser's objections were also raised in the late twentieth century and the advancement of technology since then has been immense meaning audio devices have become much smaller and the use of technology is much more accepted within society. By recording the audio discussions, I had the opportunity to focus on observing the non-verbal, whilst still

[475] Barney G Glaser, *Doing Grounded Theory* (Mill Valley: Sociology Press 1998).

retaining an accurate record of the spoken. Heritage observed that transcribing has a number of other advantages over note taking, which I found to be useful:

- It helps to correct the natural limitations of our memories and of the intuitive glosses that we might place on what people say in interviews.
- It allows more thorough examination of what people say.
- It permits repeated examinations of the interviewees' answers.
- It opens up the data to public scrutiny by other researchers, who can evaluate the analysis that is carried out by the original researchers of the data.
- It therefore helps to counter accusations that an analysis might have been influenced by a researcher's values or biases.
- It allows the data to be reused in other ways from those intended by the original researcher – for example, in the light of new theoretical ideas or analytic strategies.[476]

In order to consider what would be recorded, it was necessary to establish the student and academic supervisor contact in the LAC. The main point of contact with clients in the LAC was through student appointments with clients and drop in sessions with specialist solicitors. The student appointments consisted of two student advisors and a supervisor meeting with a client to discuss their problem. The students led the interview and no advice was permitted in the interview. Prior to the interview, the students were given notification of the client's legal problem, undertook research and prepared questions, then met with

[476] John Heritage, *Garfinkel and Ethnomethodology* (Cambridge: Polity 1984) 238.

their academic supervisor to discuss their preparation and the forthcoming interview. Following the client interview, the students reflected upon the interview in a post-interview meeting. A date was then set for a selection panel meeting. The selection panel consisted of two other students and another supervisor and the two students who interviewed the client presented and discussed their case with the selection panel, which assessed the needs of the client (for help and assistance) and the risk of taking the case on. The selection panel then decided if this was a case in which it was appropriate for the students to provide advice. If the case was accepted, the students aimed to provide a full and detailed written letter of advice within 14 days of the client meeting. If the case was rejected by the selection panel, the students were required to try to find help for the client elsewhere and to signpost the client to other services. Following the completion of the letter of advice, the students then had individual reflection meetings with their supervisor on the case and the case was then closed. The process for the appointments is summarised in the following diagram:

APPOINTMENT PROCEDURE

Details of client's problem passed to two students and a supervisor

\/

Students undertake preparation and research

\/

Students meet with supervisor and discuss preparation

\/

Students lead meeting with client

\/

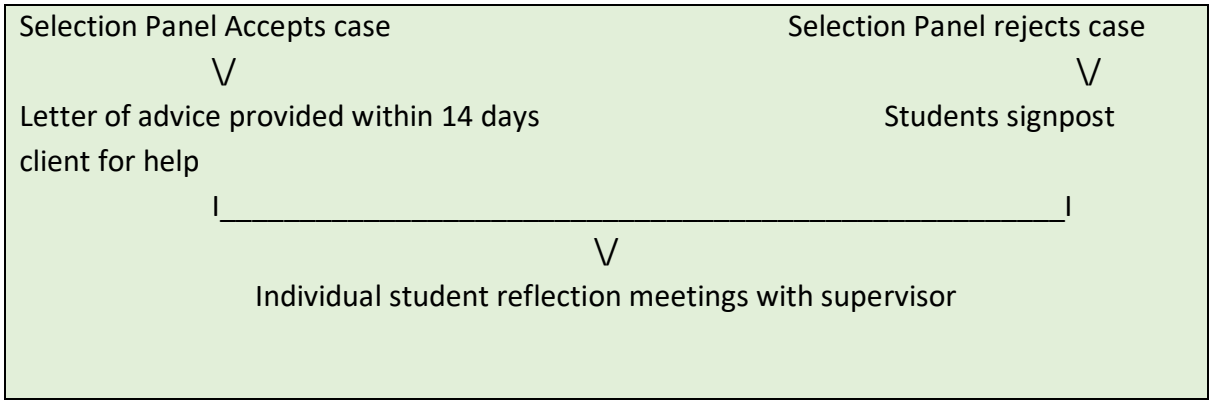
Students have a post-interview meeting with supervisor

\/

Selection panel meeting

_____ I_____

\/ \/



The drop in sessions were led by a solicitor in a specialist area of law on one afternoon per week and no appointment was needed. Clients were seen on a 'first come, first served' basis and advice was given by the solicitor in the meeting, with a student usually adopting a passive role; albeit the student and solicitor would sometimes discuss the case following the client leaving.

As recognised earlier, in the ethics section of this chapter, the focus of the research is on the students and academic supervisors' interaction and the clients that were seeking the help of the LAC were often vulnerable and in desperate situations. Therefore, I decided to restrict the impact of my research on the clients involved and limited my observations to the meetings not involving the client.

The ethnographic focus of the research was how the participants (re)negotiated meaning at the margins of practice[477] and what they perceived as 'good practice'. This was undertaken

[477] Silvia Gherardi, 'Professional knowing-in-practice: rethinking materiality and border resources in telemedicine' in Tara Fenwick & Monika Nerland (Eds), *Reconceptualising Professional Learning*. (Routledge 2014) 11-23.

through an observation of the participants' activities and discussions within the LAC at the margins of practice (learning; theorising in practice; performing of a professional self and of a community of professionals)[478]. This approach is in line with Gherardi's 'knowing-in-practice concept', which focuses on the socially shared and that which allows for the reproduction of practice. Applying Gherardi's theoretical concept, the focus in the research was the LAC participant's discursive communication about practice, where the students and supervisors theorised about what they did, how they did things and their beliefs that informed the doing through the mutual exchange of knowledge. This approach also linked in with the Bourdieusian theoretical concept of habitus and how habitus is acquired through past and present experiences. Through such discussions, the students developed a sense of meaning and the research examined what meaning the students and supervisors gave to the work that they undertook. As confirmed by Gherardi:

> "At the margins of the practice the production and circulation of knowledge takes place in the form of a reciprocal and interwoven process of learning/teaching"[479]

The research also considered the border resources[480] which furnish the socially shared significance given to particular actions/artefacts or 'symbols' by examining the unintentional items of information that become meaningful. This approach also fits in with the cultural importance of symbols taken in this research particularly through adopting Spradley's

[478] ibid 22.
[479] Gherardi (n 476) 20.
[480] John S Brown & Paul Duguid, 'Borderline issues: Social and Material Aspects of Design' [1994] Human-Computer Interaction 9 3.

developmental research sequence methodology[481] together with the influence of the field and the formalistic and substantive spheres.

Given my approach and my reluctance for the research to impact upon the client experience, I decided to sit in and audio record post interview meetings, selection panel meetings and student reflection meetings. This approach meant that the impact on the client was kept to a minimum and it was possible to acquire prior consent from the client before the meetings were observed. It was also possible to observe the students and supervisors discussions about the case and also their discussions about other issues on the margins of practice within the context of these meetings. It was decided that whilst it might be useful to hear discussions between solicitors and students in the context of the drop in sessions, little or no relevant discussion would be made between the solicitor and student due to the busy nature of the sessions and the practicalities would be far more difficult and far more disruptive to the service being provided. In relation to the access to the student and supervisor meetings, as Director of the LAC and gatekeeper to the LAC, I did not have the same obstacles as others researchers may have experienced, in trying to negotiate my presence other than obtaining the consent of the participants.

2.5.2 Interviews

Interviews can play an important role in both ethnographic and particularly idiographic research. I wanted to ensure that an ethnographic and idiographic focus within a

[481] Spradley (n 426) 95.

Bourdieusian framework was retained and the questions related to the meaning that the participants gave to their work within the LAC. I therefore prepared specific questions and took a semi-structured approach. However, in line with my methodological approach, I did not adopt a rigid stance and I retained some flexibility to discuss issues further that I had not anticipated. As confirmed by Beardsworth and Kiel when discussing their interviews:

> '[Interviews were]... guided by an inventory of issues which were to be covered in each session. As the interview programme progressed, interviewees themselves raised additional or complimentary issues, and these form an integral part of the study's findings. In other words, the interview programme was not based upon a set of relatively rigid pre-determined questions and prompts. Rather, the open-ended, discursive nature of the interviews permitted an iterative process of refinement, whereby lines of thought identified by earlier interviewees could be taken up and presented to later interviewees' [482] .

The questions I prepared helpfully provided a logical structure for the interview and also meant I was addressing my main research question. Interviews were arranged in the LAC setting and in one of the interview rooms used by students for interviewing clients. This was an environment where the students were acquainted with and I hoped would feel comfortable. It was also quiet and I thought important as the students were discussing their experiences in this field. My interviews were semi-structured and whilst some questions were prepared following Spradley's recommendations for ethnographic interviews[483], other

[482] Alan Beardsworth & Teresa Keil, 'The Vegetarian Option: Varieties, Conversions, Motives and Careers' [1992] Sociological Review, 40 253 261-2.
[483] Spradley (n 426) 83-91.

unscripted questions arose as unanticipated topics were discovered. Ethnographic questions included:

- Grand tour questions: *"can you just take me through the legal advice clinic. Like I've said, just imagine that I don't know anything about the legal advice clinic and just take me through it, what it's like, what I would see if I went into the legal advice clinic and walked around?"*;
- Typical grand tour questions: "*describe me a typical morning or afternoon in the Legal Advice Clinic.*";
- Specific grand tour questions: "*can you describe what happened the last time you came into the Legal Advice Clinic from the time you came in to the time you left?*";
- Experience questions: "*you have probably had some interesting experiences in the legal advice clinic, in all the time that you have been in here, could you tell me about any of them?"*;
- Example questions: *"can you give me an example of one* [a client interview] *that's gone well?*";
- Hypothetical situations: *"if I listened to some student advisors talking amongst themselves. I'm a fly on a wall, I'm secretly there, they don't know I'm there. What would I hear?"*

I also asked a number of questions relating to the Bourdieusian and Weberian theoretical framework of this research. Questions included:

- "*why did you apply to be a student advisor?*";

- *"what would you think would be the good qualities of a student advisor? Give me an example of what you think would be a good student advisor in the legal advice clinic?"*;
- *"you can tell me as much or as little as you like but, tell me a little bit about your family?"*.

The students chosen for the two interviews were chosen by me upon the basis that they would shortly be graduating and this was my last chance to interview them as students. They had both displayed, in my opinion, good aptitudes whilst working in the LAC and had both volunteered in the LAC for at least two academic years. Whilst I appreciated this may demonstrate bias on my part with my preconceived notions, they were both interviewed as this was the last opportunity to speak with them before they graduated and as they had both proved to be a success in the LAC, albeit through my own necessarily biased perception of what success would look like. Most importantly, I wanted to hear their story.

2.5.3 Focus Groups

I initially decided to undertake focus group meetings of current and former students to explore the group's joint construction of meaning[484] with questions constructed on a semi-structured basis. I had decided the research would adopt the soft systems methodology of a rich picture approach[485], which I had used effectively on previous related published research[486]. This approach was effective to help and encourage participants to reveal

[484] Alan Bryman, *Social Research Methods* (Oxford: Oxford University Press 2001) 474.
[485] Peter Checkland & Jim Scholes, *Soft Systems Methodology in Action* (Wiley 1990).
[486] Drake, Taylor & Toddington (n 288).

thoughts and views that may not be immediately apparent[487] and acknowledged social reality as a complexity of multiple interacting relationships and connections[488]. Through drawing pictures and presenting and discussing the ideas outlined in the pictures as a group, holistic thinking was encouraged and the conversation arising from the discussions was just as important as the pictures produced in the analysis of the data[489]. However, in September 2016, I was fortunate enough to attend a voluntary staff development course for experimental teaching at the University of Huddersfield with Ola Aiyegbayo. This highly innovative session, incorcorporated using LEGO® SERIOUS PLAY® methodology[490] as a method to enhance learning and particularly reflective practice[491]. Within the session, I constructed LEGO® models representing metaphoric stories of my experiences and perceived identities[492]. I was taken aback by how effective this kinaesthetic method was in conceptualising complex abstract thoughts[493], tacit hidden experiences[494] and exposing emotional issues[495]. I therefore decided that with my first research question focusing upon professional sense making, this methodology provided an ideal platform to uncover further information on the student advisors perceived professional identity and role. Further by

---

[487] ibid.
[488] Checkland & Scholes (n 484) 45.
[489] ibid 16.
[490] LEGO® SERIOUS PLAY®, The science of LEGO® SERIOUS PLAY® (Enfield, CT: Executive Discovery LLC 2006).
[491] Mary Anne Peabody & Susan Noyes, 'Reflective boot camp: adapting LEGO® SERIOUS PLAY® in higher education' [2017] Reflective Practice, 18 (2) 232 233. DOI: 10.1080/14623943.2016.1268117.

[492] Yana Wengel, Alison McIntosh & Cheryl Cockburn-Wootten, 'A critical consideration of LEGO® SERIOUS PLAY® methodology for tourism studies' [2019] Tourism Geographies 3-4. DOI: 10.1080/14616688.2019.1611910; See also David Gauntlett, *Creative explorations: New approaches to identities and audiences* (London: Routledge 2007); David Gauntlett & Peter Holzwarth, 'Creative and visual methods for exploring identities' [2006] Visual Studies, 21(1), 82. DOI:10.1080/14725860600613261; & Wen-Chih Tseng, 'An intervention using LEGO® SERIOUS PLAY® on fostering narrative identity among economically disadvantaged college students in Taiwan' [2017] Journal of College Student Development, 58(2) 264. DOI:10.1353/csd.2017.0019.

[493] LEGO® SERIOUS PLAY® (n 459) 6.
[494] Wengel, McIntosh & Cockburn-Wootten (n 491) 16.
[495] Peabody & Noyes (n 490) 237.

engaging with this seemingly paradoxical description of a serious/play methodology, and using a playful creative method to uncover emergent metaphorical stories, this would provide for an environment where participants could feel less pressure and more comfortable in discussing identities and experiences, together with the tensions and conflicts that arose.

The LEGO® SERIOUS PLAY® methodology provided an inclusive experience for participants, and particularly the more inhibited participants, giving them time to collect their thoughts whilst building their LEGO® SERIOUS PLAY® model[496] and using the model as an aid to their description and discussion. The methodology is founded upon Papert's theory of constructionism[497] where learning occurs through individuals constructing models external to themselves[498]. Through 'thinking through our fingers' Papert & Harel argued that different thought patterns were engaged, capturing the participants' creativity and imagination, using tangible objects to solidify abstract ideas and to take account of the cognitive, social and emotional[499].

Twelve students were involved in the three LEGO® SERIOUS PLAY® focus groups. The focus groups were delineated by the students' academic stage of learning, comprising of second, third and fourth year law students. The year two students were still in their LLB (Hons)

[496] Peabody & Noyes (n 490) 239.
[497] Seymour Papert & Idit Harel, *Situating constructionism* in Seymour Papert & Idit Harel (Eds.), Constructionism. (Ablex Publishing Corporation 1991).
[498] P Kristiansen & R Rasmussen, *Building a better business using the Lego serious play method* (Hoboken, NJ: Wiley 2014).
[499] Papert & Harel (n 496).

academic stage of learning. The year three students comprised of those who were undertaking the final year of their three year LLB (Hons) undergraduate degree and those on the third year of a four year course combining both the LLB (Hons) undergraduate degree and the Legal Practice Course. The year four students were all taking the Legal Practice Course element of the degree and had completed the academic stage of learning for the LLB (Hons).

Groups were deliberately kept small to encourage interaction. Four students were involved in the year two focus group; three students were involved in the year three focus group and five students in the year four group. This size was considered appropriate as higher numbers could result in a reluctance of members to discuss personal issues and/or difficulties in stimulating conversation[500]. Further, it was decided on a practical level, as the focus group was being audio recorded, the higher the numbers involved the more difficult it would be to differentiate between different voices when transcribing. All students were chosen randomly from each year group through the allocation of a number to all the student advisors in that year and through using a computer random number generator.

Based upon the session I had undertaken before, I started with a brief presentation on storytelling and explained how as story consumers, we made sense of the world through our stories. I explained the LEGO® SERIOUS PLAY® methodology and how it had been originally designed to enhance business innovation and performance. I commented how the LEGO®

[500] Bryman (n 483) 479-480.

building was both a cerebral and experiential exercise and set out the guidelines to the sessions, which would include me setting them a challenge, the students building a model and sharing their story and I and the other participants then asking questions about their model.

The participants were encouraged to think with their hands, to embrace the time and brick constraints and I emphasised artistic perfection was not the goal of the exercise. I reinforced that there was no one right answer and how everyone had different views. I explained that thinking metaphorically was the most important aspect of the workshop, rather than the design itself and we discussed how metaphors were used in our daily lives and embedded in the stories we learned and told.

The students were first set two challenges to assist in them becoming acquainted with using the LEGO® bricks. The first challenge involved building a tangible model from the LEGO® bricks and the second involved building an abstract model representing something about their identity. These two initial challenges provided a foundational base for the students to get used to the LEGO® and to prepare them for the next series of challenges. The third challenge involved building a LEGO® model representing who they were as an LAC student advisor, which would assist in my consideration of the students' sense making for the first research question. In the next challenge, I asked the students to build a LEGO® model that represented their best learning experience, in order to consider if this was either within the formalistic or substantive realms and the context for this. I then asked the students to build

a LEGO® model representing what a career in law meant to them to establish the students' professional aspirations and their understanding of the legal field.

With the focus group for year three students consisting of only three students, I had time to also ask an additional question of 'what it meant to be a law student?' to provide a contrast to the students meaning given to their student advisor identity and their aspirations for a career in law. The students and I found the focus groups to be fun but incredibly emotionally draining with some students revealing very personal aspects of their lives and identity. For this reason, I had made clear at the beginning and end of all sessions that what was discussed in the room was respected by everyone and not discussed outside of the room. The students comments and feedback at the end of the sessions ranged from descriptions of the session as 'challenging', 'therapeutic', 'surprising' and 'deep'.

The first focus group session with the year two students lasted one hour and twenty four minutes; the second group with year three students lasted one hour fifty two minutes; and the final group with year four students lasted one hour forty seven minutes.

Another focus group, consisting of alumni and former student advisors who had graduated and were now working in legal practice was arranged in August 2017. This was arranged rather impromptu as the six alumni were attending the university for another reason. Whilst it was not possible to use LEGO® SERIOUS PLAY® due to the short notice, the focus group was conducted with semi-structured questions including:

- *"What is it like working in practice?"*
- *"Did university prepare you for practice?"*
- *"What one thing was learnt from working in the law clinic?"*
- *"Is there any experience that you've had in the clinic that sticks with you?"*
- *"What are the key attributes for working in the law clinic?"*

2.5.4 Data Interpretation and Analysis

Having gathered the data through taking notes, audio recordings and photographs, I transcribed my notes, as well as the audio recordings and saved all the documents onto files on the analytical software NVIVO[501]. Following my line-by-line iterative analysis, which is outlined in chapter 3 for the pilot study, I used Spradley's domain analysis to look at semantic relationships and particularly in accordance with my Weberian lens, I considered the rationale for action. Appendix 3 outlines some coding where I considered the semantic relationship of 'X is a reason for doing Y', when considering why students helped clients. Nvivo allowed me to consider if the code related to one specific document or if it featured in a range of different documents and to also consider the number of times the code had emerged.

With large codes, I developed this into a theme, breaking the large code down into sub-codes. See Appendix 5, for example, with the main code of 'Documentation legitimises'. I broke this large code into sub codes of 'evidence', 'court order', 'court application', 'lawyer's files', 'assumptions' and 'LAC File'. Sub codes such as 'Evidence' were then split into further

[501] See appendix 2.

sub codes including ‘LAC forms’, ‘legal’, as well as relating to the client, such as ‘organised client’ and ‘confused client’. Through writing codes and providing a definition for the code, I was able to identify and consider data that fitted into or did not fit into the code and if it was necessary to change my definition or relate the data to another code. See the table below for an example definition of a code:

Code	**Definition**	**Examples that fit the definition**
‘Evidence’	Code must relate to evidence, including forms, files etc. and/or how they impact and upon whom.	LAC forms, legal evidence, organised client, confused client

I was then able to break evidence down into categories such as types of evidential documents and the impact of evidence on the client. Through undertaking this approach to coding, both large and small inter-connected themes, as well as different categories emerged from the data.

Whilst I considered all the data generally, I also specifically considered the codes that emerged from different types of meetings, for epistemic practice purposes, and for the focus groups, I broke down the codes for the different questions and for the students year group on the law degree. For example, appendix 5 includes a document with the heading ‘Year 2 Students’ which relates to a specific question asked in the year 2 focus group. When systematically considering the codes, I linked codes in with each other, so the codes ‘shield’ and ‘taking control’ were linked to the bigger code of ‘building confidence’ which was in turn linked to working ‘outside of comfort zone’. This provided an emerging picture of meaning and highlighted relationships between the data.

Through creating large codes and sub codes and linking different codes together, my coding scheme enabled me to decide whether to code or not, through my definition of what the code entailed. As I reflected upon the codes and the meaning I was giving to the codes, the process had the added benefit of reinforcing my reflexivity. To this end, I found the use of analytical memos extremely useful to gather my thoughts, ideas and reflections regarding the codes and connections, the problems I was having and my reasons for linking the codes and themes together or not. Through the memos I found myself engaged in internal conversations and arguments with myself about what I was thinking in my analysis of the data and why[502] (see appendix 4 for an example of an analytical memo). My approach enabled me to understand the analysis as an active process of theorising about the data[503] and in accordance with my Bourdieusian approach, allowed me to consider the meaning given to the data at both a subjective individual level and a meaning above this level of subjectivity.

The document in appendix 5 with the heading '8. Identity' showed how the students were identifying meaning according to how they felt apposition or opposition to other identities such as the student identity and solicitor identities. This opposition was split into further sub themes ranging from emotions to wanting to help. The codes in relation to these sub themes were then linked together into connected and sub-codes. For example, the codes in

[502] Adele E Clarke, *Situational analysis: Grounded Theory after the postmodern turn* (Thousand Oaks CA: Sage 2005). See appendix 4 for examples of my memos.
[503] Charmaz (n 436).

the example in appendix 5 show how the student advisors saw their advisor identity as different from their student identity.

Nvivo also provided me with electronic tools to assist in my analysis. Through using Nvivo tools such as bar charts[504] (see appendix 6) I was able to identify the most popular codes in specific documents and through cluster maps (see appendix 7), I was able to recognise emerging relationships between codes[505]. The hierarchy of codes also provided me with the key themes that were emerging from the data[506]. Altogether, I found Nvivo to be an extremely useful resource for coding and organising the emergent codes into themes and analysing the data in a systematic and logical manner.

2.5.5 Methods summary

In summary, the tools of research were participant observation, interviews and focus groups as follows:

Participant observation: x5 Post interview meetings; x5 Selection Panel meetings; and x8 Reflection meetings
X4 Focus group meetings
X2 Individual interviews

[504] See appendix 6.
[505] See appendix 7.
[506] See appendix 8.

2.6 Summary

My methodology was philosophically grounded in critical realism, where reality exists objectively and independently of our knowledge but is conceptually mediated through my Bourdieusian, Weberian and epistemic cultures theoretical framework, discussed in the literature review. Through applying this theoretical framework to the data that I collected, I examined the underlying and generative mechanisms that influenced social agency within the LAC. My approach was predominantly ethnographic and in light of my involvement with the LAC, I adopted an uncomfortable reflexivity approach forming a separate but integrated dialogue to the research and interpretation of data.

I drew upon Spradley's domain analysis and universal semantic relationships, when applying a three part methodology for considering the 'why, what and how' of professionalism. When considering the 'how' I utilised Jensen *et al.*'s concepts of epistementalities and epistemic practice to consider how the participants reasoned and collected beliefs and what the participants did and how they went about doing it. The final stage of my analysis involved applying Winter's dilemma analysis to consider the tensions and conflicts that arose between substantive and formalistic logics in the participants' sense making.

My research method was predominantly participant observation of the post-interview meeting, selection panel meeting and reflection meetings considering the participants discussions at the margins of practice. I undertook two individual semi-structured meetings and I also employed focus groups, involving a LEGO® SERIOUS PLAY® methodology to consider the participants' sense making further.

CHAPTER THREE: PILOT STUDY

3.1 Reasons for a Pilot Study

Pilot studies have been described as desirable[507], important[508] and invaluable[509]. Through undertaking the pilot study, I had hoped it would enhance the research being undertaken[510] and allow me to articulate and develop ideas[511] within a small scale preliminary study and ensure that the methods I used, actually worked in practice[512].

---

[507] Bryman (n 404) 247.
[508] Helen Sampson, 'Navigating the waves: the usefulness of a pilot in qualitative research' [2004], *Qualitative Research* 4(3) 383. DOI: 10.1177/1468794104047236.
[509] ibid 398.
[510] ibid 384.
[511] James Arthur, Michael Waring, Robert Coe & Larry Hedges, *Research Methods & Methodologies in Education* (Sage 2012) 37
[512] Michael Haralambos & Martin Holborn, *Sociology Themes and Perspectives* (8th edn, Harper Collins 2013). 915; Patricia A Prescott & Karen L Soeken, 'The Potential Uses of Pilot Work' [1989] Nursing Research 28 (1) 60-2.

3.1.1 Eliminating Bias and Developing my Reflexive Approach

I primarily decided to undertake a pilot study in order to carry out a line-by-line iterative study to eliminate bias and to develop my reflexive approach. As confirmed in my methodology chapter, my predominant reason for drawing upon an initial iterative approach, similar to grounded theory, was in recognition of my role within the LAC and that I might have held sub-conscious preconceived ideas or prejudices. I did not want the data to be made to fit the theory. Through iterative initial line-by-line coding of the data[513], I was able to observe subtle nuances[514] and remain open to a purely inductive approach to interpreting the data, reducing any potential bias and the likelihood of me superimposing preconceived notions that I held upon the research[515]. However, my own thoughts and reflections on the data collected and its analysis were also relevant to reduce the potential for bias. Whilst it is not possible to reduce all bias, reflexivity and a pilot study employing an iterative line-by-line process, provided a useful tool in helping to decrease potential bias[516]. This pilot study therefore conformed to my reflexive approach towards the research[517] and allowed me to reflect at an early stage in greater depth on the nature of the activity that I was undertaking[518]. Pilot testing allowed for an acknowledgement of my presence as the researcher in the research process[519] and helped generate my own reflexivity and the transparency of the research[520]. Undertaking a reflexive approach helped situate me within

---

[513] Glaser (n 437).
[514] Charmaz (n 436) 50.
[515] ibid 50.
[516] Sampson (n 507) 395.
[517] Ibid 385.
[518] Helen Sampson & Michelle Thomas, 'Lone Researchers at Sea: Gender, Risk and Responsibility' [2003] *Qualitative Research* 3(2) 16.
[519] Christine Barry, Nicky Britten, Nick Barber, Colin Bradley & Fiona Stevenson, 'Using reflexivity to optimize teamwork in qualitative research' Qualitative Health Research 9 (1) 26 30.
[520] Beverly R Williams, Lesa L Woodby, Amos F Bailey, Kathryn L Burgio, 'Identifying and Responding to Ethical and Methodological Issues in After-Death Interviews with Next-of-Kin' [2008] Death Studies 32 (3) 197 200. DOI: 10.1080/07481180701881297.

the research and allowed me to undertake a self-conscious critique of how I was conducting the research[521]. As confirmed by Cutliffe[522]:

> ''Reflexivity conceptualizes, in part, who the researchers are, what is going on in themselves, and how a sense of self-consciousness can be put to analytical use''.

Through being reflexive, I examined at an early stage how both the participants and I co-constructed our own versions of reality[523] and I looked at ways to incorporate this into my approach to the main study. As detailed in the methodology chapter, I adopted Youdell's uncomfortable reflexivity approach[524] and the pilot study helped evaluate the data both in ethnographic detail and through reflecting upon places of anxiety and the silenced familiar, or as Youdell described, the 'uncanny'.

The pilot study also proved useful for a number of other reasons:

- Preparation for the main study;
- Testing my theoretical framework; and
- Testing the research method.

---

[521] ibid.
[522] John R Cutcliffe, 'Reconsidering reflexivity: Introducing the case for intellectual entrepreneurship' [2003] Qualitative Health Research 13 (1) 136 137.
[523] Tim Rapley, 'Interviews' in Clive Seale, Giampietro Gobo, Jaber F Gubrium & David Silverman (Eds) *Qualitative Research Practice* (London: Sage 2004) 15-33; David Silverman, *Doing Qualitative Research* (3rd edn, Sage 2010) 199.
[524] Youdell (n 2) 89.

3.1.2 Preparation for the Main Study

There is an adage that 'failing to prepare is preparing to fail' and some researchers have found that a lack of planning in research may often lead to regret[525]. I therefore recorded two student/supervisor meetings and interviewed a participant to develop my overall strategy for obtaining the data. The pilot study provided me with an idea of data content and time periods of the meetings and interviews and assisted in developing an overall achievable strategy and plan for completing the data collection and analysis for my research[526] within the time constraints of my doctorate.

3.1.3 Testing my Theoretical Framework

As detailed in the literature review, I had decided to undertake data collection and analysis qualitatively within a Bourdieusian, Weberian and epistemic cultures theoretical framework. Whilst there is a belief that pilot studies are of more relevance to positivistic methodological approaches there is an increasing consensus of their benefit to qualitative work[527]. Through the pilot study, I considered the effectiveness and feasibility of the theoretical framework to the data and the research methods I was using and through analysing the iterative line-by-line coding, I saw the themes emerging and was able to consider if they corresponded with themes consistent with my theoretical framework and my research questions. Also, by doing this, I was able to review and adapt and improve the effectiveness of the study[528].

---

[525] Martyn Hammersley, 'The Researcher Exposed: A Natural History' in Robert Burgess (Ed), The Research Process in Educational Settings: Ten Case Studies (Falmer Press 1984) 15.
[526] Duncan Gallie, 'Are the unemployed an underclass? Some evidence from the social change and economic life initiative' [1994] Sociology, 28 (3) 737; Sampson (n 507) 390.
[527] ; Sampson (n 507) 385.
[528] Haralambos & Holborn (n 511) 915; Arthur, Waring, Coe & Hedges (n 480) 191; Berni Kelly, 'Methodological Issues for Qualitative Research with Learning Disabled Children', International Journal of Social Research Methodology 10 (1) 21 25; ; Sampson (n 507) 392; Roberta Muoio, Linda Wolcott, Harriet Seigel, 'A Win-Win

3.1.4 Testing the Research Methods

The methods for this research were participant observation, interviews and focus groups[529]. The pilot study allowed me to test and refine my planned techniques and tools[530] and informed the focus and strategy for the main study[531]. Through undertaking a pilot study, this allowed me to identify and address any potential practical problems at an early stage in the research project[532] and also to ensure that the method of data collection produced relevant and appropriate data[533]. Whilst some academics question if the data obtained in the pilot study should be used in the main body of research, or even if the participants should be from the same sample as the intended research[534], the data collected and analysed in the pilot provided a discreet and usable set of data for the main body of research[535]. Academic opinion on the possible prejudice arising from using the same sample relates to a quantitative, rather than qualitative approach, when participants might be interviewed for questions and answers to prepare a questionnaire[536] and their involvement in the interview might prejudice their answers to any subsequent questionnaire. As my

---

Situation: The Pilot Program' [1995] Journal of Continuing Education in Nursing 26 (5) 230-233; Shannon E Perry, 'Appropriate Use of Pilot Studies' [2001] Journal of Nursing Scholarship 33 (2) 107; Vanora Hundley & Edwin R Van Teijlingen, 'The Role of Pilot Studies in Midwifery Research' [2002] RCM Midwives Journal 5(11) 372; Nalini Jariath, Mary Hogerney & Christine Parsons, 'The Role of the Pilot Study: a Case Illustration from Cardiac Nursing Research' [2000] Applied Nursing Research 13 (2) 92-96.

[529] I only decided to include a focus group following the pilot study so I did not unfortunately run a focus group within the pilot study.

[530] Arthur, Waring, Coe & Hedges (n 510) 37; Sampson (n 507) 392; Bill Gillham, *Case Study Research Methods* (London: Continuum 2000);

[531] Yujin Kim, 'The Pilot Study in Qualitative Inquiry' [2011] Qualitative Social Work 10 (2) 191; ; Sampson (n 507) 390 397; Hammersley (n 524) 15-38; M Fuller, Dimensions of Gender in a School: Reinventing the wheel?, in Robert Burgess, (Ed) *The Research Process in Educational Settings: Ten Case Studies* (Falmer Press 1984) 97; Jariath, Hogerney & Parsons (n 527) 92-96.

[532] Haralambos & Holborn (n 511) 915; Bryman (n 404) 247; Sampson (n 507) 383-402.

[533] Haralambos & Holborn (n 511) 915.

[534] Bryman (n 404) 248.

[535] Sampson (n 507) 397.

[536] Bryman (n 404) 247.

approach was qualitative, and more specifically ethnographic, involving observing the participants and developing hypotheses from observations and interviews, the data collected in the pilot study was also useable in the main body of the research without any prejudice arising. However, I was aware that some of the ways that a pilot may inform a study could be unanticipated[537] and there was a need to be both flexible and adaptive within the pilot study[538]. I therefore retained an open view and reviewed the usability of the data following its analysis.

As already identified, the pilot study allow me to adapt semi-structured questions and reflect upon the effectiveness of interviews. I paid particularly close attention to the participant's responses, to see if any of the questions made the participant's feel uncomfortable or lose interest[539]. I believed that the interviews might also alert me to any questions or concerns the participants may have had in relation to the research[540]. By identifying and addressing any potential problems in the research process at an early stage[541], I was able to modify my research method to ensure the research instrument functioned as it should[542] and make any adjustments or revisions.

Potential problems or difficulties with the research were considered through testing the method of data collection[543] to establish if there were any gaps or unnecessary data

[537] Sampson (n 507) 393-395.
[538] ibid 393.
[539] Bryman (n 404) 247.
[540] Kelly (n 527) 25.
[541] Sampson (n 507) 383-384.
[542] Bryman (n 404) 247.
[543] Muoio, Wolcott & Seigel (n 527) 230-233; Prescott & Soeken (n 481) 372-4.

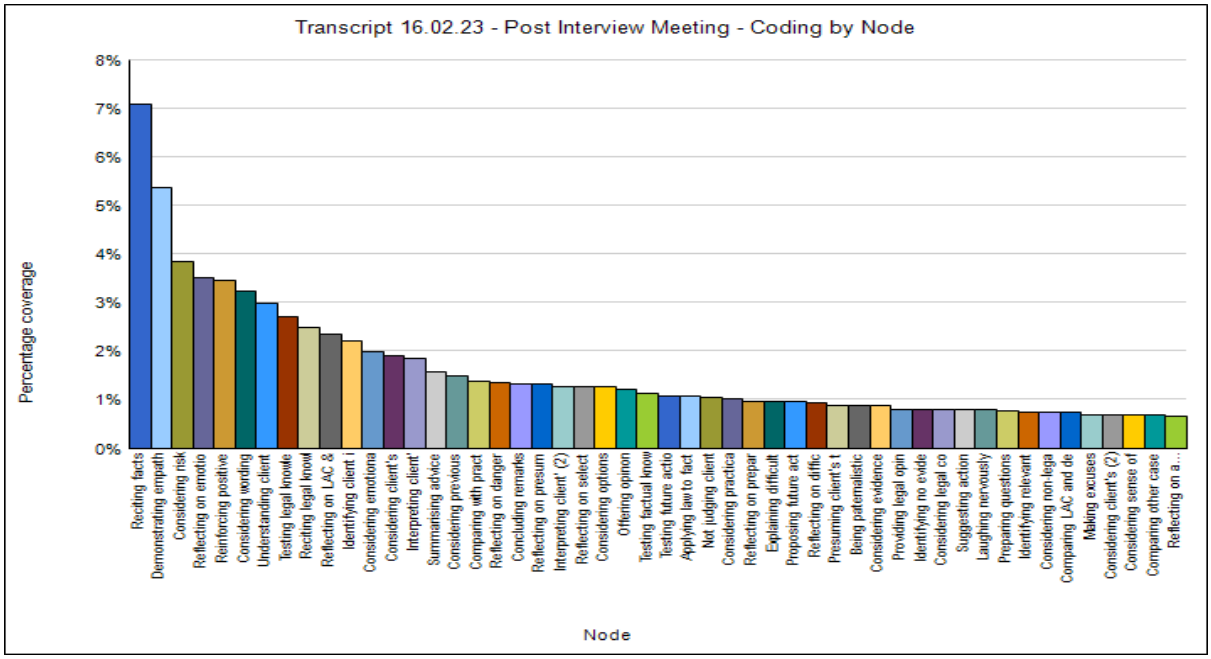
collected[544]. The analysis from the data collection also helped reveal which method would ultimately produce the most relevant and useful data set to the research for the main body of research[545].

For the pilot study, I observed two post interview meetings and conducted an interview with a student. These gave me a good idea of the data that I would gather in the main research. As outlined in my methodology chapter, I audio recorded the meetings and interview and made notes within the meetings, recording my observations. Following the transcription of the meetings, I coded the transcripts on a line-by-line basis.

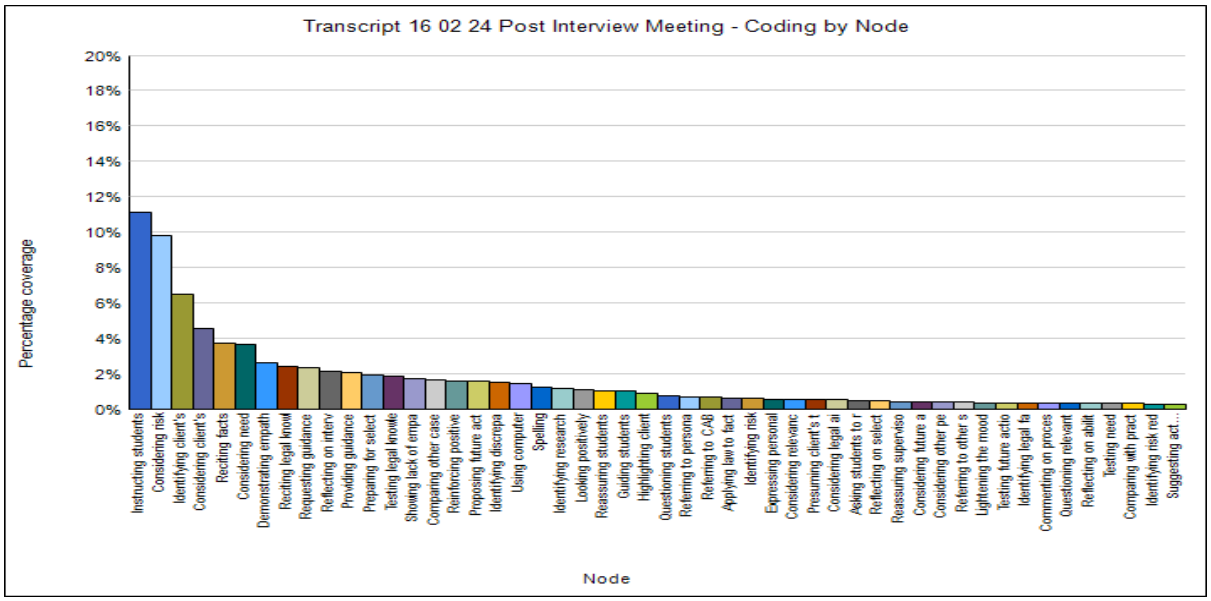
3.1.4.1 Outcome of Line-by-line Coding

A number of different codes were produced by the line-by-line coding of the first post interview meeting however the highest percentage codes were 'reciting facts' (7.02%); 'demonstrating empathy' (5.37%); 'considering risk' (3.86%); 'reflecting on emotions' (3.52%); 'reinforcing positive work' (3.47%); 'considering wording of letter'(3.24%); and understanding client's thoughts' (2.99%). Of these codes 'demonstrating empathy', 'reflecting on emotions', 'considering the wording of the letter' and 'understanding client's thoughts' represented over 15% of the data (see diagram below):

[544] Sampson (n 507) 399.
[545] Silverman (n 522) 199.



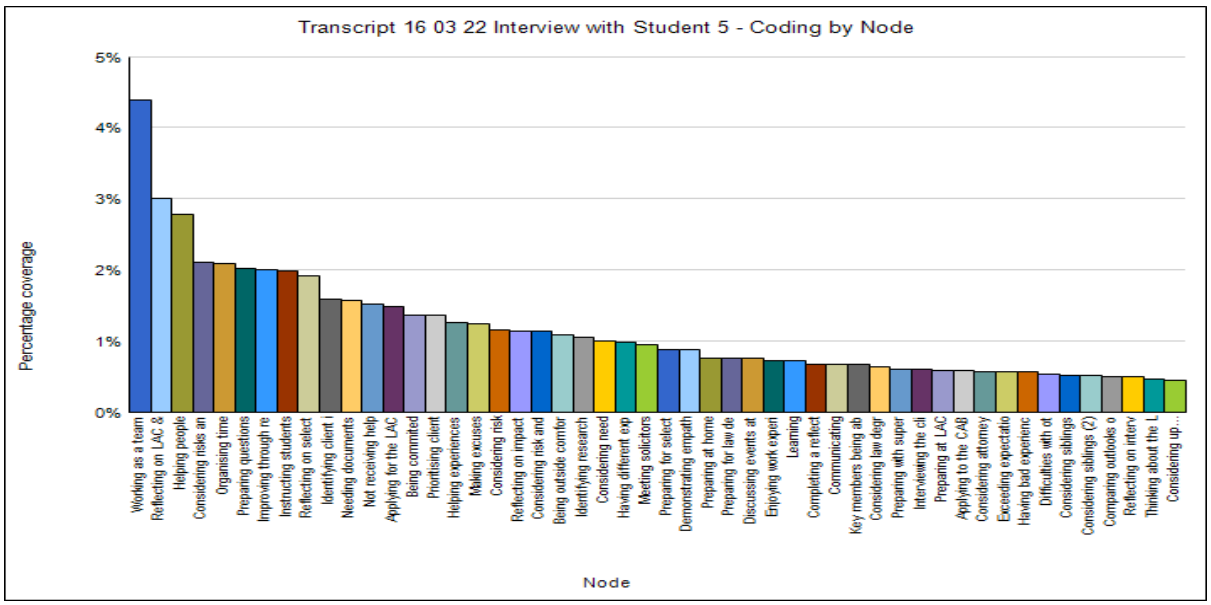
This coding and data collected in the first post interview meeting can be contrasted with the data collected in the second post interview meeting (see below):



In this second meeting, ‘instructing students’ (11.12%) and ‘considering risk’ (9.82%) amounted to over 20% of all the data collected. Other codes of prominence included

‘identifying client’s goals (6.5%); ‘considering client’s finances’ (4.58%); ‘reciting facts’ (3.72%) and ‘considering need’ (3.68%). Whilst the codes that emerged from the line-by-line coding of this second meeting was different from the first meeting, there were two common themes evident including ‘considering risk’ and ‘considering client’s needs’.

The interview with student 5 also produced a number of different codes. This possibly reflected the more general discussions that took place in the interview covering a number of topics, rather than the focus in the post interview meetings, which was on the client’s case.



There again were numerous codes but the three main codes which emerged from the student interview were ‘working as a team’ (4.39%); ‘reflecting on LAC and degree difference’ (3%) and ‘helping people’ (2.79%).

As can be seen from the three diagrams a large number of themes were coded. However, through writing analytical memos to capture my thoughts and using clustering techniques to establish links between different codes[546] I eventually managed to categorise the line-by-line codes into five key themes:

- Considering client's needs;
- Considering client's perspective;
- Emotions;
- Considering risk;
- Giving instructions.

The three themes of 'considering client's needs', 'considering client's perspective' and 'emotions' could be put into a larger category representing emotional intelligence which did appear to be a key theme throughout all the interviews. However, it was a theme that was more evident in the first post interview meeting and interview with student 5. This was of value to my Weberian theoretical framework as it could be seen that both formalistic and/or substantive values were emerging from the data.

3.1.5 Observations from the Meetings and Interview

I made a number of observations from the meetings and interview. In the first post interview meeting, the two students were both female and in their late teens/early twenties. Student 2 was a British Asian female and in the fourth year of the Masters of Law

[546] Charmaz (n 436) 86. See appendices 4 and 7 for examples.

and Practice (MLP) and student 1 was a white British female and in the third year of the MLP[547]. The supervisor and both students were dressed smart with supervisor 1 and student 1 both wearing shirts and cardigans and student 2 was wearing a shirt and a kind of cardigan waistcoat. I unfortunately did not observe whether they were wearing trousers or skirts because they were sitting down.

The meeting lasted twenty-one minutes and both supervisor 1 and student 1 contributed verbally in equal measure, together contributing roughly equally towards approximately 90% of the meeting. Student 2 though played a very passive role throughout the meeting and her verbal involvement was limited to around 5%[548]. Supervisor 1 did try to bring student 2 into the conversation on at least one occasion through looking at her for an opinion but without major success. Student 2's body language was quite nervous with her on occasion fiddling with her fingers, hair and pen and defensive with her head on her hand whilst talking and also holding her hands together in front of her perhaps indicating a lack of confidence in this situation. In contrast, student 1's body language was far more confident with her making points with a pen and gesticulating with her hands to evidence pertinent points. This student displayed participation, confidence and knowledge. It was not clear why student 1 appeared to have more of this cultural capital than student 2, particularly as student 1 was less academically advanced and only in her third year of the Master of Law and Practice, whilst student 2 was a fourth year. Adopting a Bourdieusian approach of habitus, whilst the student's past experiences on the law degree did not appear to have

[547] See appendix 9 for full details of the participants.
[548] The participation in the transcript was coded and student 1 was involved in 44.46% of the discussion, student 2 was involved in 5.64% and supervisor 1 was involved in 46.64%. The researcher was also involved in 3.25% of the discussion.

been of significant influence on these dispositions[549], it may have been relevant that student 1 had worked as a student advisor for twice as long as student 2 and had seen twice as many clients as student 2[550].

The issue of confidence also arose in the second post interview meeting which lasted for thirty-one minutes. Participating in this meeting was supervisor 2 and students 3 and 4. The students were male and female and both students were of British Asian origin, in their early twenties and in the fourth year of the MLP. They had both started working in the law clinic in September 2014 and both had only had one interview prior to this interview. Supervisor 2 and student 3 were both smartly dressed with supervisor 2 wearing a black jacket and trousers and student 3 wearing a light pink hijab, black jacket and trousers. Student 4 whilst dressed reasonably formally in a white shirt with light blue spots, jumper and trousers was not quite as smartly dressed. The jumper was patterned and also quite high around student 4's neck so it was not possible to see if he was wearing a tie. In this interview, both students played a more passive role with the supervisor accounting for 69.15% of the verbal data and student 4 accounting for 19.79% and student 3, 11.06%. Whilst the supervisor did ask the students questions and attempted to elicit answers from the students, this meeting was very much about the students asking the supervisor questions about what to do and the supervisor informing the students about the approach they should take. This may be contrasted with the first meeting where the supervisor asked all the questions about what the students needed to do and the students provided the answers, albeit the answers were

[549] Although it is acknowledged that both students may have had different experiences and skills when entering the law degree and their starting points may have been different.
[550] Student 1 was appointed in September 2014 and had seen 7 clients in total prior to this interview, whereas student 2 was appointed in September 2015 and had seen 3 clients prior to the interview.

mainly provided by student 1. In the second meeting, student 3's body language was quite defensive early on but she became more comfortable as she took over the computer keyboard and mouse to input information agreed with supervisor 2. Her verbal input was in the main very short sentences reinforcing points that the supervisor had said and seeking instructions from the supervisor. Student 4's involvement was also more limited than student 1's in the first meeting. He did offer opinions within the meeting but his contributions were usually limited to one sentence and there was no expansion of the points made. His body language was more confident than student 3's and he used hand gestures to reinforce points that he had made.

Student 5 was deliberately chosen by the researcher for the interview as he was one of the original founding members from when the law clinic first opened. This student was very experienced having seen eight clients since September 2014 and a number of clients before then. The student was also in his final year and due to leave the university in two months' time. He was British Afro-Caribbean in background and whilst his mother was a first generation UK citizen, his father was born and had lived outside of Britain for a large part of his life. Student 5 had a large family consisting of one full sibling and a number of half siblings. He was the first of his immediate family to attend university, including his mother, father and siblings, but had an auntie (his grandma's niece) in America who worked as an attorney. He did not have much contact with the auntie but when they did communicate, through email or 'whatsapp', they did not discuss the law. Student 5 was dressed informally wearing a blue hoodie and jeans. As expected, from my experience with this student as the law clinic director, he was very confident and articulate in answering the questions.

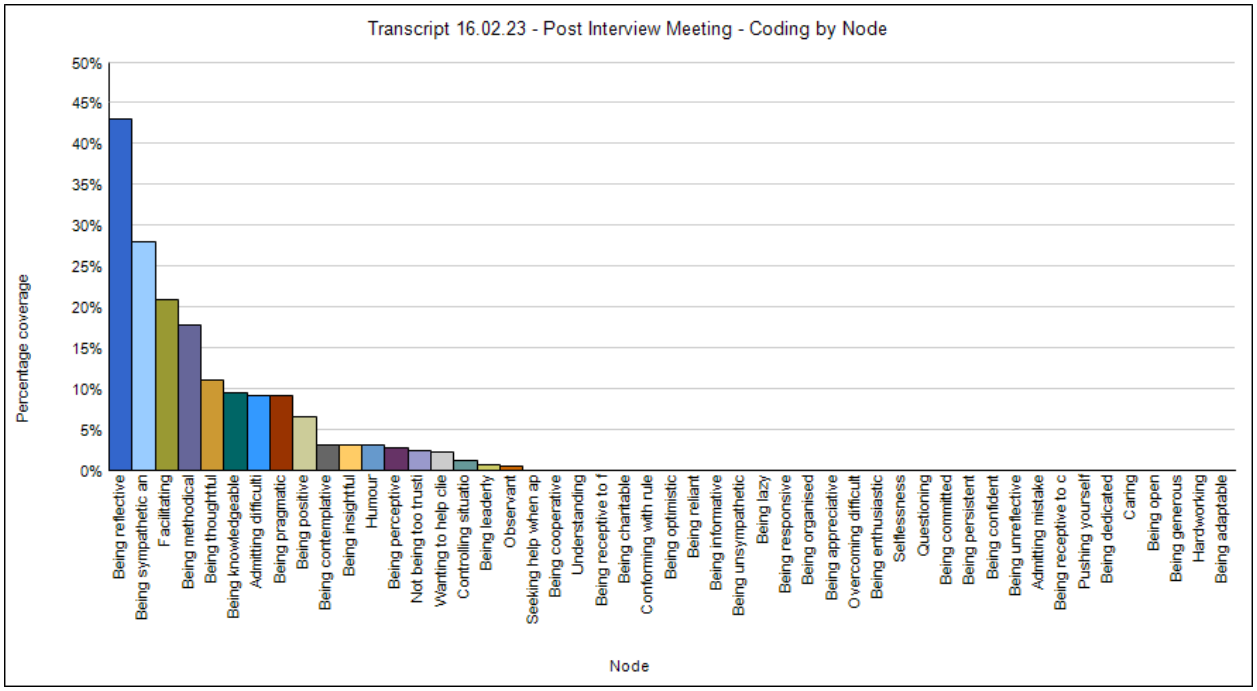
3.1.6 What are the Valued Dispositions or Cultural Capital of the LAC?

As the data suggested that both formalistic and substantive themes were arising, I also decided to consider the dispositions that were being displayed by the participants, in accordance with my Bourdieusian framework. The data collected from the two meetings and student interview indicated that the most popular dispositions displayed were 'Being reflective' (56[551]), 'Humour' (30), 'Being sympathetic and empathetic (28), 'Being pragmatic' (23), 'Wanting to help clients' (22), 'Being methodical' (19) and 'Being appreciative' (19). Also amongst these codes was a less positive code of 'Being reliant' (21).

3.1.6.1 The First Post Interview Meeting

In terms of percentage coverage of dispositions, the three highest codes for the first meeting was 'Being reflective' (43.13%), 'Being sympathetic and empathetic' (27.98%) and 'Facilitating' (20.88%):

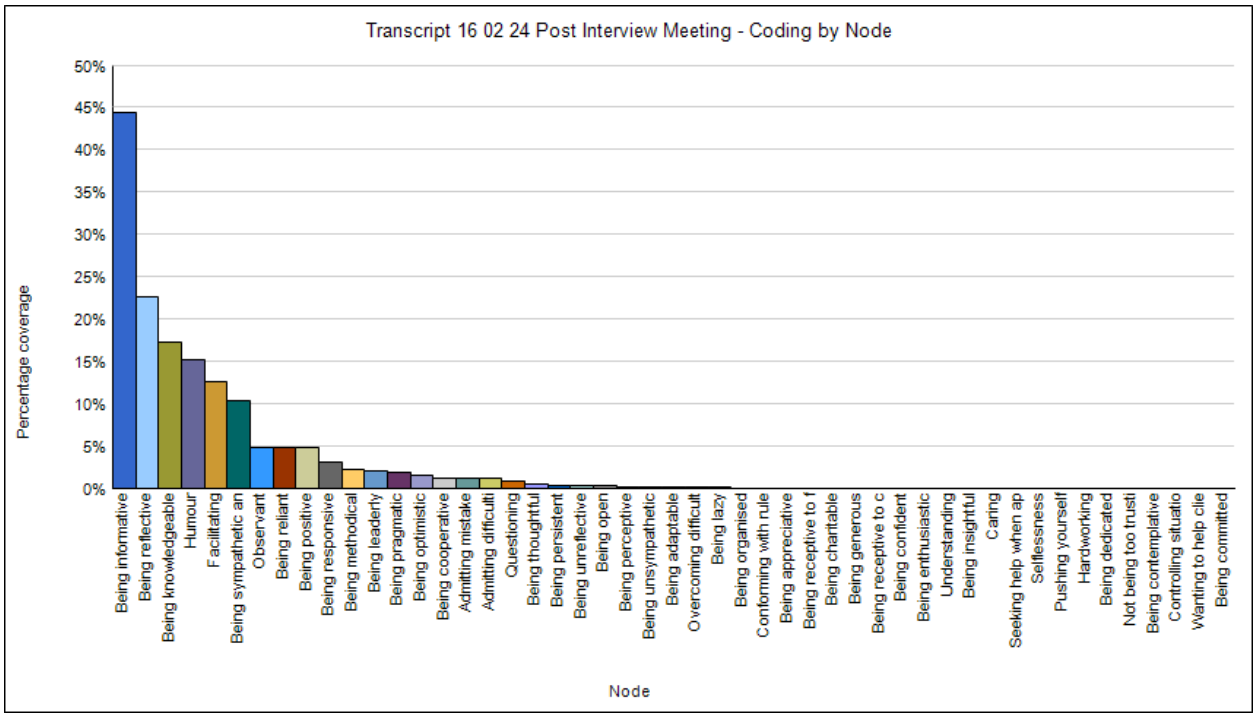
[551] This indicates the number of coded references to this disposition in the three transcripts. It should be noted that the post interview meeting is a part reflection on the interview and in the interview with student 5, he was being asked to reflect upon his time in the clinic, so it is perhaps not surprising that this disposition scores so highly.



3.1.6.2 The Second Post Interview Meeting

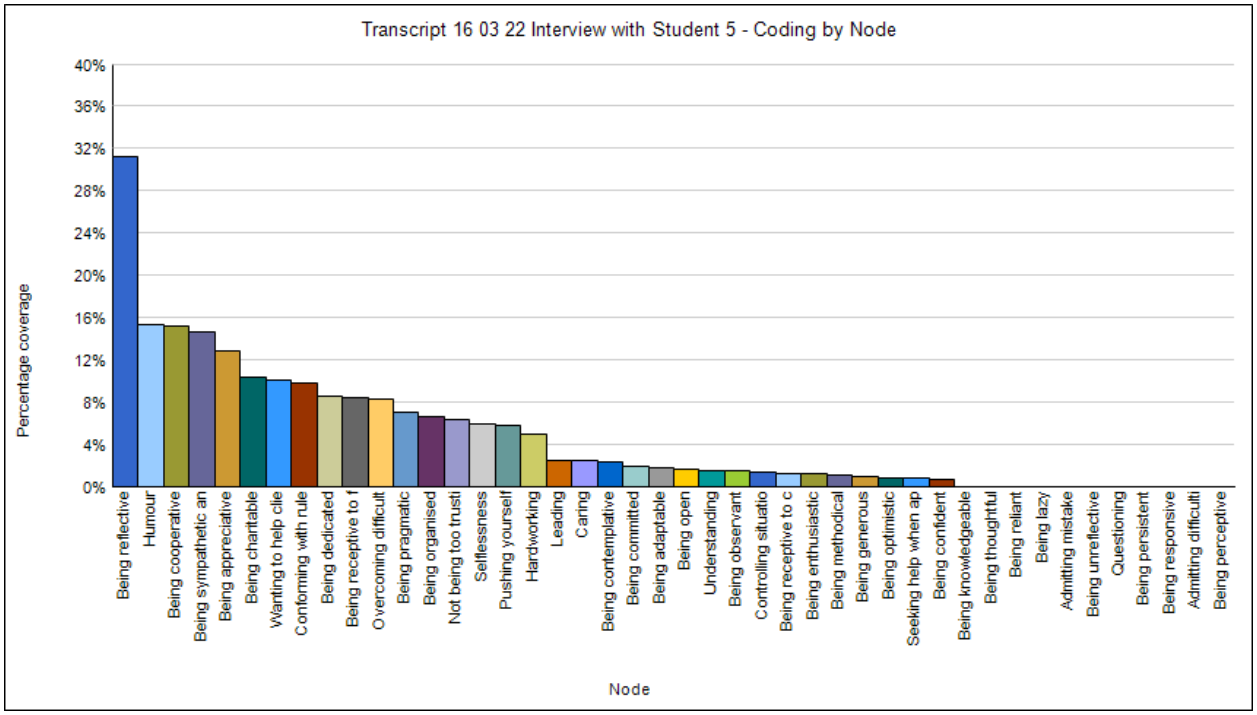
In contrast to the first meeting, the highest percentage coverage of dispositions in the second meeting was 'Being informative' (44.41%), 'Being reflective' (22.73%) and 'Being knowledgeable' (17.23%)[552]:

[552] All the codes do not necessarily add up to 100 as if a paragraph represented more than one type of disposition it may have been double or even triple coded.



3.1.6.3 Interview with student 5

The largest percentage coverage for student 5's dispositions related to 'Being reflective' at 31.27%. Whilst student 5 was genuinely reflective, a contributing factor was that the interviewer was asking the student to reflect upon his experiences in the LAC. The three next largest percentages related to 'Humour' (15.3%), 'Being co-operative' (15.24%) and 'Being sympathetic and empathetic (14.71%):



Significantly, three of the major codes for student 5, were 'being sympathetic and empathetic', 'being charitable' and 'wanting to help clients'[553].

3.2 Reflections on the Research Methodology

As considered throughout this chapter, the data collected within this pilot study appeared to fit within the theoretical conceptual framework. Through adopting both an ethnographic and idiographic approach, I was able to identify from observations, the behaviour and attitudes of participants within the context of two post interview meetings and through the student interview examine attitudes further and get some perspective on reasons why the participants may have acted in a particular way.

[553] Added together this amounted to 35% but it should be noted that this represented some duplicate coding so actual coverage was not this high.

Whilst I did not approach the research from the position of complete ignorance[554], my initial approach of line-by-line coding[555] provided some transparency and helped guide my research focus. Albeit, and as mentioned earlier, I did create a large number of codes. For this reason, and given that the main study generated far more data, my coding and analysis for the main study was focused around the themes identified in my conceptual matrix and arising from my review of the literature.

3.3 Reflections on the Research Methods

Whilst I enjoyed observing the meetings and transcribing the recordings, the transcribing did take far longer than I had initially expected. The transcripts of the post interview meetings were also far more time consuming than the student interview, as they were less structured, involved three participants speaking and sometimes participants speaking over the top of each other. However, these meetings did give me a chance to see and record the participant's approach in the context of a real situation, rather than just relying on a participant telling me her perception of what had happened. The post interview meetings therefore formed a valuable part of the research and the pilot study enabled me to decide to cover more of the various meetings between the students and supervisor and place less emphasis on interviews. Although I did use focus groups to explore some questions, which did not necessarily arise in the context of discussion.

[554] A position recommended in Spradley (n 426) 4.
[555] Glaser (n 437).

In light of the time my transcribing took, I did consider whether it would be worthwhile paying for recordings to be transcribed by a third party, so I could dedicate my time to coding and analysing the transcripts. However, as I listened and transcribed more, I realised that I would lose the valuable insight that I was gaining through actually listening to the tone and manner of the discussions taking place. Further, as I gained more experience my transcribing speed did seem to get faster.

As seen in the findings section, both the two post-interview meetings and interview provided relevant and appropriate data[556] and the data that was collected provided firm foundations for the main body of research, forming part of the main study[557], without providing any concerns of prejudice.

One of the main lessons that I learned from the interview was whilst I felt relatively comfortable undertaking the interview due to my trained skills as a lawyer and I felt comfortable keeping questions open, as I was transcribing and analysing the interview, I realised I missed out on a number of occasions of probing and delving deeper. This was particularly the case regarding the reasons why the student had a certain opinion or viewpoint. Of some relevance to my research, and rather ironically given my literature review and selection of Weberian value spheres as a theoretical foundational base, was that I realised that as a trained lawyer my experiences were leading me to focus on gathering the facts, rather than as a researcher, being interested in gathering opinions. Discovery of this

[556] Haralambos & Holborn (n 511) 915.
[557] Sampson (n 507) 397.

subtle difference in approach helped me prepare for future interviews and particularly focus groups, and encouraging the opinions of participants.

I was pleasantly surprised that the students and supervisors did appear relatively comfortable with me observing their meetings. Indeed, in the first meeting I was invited to participate by the supervisor and offer my own opinion. Whilst inevitably the presence of anyone in the meeting may have had some influence on the discussions that took place, the participants were relaxed with my involvement and I believe were more relaxed than if they had perceived me as a stranger.

When interviewing student 5, I was conscious that he might find my questions strange, as he would likely think I already knew the answer to some of the questions. I therefore intentionally advised the student before commencing the interview that I wanted to learn from him and it was his thoughts that I was interested in. I also asked him to treat me as though I did not know anything about the LAC. This approach did seem to work and the student did seem to provide an honest and candid account of his experiences and thoughts about the LAC and other related matters. There is always the possibility that the student might have just been saying what he thought I wanted to hear, and I must admit that a lot of what he did say I did agree with. However, to provide such a consistent approach over fifty minutes without any contradiction would suggest to me that the beliefs he relayed were his own.

I did feel uncomfortable at one part of the interview. I was very self-conscious when asking the student about his family as this to me seemed very personal to the student and none of my business. Perhaps this may have been as a consequence of me finding it difficult negotiating between my two personas of researcher and LAC participant. However, the student did seem at ease with my question and perhaps more at ease than I was. Student 5 was very happy to discuss this with me and the situation became to feel quite natural. Again, this may be because the student felt comfortable in my presence, whereas with a stranger he may not have been quite as open. None of the participants seemed to have any concerns with regards to my presence or questions[558] and my initial concerns that my presence may overly influence the discussions were to an extent allayed.

The pilot study proved to be highly beneficial. I continued with my planned observations of further meetings and analysed the data from these meetings to consider if my theory was supported, whilst also being flexible and open to different themes emerging. In relation to my research methods, I decided that the data emerging in the participant discussions was more natural and that I would concentrate upon this as my main research method but also incorporate focus groups for specific identity considerations. My uncomfortable reflexive approach narrative on the pilot study is attached as appendix 10.

[558] Kelly (n 527) 25.

CHAPTER FOUR: BACKGROUND AND INFLUENCE OF THE FIELD

4.1 The Legal Advice Clinic and its Participants

At the time of this study, the law clinic consisted of four supervisors representing three white female supervisors in their 40s and 50s; one white male supervisor in his 40s (the researcher) and 27 student advisors. Whilst all the supervisors were white, the student advisors represented an ethnically diverse and rich group. With the exception of one student, all the students were in the 18-25 year old age bracket. The students were predominantly female (70%) and the group consisted of 67% British Asian; 18% white British; 11% Afro-Caribbean; and 4% mixed heritage. The largest single demographic group were British Asian female students (55.5% or 15/27) with nearly half (47%) of these students wearing a hijab symbolic of the Islamic religion. The majority of the students were from working class backgrounds and 81% commuted into university from their parental homes. Six alumni were involved in the focus group comprising of four females and two males. Four of the alumni were white British, with one alumnus of British Afro-Caribbean heritage and the other alumnus British Asian wearing a hijab. Alumni's 5 and 6 were also student advisors at the time of some of the student recordings. Details of all the participants are outlined in appendix 9.

The LAC is based off campus and located in a shop in an indoor shopping centre in the town centre. The frontage is glass with two central doors. There is a blue sign across the top of the glass windows displaying the Legal Advice Clinic sign and EMVA (Events Management Volunteering Agency). The ground level consists of a waiting room with two modern settees and a flat screen monitor secured to the wall. Next to the waiting room and through a hatch

is the law clinic co-ordinator's seat and desk. This is also situated next to the front window. This section of the office can be accessed through a door with swipe card access. Directly in front of the internal door are four open plan tables and chairs with one EMVA student working at one of the desks in the year of the study. To the left of this open plan office are two separate interview rooms accessible through doors and with floor to ceiling glass and horizontal blinds fitted to enable privacy. The two interview rooms are identical in size and layout with a large round table in the centre of the room and usually five seats around the table. Situated on the table is a computer monitor, keyboard and a box of tissues, which was symbolic of the client emotions that were often displayed. There is a whiteboard fixed to the wall and a panic button situated near to the door in both interview rooms.

The law clinic is on three levels although the basement is not used. On the first floor are two toilets, a fire exit door with a panel of frosted glass providing natural light and two rectangular desks facing each other. Both tables have computer monitors and keyboards and also legal books on top of them. There are two chairs to each table. There is a dividing wall (but no door) and past this is a large rectangular table with six chairs (three on each side). There is a kitchen to the right (accessible through a door) and two doorways in front (one with a locked door and the other with a doorframe but without any door). The locked door leads to a large storage area for files. The open doorway leads to four desks with legal books on and two chairs to each table. There are two tables to the left and two tables to the right, each facing the wall. There are no windows in this room and the natural light comes from the fire exit door at the other side of the floor.

The pre-meetings, client meetings, post meetings and reflective meetings all took place in the interview rooms on the ground floor. The selection panel meetings all took place on the large rectangular table on the first floor.

4.2 Integral Themes to the Professional Identity and Role of a Student Advisor

As discussed in the methodology chapter, the study produced data from four different sources:

- Audio recordings, transcripts and field notes from supervisor and student advisor discussions;
- Audio recordings, transcripts and photographs from LEGO® SERIOUS PLAY® focus groups split into year groups;
- Audio recordings and transcripts of individual semi-structured interviews;
- Audio recordings and transcripts from an alumnus focus group.

Data was collected and analysed across all the different sources to consider both what the participants elucidated about themselves in interviews and focus groups, together with what they discussed when considering their client's claim. Through undertaking these different approaches, it was possible to examine both what the students said about themselves and what they did.

Analysis indicated that students were mixed in their responses about their student advisor identity and there was a general divide in opinion between the students who were new to

the student advisor role and those who had been involved for at least an academic year; in how they perceived their student identity.

4.2.1 Students new to the Student Advisor Role

4.2.1.1 Anxious Identity

Surprisingly, only one relatively new student advisor involved with the LEGO® SERIOUS PLAY® focus groups portrayed their student advisor identity in a formalistic image[559]. The majority of the less experienced students saw their participation in the LAC predominantly as a zweckrational, instrumentally calculative rational vehicle for them to grow both personally and professionally and develop what they perceived as their 'personal and professional skills'. The year two students in particular relayed their perceived identity as a student advisor in the LAC as a personal and professional journey of improvement and the development of social communicative skills, as well as more specific lawyering skills. However, rather than just building up the skills of benefit to the formalistic sphere, a number of the students identified their lack of experience of dealing with people outside of a classroom, and the paucity of confidence that they had in themselves as an important reason for becoming a student advisor. A number of the new student advisors portrayed little confidence in themselves:

> **Student 22 (year 4 student with limited LAC experience):** I'm not really that confident, so I sort of put everyone on a pedestal where everyone is perfect.

[559] Representing their student advisor identity and professional image as trousers, a shirt and tie. Sommerlad (n 213) 200-203, although this related to students perceptions of a lawyer rather than a student advisor role and these students were undertaking the Legal Practice Course.

Student 19 (year 2 student): … even as I was still doing my exams and stuff, I was just, you know, really... I don't know... insecure and not confident in myself.

Student 20 (year 2 student): It's not that complex. It just means like … I came from nothing.

Many of the student advisors described working in the LAC as coming outside of their usual comfort zone on the law degree and saw undertaking work in the LAC as an instrumentally calculative means to increasing their self-confidence. As well as macro fields, such as the legal practice and juridical field, meso and micro fields also operate in learning sites, institutions and workplaces[560]. The LAC field was a micro field but represented a more daunting field to the students then the often passive learning of the 'transmission'[561] or 'banking' models[562] of education, examined in chapter 1.7. The students had identified their lack of confidence in their habitus and had deliberately set out to develop this element of their habitus to build up cultural capital for the legal practice field. In the LEGO® model focus group, two year two students discussed how they engaged with metaphorical defence mechanisms that they hid behind for the purposes of hiding their apprehension. However, the students recognised how these defence mechanisms acted as barriers to their

[560] Helen Colley , David James , Kim Diment & Michael Tedder, 'Learning as becoming in vocational education and training: class, gender and the role of vocational habitus' [2003] Journal of Vocational Education and Training, 55 (4) 471 477. DOI: 10.1080/13636820300200240.
[561] Bransford & Stein (n 198) 199.
[562] Freire (n 199) 57.

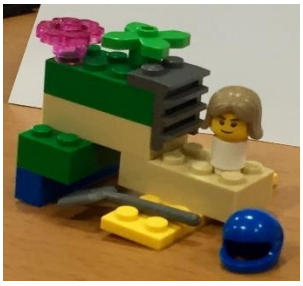
development. They saw their involvement within the LAC field as breaking down these barriers, increasing their confidence and taking back control. Student 18 explained that he saw his student advisor identity as coming outside of his comfort zone and having the confidence to be more open with his feelings and opinions, in order to be noticed. Having confidence would also create a greater field position for the student when graduating and entering into legal practice. Student 20 built a LEGO® model with her stood away from her metaphorical shield (the screen) and behind a wheel indicating her taking back control. She advised:

> **Student 20:** That just show's I'm taking more control. And that just acts like a shield, like, sometimes that you put up a shield, when you're not confident or whatever but I'm like breaking that down and getting more comfortable.

The ladder in the model signified her knowledge expanding through her volunteering in the LAC and was symbolic of her increasing the experiences for her habitus and therefore capital within the field. She explained the knowledge that she was learning as a student advisor related to teamwork and writing letters and also with dealing with the client's emotions:

Student 20: Like, say, teamworking skills, how to write letters and deal with clients... if they're emotional how you should [ILLEGIBLE]... how to balance between someone's emotions and [ILLEGIBLE]... their emotions and someone else's emotions and just trying to find the right balance.

As reviewed in chapter 1.7, having to deal with emotions was not something that was necessary in the academic field[563] but in accordance with considerations in chapters 1.9 and 1.12 is essential to a reflective approach to clinical legal education, developing emotional intelligence[564], empathy[565] and a relational[566] and hybrid identity[567]. Having to contend with emotions was also raised by another year 2 student, who described hiding her feelings behind a metaphorical helmet:



Student 19: I've got a helmet, so that is for when you're dealing with a client and sometimes you have to be very... like you have to remember to be very… objective. And you can't let things get to you emotionally. So you have to… you just have to keep... a hard head and just not let things get to you.

[563] Granfield (n 172); Mertz (n 29).
[564] Montgomery (n 377).
[565] Silver (n 378).
[566] Parker (n 364) 70-71.
[567] Harrits (n 390) 2.

This new student advisor saw hiding her personal self as important in the interview and took what seems to be a formalistic view of trying to remain objective; although was actually as a consequence of self-protection of her own emotions. She recalled how emotional her first case in the LAC had been where the client had lost his job and had been very emotional:

> **Student 19:** And you could see that in how he was coming across in the interview. Sometimes he was raising his voice a little bit and you could see the emotion and the anger and confusion as well. But you have to learn as an advisor you can't show your emotions, you know, as much as the client. So, if you know that the client seems to be confused with what you're saying then, you can't look confused as well. Because then it'll decrease the client's confidence in you. So, you have to keep that in control in your emotions.

Importantly, the student explained that as well as protecting herself, hiding her feelings also related to her own lack of confidence in dealing with the client. She was understandably concerned that if she displayed her own emotions of anxiety and confusion to her client, that this would undermine the client's confidence in her. This would also be particularly unhelpful to the situation given the client's own emotional state. Student 19 therefore related to the client's own emotions but chose to hide hers behind a mask and an impression of professional confidence. This was for the benefit of both the client and herself, indicating that whilst this first encounter with a client may not necessarily have increased her confidence, she was increasing her habitus by gaining experience in how to display an *image* of confidence.

4.2.1.2 Past Experiences or Habitus

Corresponding with a Bourdieusian outlook and a critical realist ontological approach, it is necessary to consider the habitus and past subjective experiences of these students, to understand the subjective, as well as objective reality that they relate. As outlined already, many of these students were from working class and Black Minority Ethnic (BME) backgrounds and were predominantly British Asian female students, residing at their family home. This group, in particular, has traditionally found difficulty in obtaining work experience, through family commitments or for other cultural reasons[568]. It is not clear why the LAC proved so popular with this group and it may simply be reflective of the ethnic diversity of the students on the law degree at this particular Higher Education Institution. However, the male/female gender ratio is similar to the current admission levels for a law degree at undergraduate level[569], reflecting the female/male divide seen of 2:1 at this LAC.

A number of the new students relayed in their focus groups how they had faced traumatic events and adversity in their past and how these had influenced their current dispositions. Student 19 explained how during her time at sixth form college she had been involved in a serious accident resulting in her being hospitalised then consequently being 'cut off from everyone' during her rehabilitation at home. She learned through this experience the

[568] Jacqueline Stevenson, Sean Demack, Bernie Stiell, Muna Abdi, Lisa Clarkson, Farhana Ghaffar & Shaima Hassan, *Challenges Faced by Young Muslims* (Social Mobility Commission, 2017) 3, 37, 42-43, 49, 59 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/642220/Young_Muslims_SMC.pdf> accessed on 26 February 2020.

[569] In 2017-18, 18,850 UK student were accepted on to law undergraduate courses and of this number 12,970 (68 per cent) were female and 5,880 (31.2 per cent) were male. See The Law Society, 'Trends in the solicitors' profession. Annual Statistics Report 2017 (2018) Slide 41 <https://www.lawsociety.org.uk/support-services/research-trends/annual-statistics-report-2017/> accessed on 26 February 2020.

importance of patience to gaining her goals and reflected:

> **Student 19:** ... that experience taught me that if I was able to overcome something like so traumatic, and just life changing, then I can, you know, do anything [LAUGHING]. It sounds clichéd but... yeah.

Another student explained how through being complacent and not working hard enough at sixth form college, he had failed to get into the university of his choice. He had therefore resolved to become more hard working, with an eye to the longer goal and realised the importance of laying down what he described as 'firm foundations for the future'. This student described his ultimate ambition as achieving the position of Attorney General, however sadly recognised the difficulty of such aspirations without the cultural capital of a law degree from a university such as Oxford or Cambridge.

One of the most pronounced former experiences however, were those of student 16. She analogised how her life had been like a 'car crash' and explained how her mistakes had shaped her as a person:

> **Student 16:** this is… just a car crash basically. I've bumped into a wall. This is older me. This is me growing up, getting old and maturing; all that jazz. And looking back at everything that I've gone through in my life. Everything that I've done, every mistake that I've made… every car crash... situation that I've made and it's <u>grown</u> [EMPHASIS] me as a person all of losing bits of me… from mistakes that I've made; from experiences that I've had; what people have said; maybe nasty or nice; have all

> built up this person that I am today; looking back and learning from… the mistakes that I've made and things that I've gone through which… sometimes are quite difficult.

The student relayed that she had learned from good and bad experiences, however the presiding message was that the experiences that she had learned from involved discarding parts of herself, in order to grow and change her habitus and ultimately change as a person. She explained:

> **Student 16:** I do think you lose yourself; and then you grow; and you lose yourself; and you grow. And I'm a completely different person to what I was since I was a kid; for better, for worse.

Interestingly, student 16 did not necessarily see all her changes as making herself a 'better' person. She recognised however that she was compelled to change, if she wished to succeed with her goals in life and comply with the necessary capital and requirements for success within her chosen field. The students told narratives of despair but having the patience to grow and develop. They identified that their own cultural capital was insufficient for their future careers and talked about having to rebuild themselves into a person who could succeed.

The common theme amongst these students therefore was overcoming adversity and preparing for and laying foundations for the future. The students' involvement within the

LAC was seen as an opportunity for progression to the legal practice field.

4.2.1.3 Anxiety in the Field

It is well established that students from complex and working class backgrounds can find their self-confidence as significantly under-developed in comparison to their middle and upper class counterparts, with grammar school and private school educations[570]. The traditional method of law teaching, within higher education institutions, with its formalistic approach and middle class unwritten rules of the field, can also discombobulate and create anxiety in students from working class backgrounds[571]. Further, and within the confines of a formalistic law degree, students entering into the degree with low aspiration levels may have these low aspiration levels reinforced. This was related by alumnus 4, who was completing a training contract with a major international law firm. She reflected upon her own limited aspirations upon starting the law degree and how limited expectation levels were projected to her within the academic field in her first year on the law degree:

> **Alumnus 4:** It's a bit, well to me, it was a bit like, I remember in the first year thinking "oh my god if I just get a 2:1, I'll be so pleased. And if I just get a job as a legal secretary, I'll be so pleased". I don't think they manage your expectations and actually allow you to think I can get a first…
>
> **Alumnus 3:** I can actually do this…

[570] Pierre Bourdieu, 'Systems of Education and Systems of Thought' [1967] International Social Science Journal 19 (3) 338; Francis Green, Samantha Parsons, Alice Sullivan and Richard Wiggins, 'Dreaming big? Self-valuations, aspirations, networks and the private-school earnings premium' [2018] Cambridge Journal of Economics 42 757. DOI:10.1093/cje/bex023; Anna Zimdars, Alice Sullivan & Anthony Heath, 'Elite Higher Education Admissions in the Arts and Sciences' [2009] 43(4) 648. DOI: 10.1177/0038038509105413; Julian Baggini, 'State school pupils lack confidence – you won't fix that in the classroom' *The Guardian* (15 January 2016) <https://www.theguardian.com/commentisfree/2016/jan/15/state-school-pupils-confidence-lessons-personality-private-education> accessed on 20 February 2020.
[571] Bourdieu & Passeron (n 90).

> **Alumnus 4:** … and I can go work at a good law firm. And I can get a training contract. It's like you're kind of… stumped at day one.

The students did not identify their lack of self-belief in themselves as particularly problematic in the academic field. However, it can become especially problematic when the students leave university to enter into the field of legal practice or other similar hierarchical and patriarchal fields, where self-confidence and belief represents social and cultural capital in the field and, as examined in chapter 1.6, is inherently associated with status and reputation[572] and a prominent 'white male bourgeois personality'[573]. Whilst a number of the new student advisors recognised that they needed to improve their self-confidence in order to succeed within the LAC and felt that a career in law would be positive and help them achieve their goals. All year two students recognised the status associated with becoming a solicitor. Student 20 described it as a turning point and finally reaching something better; whereas student 14 saw a career in law as finally becoming the confident person that she yearned to be:

> **Student 14:** And… kind of straightening out of my rough edges, [LAUGHING]… kind of being where I want to be at a place with how I come across. Obviously being confident, being well presented and… I see it as a platform for me to gain or… skills of the type of… to become the type of person I want to be, like other people… Someone who's confident, someone who can… [PAUSE] present myself just the way I am. Just myself [LAUGHING].

[572] Burrage (n 133).
[573] Schultz & Shaw (n 147) 25.

However, the students did not mention or seem aware of the high-pressure environment of the legal practice field generated by the economic field of power. As examined in chapters 1.8 and 1.9, the necessity of profitability and the tension that this creates pervades throughout legal practice[574] but this was not raised by the new student advisors in any of their discussions about a career in law. This can be contrasted with members of the alumni focus group who all agreed how much more pressured the legal practice environment was in comparison to both the law degree and LAC. Alumnus 4 also lamented that in contrast to the LAC, there was little praise for work undertaken in the field of legal practice and how she longed to just feel appreciated at her firm:

> **Alumnus 4:** But... you're not told. So, it's hard sometimes you can kind of... I find a lot, even now, I'll sit and I'll think I just wish someone would... just tell me something I've done's good. [ALUMNI 2 & 3 AGREEING] But you don't get it. And you have to… reassure yourself a lot. Which I find a lot of people can't.

Alumnus 2 who worked in a small/medium claimant firm of solicitors presented a much starker description of the office in which he worked and the colleagues with whom he worked:

> **Alumnus 2:** It's a dog eat dog world and there's lots of sharks in the office and if you do something wrong you get eaten up.

However, this might be contrasted with the experience of another alumnus, who was

[574] Evetts (n 247) 23 24; Abel (n 126) 117; Sommerlad (n 240) 159–185.

working in a small/medium sized legal aid firm working in the area of childcare claims. Alumnus 3 mentioned how she had received recognition of her work with a gold star from her boss for the work she had undertaken. Whilst there were similarities, the experiences of all the alumni were very different depending upon the size of the law firm, the area of law being dealt with, whether the work was contentious or non-contentious and other factors. Whilst there are common factors therefore for the legal practice, these all represent mini-fields where different rules and values of the field apply[575]. However, alumnus 4 did observe the cultural capital of self-belief within her particular law firm and how those trainees and employees with this disposition seemingly found it easier to get by within the firm:

> **Alumnus 4**: But I think the people who seem to find it easier... like especially doing the training contracts and stuff are them that have a lot of self-confidence and can take the knocks or can take… not getting the compliments. Because they don't need it.

4.2.1.4 Building Confidence in the Legal Advice Clinic

In contrast to alumnus 4's identification of the lack of positive recognition in practice, observation of the dialogical discussions between students and supervisors in the LAC highlighted praise given for work undertaken. Supervisors praised students; supervisors and students praised clients; and a client even praised students for their work.

[575] Colley, James, Diment & Tedder (n 559) 477.

The positive reinforcement by supervisors generally related to both formalistic and substantive issues. Students were praised for their thoroughness in their client meetings and their focus on relevant facts highlighting the formalistic issues of 'functional specificity'[576], 'colligation'[577] and 'narrowing'[578] considered in chapter 1.3, as being important to lawyers when meeting with the client:

> **Student 2:** She did make it quite personal during the interview but we managed to bring it back to the scenario.
>
> **Supervisor 1:** You did. I remember that. Yeah, you managed to… and that's… you know, in a way the greatest skill you have as a solicitor; is to be able to focus on what's relevant and otherwise the client will give you… the full thread to needle story and actually there are… you just need some really relevant, pertinent facts

Supervisors also complimented students for letters that were informative and long and detailed, as well as carrying out good online research using appropriate professional search engines such as LexisNexis PSL®. However, praise was not just limited to formalistic action. In line with the relational[579] and hybrid[580] approach outlined in chapter 1.12, students were praised for dealing with client's emotions and making the client feel at ease:

> **Supervisor 1:** I mean from my point of view I thought… I thought it was a really… good case to come in to the clinic. And I thought you handled it really well. I thought

[576] Parsons (n 31) 457 460.
[577] Abbott (n 36) 40-44.
[578] Santos (n 37) 18.
[579] Parker (n 364) 70-71.
[580] Harrits (n 390).

> you did a very good job… and I thought you did a very good job of making the client not feel stupid. Because that's how she felt. Particularly because she was a lady of more mature years and here she was, coming in to see, you know, two young people at the start of their careers and probably feeling a little bit… silly because of that. But you did a very, very good job of not making her… of sort of [DEEP BREATH] helping her, you know, sort of say that actually what she did was a really nice… it was a really good thing.

Supervisor praise was also directly linked to the students' confidence with supervisors praising students for their confidence in agreeing to present before the selection panel or their interactive discussions in the client meeting:

> **Supervisor 2:** Yeah, it was your first one wasn't it so you were a bit… shy, but you were much more confident in that one, weren't you? You were very good. I was very impressed…

In one case, to the delight of the student, the supervisor relayed the client's satisfaction from the advice they had provided; advising the students that they had received 'all 5s'[581]:

> **Student 5:** Yeah. I'm even happier now that the clients given us all 5s.

An element of the LAC field, distinct from the academic field and traditional approach,

[581] 'At the end of each case, the client was asked through a questionnaire to answer a number of questions relating to her/his satisfaction with the level of the service provided by the Legal Advice Clinic. The service was marked between 1 and 5, with 1 being lowest, and five being highest. All 5s' therefore signified the best marks a client could give.

examined in chapter 1.7, was the less didactic and more positive interaction between tutor or supervisor and student. Working in the LAC therefore represented encouragement and building up confidence for the students. All the alumni focus group also expressed how, in contrast to the law degree, working in the LAC had helped build up their confidence also, distinguishing the LAC from the usual academic field. Alumnus 1, who is now a qualified solicitor at a medium sized firm, had particularly initially struggled with her own self-confidence and explained how working in the LAC had been crucial to her own development:

> **Alumnus 1: …** I think without the legal advice clinic, it [University] wouldn't have done enough. Because… that client contact, it was just crucial... It was really nice to take those baby steps with the legal advice clinic. Because obviously we couldn't give the advice but we could get face to face contact and build up our confidence. I think without that there wouldn't have been enough of that sort of thing in the… actually in university. So anybody that didn't do the legal advice clinic, I think they were at a disadvantage...

Alumnus 1 worked in the LAC for three out of the four years of her degree, and despite initially struggling with her confidence, decided through her LAC experience that she wanted to enter into client facing and client-centric work, rather than an area such as commercial work. As examined in chapters 1.5.3 and 1.9, CLE experience can expose students to different epistementalities, reinforce substantive values and be transformative in it its process[582]. Alumnus 1 is consequently now working as a solicitor in the field of private client

[582] Erlanger & Lessard (n 295) 199.

work. She described her work in the LAC as 'taking baby steps' and 'handholding', and whilst all alumni agreed that the LAC did not represent the same pressure as in practice, they did relate how different the LAC experience was to the usual predominantly passive experience of sitting in a lecture theatre on the law degree:

> **Alumnus 2: …** and the confidence really… pulling you out of the comfort zone of just sitting in a lecture theatre and getting spoon fed everything… so that was really good. It did prepare me for practice, in that sense.

4.2.1.5 Summary

Rather than having a client focus, the majority of the newly appointed student advisors saw their identity as serving the zweckrational purpose of building up their confidence, as well as learning new skills appropriate for the formalistic field such as interviewing, researching and letter writing. A number had faced adversity in the past, which they had overcome or were overcoming and in which they were building upon to prepare for their future, attempting to learn knowledge, skills and practices. Changing themselves was a common feature and the students did show a recognition that their present selves needed adapting and changing for the field that their future professional selves would find themselves. This involved losing parts of their habitus detrimental to their professional growth, whilst developing other parts, which would be useful to their future professional field. Whilst, accounts of both the legal practice and academic field indicated a de-legitimisation of the self[583], which may do little to improve anxiety and construct self-confidence, students did find that coming outside of their comfort zone and working in the relatively safe environment of the LAC,

[583] Thornton (n 214) 378.

together with the recognition and praise that they received for their work, had helped them in raising confidence levels. Unfortunately, however, whilst the relatively inexperienced sstudents all associated the role of solicitor with high status, they remained unaware of the high pressure environment of legal practice and how unsuitable this may be to shy and anxious individuals. Instead, they saw a career in law as a transformative experience where they would be happy and become what they wanted to be, albeit unaware of the demanding and anxiety-ridden field that may await them.

4.2.2 The More Experienced Student Advisors

Whilst the more experienced students in the LAC displayed a more nuanced understanding of practice, many still held a relatively romanticised version of legal practice, with no students talking about the potential pressure or stress that they may face other than student 5 who had observed how law firms were a business that had to make money as considered in chapter 1.9[584]. This is perhaps understandable given that to the majority of students, this was their career choice and they would be unlikely to want to achieve a career in a profession that they viewed negatively.

With the exception of one student, who had been involved in the LAC for over a year, all foresaw their future as a career in law. The one student who had decided that she did not want a career in law had taken a year out from the law degree at the end of her second year and had only just returned to her third year of study. She described being in a 'dark place'

[584] Evetts (n 247) 23 24.

during her year out but also 'finding herself' during this time. She had consequently decided that she would stay on for a post-graduate international Masters' degree after completing the three year LLB (Hons) but afterwards wanted to go abroad to do charity work and talked about maybe returning to her home town in India to help the poor. She explained:

> **Student 26:** I feel as though I'd reap the benefits in doing something much more active than just maybe staying in the office or something. I feel as though I want to get out and touch the people… I'm not really bothered about the money side of things; I want to just help people really. And I know in my own country people are in need so why not start in my backyard?

Student 26 explained her cultural family habitus and influence to take this route was both her parents, who had always been involved with charity work, her family origins in this country and how as a Sikh, it also formed part of her religion to help those that are in need.

Corresponding with this student's desire to help, two significant and substantive themes emerged from the analysis of the data for student advisor identity, in the more experienced students: 'kinship' and 'beneficence'. Whilst a definitive causative effect between working in the LAC and increased 'kinship' and 'beneficence' cannot be correlated, as this was not a longitudinal study, it is nevertheless interesting that the more experienced students commonly displayed these themes more than the inexperienced students. It is not clear whether these students developed these dispositions whilst working in the LAC or these dispositions were what attracted the students to the LAC or maybe, and most likely, a

combination of the two. However, given the new students (with one notable exception) were predominantly focused inwardly on building their confidence and skills, the greater outward focus of the more experienced students does seem at least to suggest that the culture of the LAC likely encouraged and nurtured these dispositions.

The notable exception was a relatively inexperienced year 3 student (student 25) who displayed a deep understanding of the inaccessibility and unfairness of the law and expressed a desire to help these people. She had confirmed this was one of her main reasons for getting involved with the LAC. However, when relaying her best learning experience, student 25 did refer to how she had gained understanding of considering the client's perspective through dealing with a case in the LAC. This had been a distressing case for the client and she reflected upon how supervisor 1 had helped prepare her to 'bridge the gap' with the client:

> **Student 25:** This is a recent experience in the clinic actually. It was for a client interview. We had a client come in. It was quite... a very sensitive case. And me and the other advisor we were trying to think of how we could, start the interview off without having... because it was such a distressing case, we didn't really want to be like "hi". So, [ILLEGIBLE]. We needed to find some sort of way to bridge the gap and come up with a kind of... how to establish that personal relationship and bring down any barriers that she had and this is [SUPERVISOR 1] in the corner... But [SUPERVISOR 1] actually helped come up with a way to really bridge that gap
>
> .

In line with the other new student advisors, student 25 saw her involvement in the LAC as a means of progression but, in a manner dissimilar to the other new student advisors, recognised that this would be achieved with the help of the more experienced student advisors. She therefore demonstrated a more nuanced understanding of the culture of the LAC field, which was more similar to the experienced student advisors suggesting an instant habitus match of the necessary dispositions and characteristics valued in the LAC.

4.2.2.1 Kinship in the Field

The majority of the experienced students described how collegiate working in the LAC was. One student likened the participants in the LAC to 'a little family' when describing the LAC from the student's perspective:

> **Student 7:** I think it's like… it's almost like a little family [LAUGHING]. I think that's the nicest way to put it. Because even though we are all in different years, we've sort of had chances to get to know each other at socials and then, the meetings and I think we're all quite friendly, there's no like conflict between anyone and it's just a nice place to be.

The sense of fraternity pervaded throughout many of the discussions and it is clear that from working together, socialising together and being involved in the direction of the LAC through meetings, students had a symbolic sense of belonging and affiliation with the LAC. As confirmed by a relatively inexperienced year 4 student:

> **Student 16:** So this is the legal advice clinic. So this here shows… this link shows my bond with the clinic shows that it's something I care about, I'm passionate about.

Students compared their work in the LAC, with their work on the law degree. They recognised how their identity as a student within the academic field involved an isolation from each other, was focused on achievement[585] and how the law degree did not involve teamwork or understanding others[586]. As explained by an experienced year 3 student, the law degree was more about her, whereas the LAC was about teamwork, feelings, and 'other people':

> **Student 12:** We don't really have a lot of teamwork in law... so we're not really expected to be able to work with other people and understand how other people are feeling. And I feel like on our degree, it's more yourself, like make sure you get your grades and then you move on. As opposed to you're not working as a team. You don't have any team projects that we get assessed on or anything like that. Whereas within the clinic we work with loads of different students and we learn [EMPHASIS] from them. For the most important... we do. I learn so much from the year 4s and students that have been there longer.

Student 12's experiences of the law degree are commensurate with the literature featured in chapter 1.6 and the formalistic 'transmission'[587] or 'banking' models[588] of lectures and

[585] Daicoff (n 172).
[586] Sheldon & Krieger (n 29) 883-897; Mertz (n 29).
[587] Bransford & Stein (n 198) 199.
[588] Freire (n 199) 57.

tutorials. This approach focuses on rationality to the detriment of emotions and results in a departure from an interest in emotions and people[589]. However, student 12 whilst reaffirming this as her experience on the law degree, contrasts this with her work in the LAC which requires teamwork and the encouragement of peer-to-peer learning. In distinction from the work on the law degree, student 12 recognises that this kind of work requiring a recognition of other people's feelings and emotional intelligence, which is, as considered in chapters 1.11 and 1.12, an essential element of a relational lawyering approach[590] in contrast to the hegemonic technocrat. The students work with a wide range and rich diversity of participants:

> **Student 26:** There's different types of students, there's different people, there's staff that's older than you, there's different clients, different ages, different ethnic backgrounds. I think it's just all a mix; it's like a big mixing pot. And just the way you deal with everyone, sometimes it's different, just based on how they are. And I feel as though all of that experience, it just helps in, you know, achieving your goals, as I feel as though they're all life skills.

As examined in chapter 1.9, welcoming diversity is an essential ingredient for a liberal education[591]. Through working together, the students were working with people from different backgrounds and cultures and recognising and embracing difference[592]. Their normal relationships on the law degree differed in the LAC towards a more collegiate

[589] Daicoff (n 172); Poole (n 212).
[590] Silver (n 378).
[591] Nussbaum (n 16) 10-12.
[592] Representing one of Martha Nussbaum's foundational values for a liberal education. Nussbaum (n 16) 10-12.

approach with students also recognising a difference between the common student/tutor inter-relation on the law degree:

> **Student 25:** I feel like sometimes on the law degree there's only certain [EMPHASIS] tutors that are willing to kind of put their arms out and be like "come to me for help". I feel sometimes they're a bit like "well... that's it. You know, you've come to the lectures, you've gone to the tutorials. If you don't get it, you don't get it". So, that's how it differs from the clinic. Like you can go to anyone [EMPHASIS] in the clinic and well... the majority... [LAUGHTER] and be like "help" and they will. Whereas sometimes you've got to be a little bit more selective on the degree about who you go and speak to. Well personally, I think that.

The dissimilar contrasting method of learning in the LAC, from the law degree, involving a cooperative Vygotskian scaffolding approach[593], as opposed to a detached, value neutral case method approach[594] considered in chapter 1.6, may explain why the students found the tutors to be more supportive in the LAC. Whilst the LAC still had an evident hierarchy, between supervisors and students, power was abated through an active empowerment model of working which naturally required the students and supervisors to work more collaboratively together to arrive at a solution. This can be contrasted with the more traditional hierarchical model, where students often find themselves subordinated to the power of the tutor[595]. Whilst the case method approach on the law degree encourages individualism and there is little evidence of teamwork, student 26 described her attempts to

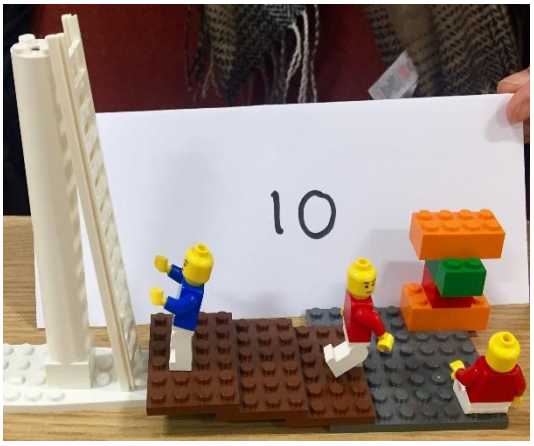
[593] Vygotsky (n 61).
[594] Granfield (n 172).
[595] Kennedy (n 216) 592.

transfer the collegiate ethos of the LAC to the learning on the law degree through a strategy of asking questions that she believed would be of assistance to her fellow students:

> **Student 26:** In terms of the degree, yeah, like at the finish line it's yourself to be honest. With what [STUDENT 12] was saying about teamwork and things like that, with the law degree, I'd agree that there's not much even though we try. But what I've started doing now, especially if I struggle on something. Then if I know I'm not seeing it and I know there might be a chance that other people are struggling... oh, say for coursework, if I ask "do we need critical analysis"? And I know that that's going to get me top marks, I'll say it out loud and I'll say it... ask the teacher, so everyone sort of knows even if they're not directly asking. I know... I feel better then. Like that, I'm not cheating everyone. That I'm, you know, helping everybody out.

It is interesting that the student sees not helping the other students on the law degree as 'cheating' them. It appears that the student has internalised the collegiate ethos which forms part of the valued dispositions of the LAC field and worked on tactics to help others on the law degree – although conceding that there is not much teamwork on the law degree, even though she tries. In contrast, the culture of the LAC is very much students providing peer-to-peer support for each other and a number of students have also internalised helping each other as a value forming part of their student advisor identity. These student advisors help each other wertrationally, for the inherent value of performing this action, even if it may mean slowing down their own development and this disposition represents one of the valued characteristics in the LAC field. The more experienced students also talk about stepping up to help mentor and develop the less experienced students.

Student 12's LEGO® SERIOUS PLAY® model that represents her as a student advisor epitomises this approach:



She explains the model:

> **Student 12:** Okay… so that's me. Stepping up. So, because it's my second year, I feel like I have that bit of experience. And then that's someone there, that's struggling, that's just started and doesn't have any help. And as opposed to just carrying on and improving myself, I've stopped and looked around and seeing if anyone needs help and then helping them and seeing if they need... if they need any help. Because I think I'll do that. I think I'll turn around and say "do you need any help?" As opposed to just thinking about myself and thinking about my own progression but thinking about others around me, as well. So we're all progressing at the same stage, as opposed to some of us doing really, really well and then the others not understanding what to do… And that's just blocks of the different things that I do at the clinic. So… just making sure I try to get involved in everything that I can do...

As outlined by student 7 earlier, student 12's advisor identity was not just based upon the appointments with clients but she related the blocks to other pro bono projects, such as helping the homeless, presentations that she had provided to the public and the drop in sessions that she has assisted solicitors with. Stepping up as an experienced student advisor was a key theme for the more experienced student advisors and was recognised by a relatively new student advisor, who saw the experienced student advisors as reaching out to help the less experienced students:

> **Student 25: …** I'd say that this is like your progression [EMPHASIS] in the LAC and these are like all the other students… working their way up. Because I'm new, I'm not... not at the bottom, bottom, I just can't prop the ladder up any other way. [LAUGHTER]. But like working my way up and they're [the more experienced student advisors] reaching out because they're offering help. Yeah.

The LAC field represented a far less individualistic and isolated field than the law degree, as explored in chapter 1.7. Some students explained how they had learned from the more experienced student advisors who had acted as role models for their development:

> **Student 7:** I think the person that's made a big impact on how I work at the clinic is [NAMES STUDENT SHE WORKED WITH IN HER FIRST YEAR IN THE LAC] because she was the first person I worked with and I had most of my cases with her. And it was just, she was so on point all the time… I think, yeah.

Student 7 explained how this student had been an inspiration to her through her commitment to the work of the LAC and her willing and helpful nature:

> **Student 7: …** she was so hard working. Like, the mind [LAUGHING] was just… it was just good to see someone that was so really into something and then you think 'oh, I'm going to have to be that'. I'm going to have to… try and achieve that just to be on the same sort of level but she was great and she was always ready to help and I just didn't understand how she did so much [LAUGHING].

However, whilst the students learned from each other, the culture of kinship, and the value of this disposition, meant that those who were not willing or able to work to a desired level of commitment or did not want to work conscientiously as a collective, were ostracised to some extent. Student 12 explained the blue and white LEGO® figure in her model who simply wanted to progress herself, rather than help others:

> **Student 12:** Not caring... not looking back and stopping. Just carrying on and progressing themselves as opposed to making sure that everyone around us. Because we work as a group. So if there's someone falling behind in the group or someone that is not understanding something, and just kind of ignoring that. And just thinking about themselves. Whereas I'd stop and be like... [ILLEGIBLE]

Whilst the attitude of the student 'not looking back and stopping' was conducive with the culture within the academic law degree examined in chapter 1.7, this potential conflict between those that wanted to help others and those who just wanted to help themselves in

the LAC, did create the possibility for tensions and the potential for isolation and exclusion of those who did not display the necessary dispositions[596]. These tensions and others between a formalistic and substantive approach will be discussed in the next chapter.

Interestingly, and whilst it cannot be shown as causative, the alumni focus group talked about how they still valued collegiality and pursued an ethos of teamwork in legal practice which may be linked to their developed habitus . Alumnus 2 and 4 identified how they tried to work collaboratively in legal practice and not too competitively:

> **Alumnus 4:** That's another piece of advice actually to give people... don't be competitive. Like we said this all through uni and it's the same through getting training contracts, where you work...
>
> **Alumnus 2:** Be collaborative...

Alumnus 2 also identified how he had set up a WhatsApp group with friends from other firms where the group members consulted with and assisted each other, over legal problems that they encountered. Alumnus 6, who worked in the non-contentious area of commercial property, went even further and explained how her charitable outlook extended to lawyers in other firms, working for different clients in transactional deals. She confirmed if they made a mistake, her and a lot of people from her firm would 'help them

[596] Inge Bates, '"A Job Which is 'Right for Me?" Social Class, Gender and Individualization', in Inge Bates & George Riseborough (eds) *Youth and Inequality*. (Buckingham: Open University Press 1993).

out' to try to rectify the error, albeit there was an element of self-preservation, in that if she made a mistake she would hope that other firms would reciprocate and also help her:

> **Alumnus 6:** Well... saying that, speaking to a lot of people I work with, even if someone on the other side does make a mistake, they always say "well let's help them out" [ALUMNUS 4 AGREEING] because you never know when you might need their help.

However, whilst alumnus 2 and alumnus 3 talked about how they extended their collaborative help to colleagues, they did not extend the same charitable viewpoint to other firms. They both worked in contentious areas of law, pursuing claims where a disparate power imbalance existed between their legal aid or 'no win, no fee' law firms and the financial might of the defendants and law firms that they worked against. They could not reconcile alumnus 6's approach of helping other firms and alumnus 2 described how if an opponent from another law firm made a mistake, that he would 'smash them' for it:

> **Alumnus 2:** Crazy. In my area, it's completely different if the defendant does something wrong. It's funny how you should say that. You know, in my... in what I do, they do something wrong, we like go and smash them for it.
>
> **Alumnus 3:** Well do you know what, it's funny that you say that because we have to do that as well.

Interestingly, alumnus 4 who worked in a contentious area of law for an international law firm for defendants did not make any comment. It is however clear that whilst a collegiate attitude was extended to colleagues; this was not always extended to other lawyers and

firms, particularly in contentious areas of law with disproportionate power imbalances. As noted earlier the sub-fields of legal practice can represent different epistementalities and *doxa*, resulting in different outlooks and rationalities for action, where contentious lawyers develop and exhibit a more adversarial habitus than non-contentious lawyers.

4.2.2.2 A Beneficent Role?

In addition to, helping each other, the more experienced student advisors were also focused upon helping the client. Whilst it might be expected that these two themes would work concurrently, this was not always the case and was seen by one student as a balancing exercise:

> **Student 26:** I'm always on the go I'd say at the legal advice clinic. And whenever [LAC CO-ORDINATOR'S FIRST NAME] rings I always make sure I'm there. Even if it's like an emergency, you need to help somebody out. I'm always there. My arms are like wide open because on one side I'm trying to make sure we get everything done for the client. There's the client there on the finishing line. And then on one side I make sure to help others [student advisors] as well. I make sure I'm respectful and you know, keep my morals in check as well. And make sure… the environment that I work in is good... positive and make sure I get feedback from others. Have I done well in this? Was I okay with the client? So, trying to balance everything out.

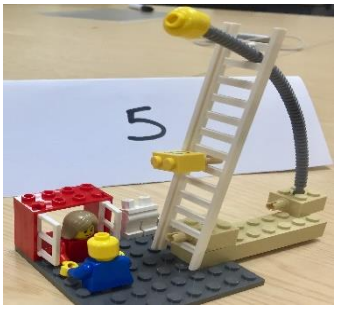
Whilst this student considered that helping both other student advisors and clients as having to try to achieve a balance, other student advisors related their sense of

commitment to a desire to help everyone:

> **Student 5:** All of them [student advisors] have been really nice people. I think, I'll say 95% are committed. They want to help this client. They're in it to help the client. I think they're a really good bunch.

> **Student 7:** And just making sure things… you could help out where you can. So, I think a good… student advisor would be someone ready to put in time and they're just dedicated. I think they're two things that they really need to be.

As identified in chapter 1.9, a goal of CLE should be developing and promoting substantive values, such as access to justice and seeking justice[597]. Student 21 was the most experienced of all the students participating in the LEGO® focus groups. Her LEGO® model embodied the beneficent student advisor identity of the more experienced students, depicting herself as a LEGO® person reaching out and holding hands with her LAC client:



[597] Stuckey *et al*. (n 224) 145-146; Abel (n 279) 216.

Student 21 explained how she had removed the legs of both LEGO® people to demonstrate how she recognised the differences between herself and the client and how the client is entering into the legal advice centre without any of the necessary knowledge for the formalistic sphere. She adopted an egalitarian approach, emphasising the dialogue between lawyer and client and identifying the relationship with the client as important to assisting the client in solving her legal problem. Such an approach of allowing students to interact with and help vulnerable clients as appraised in chapter 1.9[598] and represents a similar identity to the relational lawyer and hybrid approach to professionalism, identified in chapter 1.12[599], with the student traversing beyond the legally formalistic to understanding and relating to the client within her substantive context[600]:

> **Student 21:** Right. So... this is the clinic. That's me and that's the advisor. This piece of LEGO® had legs on it but I took them off to show that when we get clients in the clinic we like to… be on the same sort of level as them. So, they know that they can come and speak to you and you're not… you're not judging them in any way.

The ladder with faces represented the clients' journey. The bottom of the ladder, signified the frustrated client and the top represented happiness and a solution to the client's problem:

> **Student 21:** And the ladder, it represents that… so when the clients come to us they're not… well they're at the end of their tether. So, they don't feel as though they can find a solution to their problem. And what I did have was someone at the

[598] Rhode (n 255) 545; Nicolson (n 14) 57.
[599] Parker (n 364) 70; Harrits (n 390).
[600] Susan Brooks and Robert Madden suggest that relationship-centred lawyering builds upon and enhances the client-centred approach. Brooks & Madden (n 27) 342.

> top of the … their. So that's us, so that's me helping them to get back to the… helping them find a solution to their problem. And I think that's what represents… and then that's the client's happy with the result that we've given them. And I just think that's my role as a student advisor is just helping people…

The student saw helping the client as the most important part of her student advisor identity and explained how the window in the model represented her transition in role from being a formalistic student to being a substantive 'helper':

> **Student 21:** Yeah. It's because we're coming out of… we're moving away from being students and becoming helpers.

Some of the students recognised the law represented an obstacle to the clients and talked about their desire to make the law more accessible. Student 25 spoke how she wanted to make the law more accessible to people, however recognised that this may not necessarily be achievable, relating such a wish as having to wave a 'magic wand':

> **Student 25:** So these are ordinary people and this is the law. So I feel… in my law career, if I could wave my magic wand... I'm trying to make the law a little bit more transparent for people... more accessible to people. I think that's one of my main… things anyway. I know that was one of my main reasons for joining the clinic. The fact that it just made the law so much more accessible for people. Because I think that's a really big problem at the moment. So if I could somehow wave my magic

wand and give ordinary [EMPHASIS] people this access to... and like the clarity on the law that is needed.

A prominent feature of the data collected is that the students in the LAC saw wanting to help the client as an important feature of their identity as an LAC student advisor. In discourse, students and supervisors commonly expressed a desire to help the client. The following discourse provides such an example, in a case where the students were unable to offer a legal solution to their client:

Student 1: You should always tell them… why you don't think it is worth pursuing or whatever so… I just wish I could help her [NERVOUS LAUGH]

Student 2: No, I'm trying to think of other ways [NERVOUS LAUGH] but I can't think of any.

Supervisor 1: But that's good. No, but if that's, you know it's good that it draws… that spirit out in you really, yeah.

Both students lamented being unable to assist the client legally, and exhibited a wish to be able to assist the client. This attitude was in turn, praised by the supervisor. A large part of the student advisor's substantive 'helper' identity arose in the context of their understanding of the clients and how desperate they were for help. The presiding epistementality of the LAC field represented the LAC as a place of last resort, to both the clients and the student advisors, and helping those who otherwise would not be able to obtain any help formed an integral part of the student advisors' identity. This identity and

the fact that the LAC helped the most vulnerable and disadvantaged was referred to in a number of conversations:

> **Supervisor 2:** ... So, they've just… done what they can… in the tragic circumstances haven't they? And if they're all in agreement, I think… it will be a good one to advise on and to get… some knowledge of and help somebody in… real need, won't it?

> **Student 5:** ... And I just got really in the element and I really did enjoy the experience of knowing that I am helping this client where they know they can't go anywhere else and the clinic is the last resort and you are providing them with a little bit of hope that they can sort out their legal matter.

In a similar fashion to the attitude towards students who did not want to work together as a team, similar negative comments were made towards those who did not make the effort and explicitly did not care about the client. When asked about what he considered to be the qualities of a bad student advisor, student 5 replied:

> **Student 5:** I think one that just doesn't care. Like, the whole point of the clinic is to basically provide help for those who can't afford legal advice. If you can't be bothered to put the effort in, then you shouldn't be here.

4.2.2.3 The Students Sense of 'Self' in relation to the Legal Advice Clinic context

4.2.2.3.1 Family

In light of the majority of the students' ages, students unsurprisingly relayed a close affinity to their parents and families and how important they were to their personal habitus. They talked about the highly respected status of the law degree, as considered in chapter 1.9 and how proud their families were, especially as many of the students were the first in their family to go to university:

> **Student 25:** I'm the first one out of five to go to uni… well to college and then to uni. So, yeah they're just like, my mum will be in the supermarket and the scanner will be like "oh, yeah my daughter's this" and my mum will be… well my daughter [LAUGHTER] is on a law degree. Like at every opportunity she gets, she's… sliding it in. But negatively, I'll come home and she'll be "you're on a law degree, why aren't you doing some work?" [LAUGHTER] I'm like "mum, leave me alone" [LAUGHTER]. But they are really proud. [LAUGHING]. Too proud.

> **Student 18:** And when I got my results, you know, when I got accepted to come to [NAME OF UNIVERSITY] to study law and I told my mum… she was so proud of me. Yeah, that's what I want to, you know, keep going. That's how proud how she feels about me and everything because as soon as I told her, because she wasn't in the UK, I told her so when I called her and I told her and she was like, "ah" [NOISE OF CONTENT], everything and she went around telling everyone in our neighbourhood and my home town.

However, as well as relaying how proud their family were of them, the students also related the clients to their own habitus and families and communities. They reflected upon how similar their own families were to the clients, and this provided a motivation for the students to want to help the clients. They considered through helping the clients they were indirectly helping people similar to their own families and communities:

> **Student 5:** … I wanted to apply because I looked at it and it looked great, like fantastic, helping those… because I know with my family, we're not, we can't afford legal advice so I wanted to put something back into the community and help in that sense and do something pro bono really.

> **Student 7:** Well when I first, when I was quite younger, I always thought I wanted to be a family solicitor because of growing up and ... just because, I don't know, I just wanted to help people like my mum basically.

> **Student 16:** I care about it because obviously it's like the main thing being the clients; helping people who can't afford access to justice. All that sort of jazz that sounds a bit clichéd but it's true. You know, I come from an area where… that people wouldn't be able to afford advice, so, I just feel like something… that in my community would benefit them greatly. So, I can imagine how much help it would be for them.

> **Student 21:** You do it for… to help the community and help those… that need help.

The students also reflected upon how their family members had influenced them and one student, in particular, discussed how a recent death of a close family member had strengthened her resolve to help people. She believed that through volunteering and undertaking charity work she was helping to fulfil the wishes of her recently deceased family member and reflected upon the difference between the intrinsic value of doing good, as opposed to the extrinsic value of material status, associating this with the LAC field and epistementality. She reflected on the fact that people were best remembered for what they did and for the difference that they made:

> **Student 21:** And I just think that's my role as a student advisor is just helping people because, as morbid as it sounds, at the end of the day that's all… that's the satisfaction that's what going to matter really. People are going to remember you for what you've done, not for who you are. Like as in what you've done to… how you've affected their lives... So mine just basically represents helping people. And the two different areas of law, that I… well I think I would enjoy, would be family so like these, the two people, and then wills and probate because I think in, it helps me, it means I'm helping people now [EMPHASIS] and it means I'm helping fulfil the wish of the people that are not here anymore… Yeah, because I'd like to think that I would help people and I'd make a difference to their lives and they would remember me the same way, I hope, I remember them.

However, a habitus match with the clients and a substantive approach did prove to be emotionally laborious for two of the students[601]. Student 7 who had decided to become a solicitor to help people like her mum, who had brought up both her and her sister as a single parent, found the area of family law too distressing. She decided that she was 'too soft' to work in this area of law and instead decided that she wanted to work in the areas of commercial or property law, mentioning that the law degree had also shifted her towards this direction:

> **Student 7:** So, then when I actually started studying the law, because I did it at college and I just thought "oh, it's actually more to it than this". And I've actually gone right [EMPHASISED] away from family law. I just don't want to do it anymore... No, I think I'd rather prefer something more commercially or property... I think it's just doing the law degree and experiencing the whole range of things. I think I'm too soft [LAUGHING] for family law.

Student 16, found one particular case very distressing as she related the child involved in the case to her own child self. Similarly, to the client's child, student 16 had also been involved with the Children and Family Court Advisory and Support Service (CAFCASS), when a young child, and had written a letter to the court to advise she did not want contact with

[601] Arlie R Hochschild, *The Managed Heart: Commercialization of Human Feeling* [2003] (Berkeley: University of California 2003); Chalen Westaby, 'Feeling Like a Sponge: The Emotional Labour produced by Solicitors in Their Interactions with Clients Seeking Asylum' [2010] International Journal of the Legal Profession 17 (2) 153. Chalen Westaby, 'A qualitative study of the impact of law clinics on students' perceptions of emotional labour expectations' [2014] The Law Teacher 48 (3) 248.

her father. Dealing with the case had brought back all the emotions and feelings that she had faced herself as an eight year old child:

> **Student 16:** So basically, that child was me [EMPHASIS] when I was younger. I was the person who was going through CAFCASS. I was the child who was going through CAFCASS going to… the centres where you meet up with parents. But it's contact but it's not like full contact? It's just a contact centre. And I wrote a letter to the court when I was… eight to say that I didn't want to see my dad. So it really, really, really, really [EMPHASIS] affected me.

Whilst some of the students grasped their student identity by relating to the clients through their own family experiences and habitus match, this did create dilemmas and value conflicts. Student 7's habitus, and particularly her mother, had initially been a motivator and inspiration to work in the area of family law. However, whilst wanting to work in this area for reasons to help people like her mother, she discovered how emotionally demanding such work was. Family law represents conflicts, feelings and emotions, many of which may be negative such as anger and despair. Being able to relate some of such feelings back to the self was distressing to such an extent that it conflicted with the students own values of wanting to help people like her mother. Whilst the student may have still valued the work undertaken by family lawyers, it was simply too painful for her to enter into this area of law and she related her inability to deal with such feelings as being 'too soft'. Therefore whilst relational and hybrid client-centric lawyering may encourage empathy[602] for some future lawyers, particularly those who could relate to the circumstances of the case, the

[602] Silver (n 378).

subjectivity of this approach could present difficulties. Student 7 saw the subjectivity of being able to feel and empathise with the client as being 'too soft', and saw a career in commercial and property law away from the sad narratives of family law clients as being more appealing.

4.2.2.3.2 Solicitors and the future

Whilst the clients in the LAC represented the students past and present, the solicitors that they encountered could be seen as representing the students' future selves. There was therefore discussions between students and supervisors about the similarities and differences between their identity and role and those of a solicitor. Whilst many of the students believed that being a solicitor could be conducive to helping people, student 5 recognised the conflict that could arise within the neo-liberal field and how the need for profit could diverge positive substantive action:

> **Student 5:** Well, from the drop in sessions, getting to know solicitors and working and seeing how they work, like if it wasn't for the clinic I probably wouldn't have met these solicitors or seen how they operate and get a different outlook on the law and look at it from our point of view, where it is about helping clients, and then looking at it from solicitors points of view where, well some solicitors, where they are a business and they have to make money.

Student 5 through his experiences in the LAC had a glimpse of the legal practice field and the cultural, social and economic capital of this field. He recognised from his observations and discussions with solicitors, that as a consequence of the influence of the economic

sphere, which was examined in chapter 1.8, that profit is a necessity and often the primary consideration for legal practitioners[603]. In accordance with the recommendations made in the literature reviewed in chapter 1.9, he identified that the focus of the LAC was a substantive one of helping clients[604], however also appreciated that the financial necessity in the legal practice field meant that unlike the LAC, one of the primary goals of this field was to make money. He recognised how this could therefore conflict with the substantive value of fairness and helping others and described the alternative viewpoints of some of the solicitors he had encountered and how they viewed 'the law' differently to him. Of particular irony, is the fact that student 5 had learned this through his encounters with solicitors in the LAC who it might have been expected, by the very nature of being involved with the LAC, to have a more altruistic outlook. However, even with solicitors giving their time, for free, in drop in sessions, they could not avoid the financial necessity of having to make money within the neo-liberal economic field.

Students and supervisors recognised in their discussions how the financial necessity could often lead to injustices. In the following exchange, the students and supervisor were discussing a case, where the client did not have a legal solution and the supervisor highlighted to the students the injustice of not only telling the client that she did not have a legal case but also having to charge a client for telling them this news:

[603] Evetts (n 247) 23 24.
[604] Nicolson (n 15) 57.

Supervisor 1: Could you imagine if actually not only were you doing that, but you were always, you were also going to have to ask her for £500 on account of costs? Can you imagine that scenario?

Student 2: Actual worse. Not really, you can't help her, you are going to have to charge her as well.

The expensive and inaccessible nature of legal practice, and the consequent difficulties that this may lead to for those without the finances to afford entry into the legal field was also discussed by supervisor 3 and student 14:

Supervisor 3: And quite expensive if there's no legal aid available. And you do want to challenge any part of that. I mean if you're both happy in getting a divorce then that's different isn't it? Because you can then... it's just sort of take... it's part really. But if you want to challenge part of it and you haven't got any money that is much more difficult then isn't it?

Student 14: Yeah, I remember, in the research that for him... I think it was for him to challenge... it was £200 just for the form itself and...

Supervisor 3: Just to <u>deny</u> [EMPHASIS] any allegations from her.

As well as providing its services free of charge, the LAC, with its ethos of being a place of last resort, operates on an opposing financial model to the normal legal practice model. Whilst, in the absence of legal aid, possession of money provided access to solicitor firms, in the LAC model, the lower the income and the less finances and assets the client held in their

possession, the more likely they were to be provided with assistance. As confirmed by a supervisor in discussions:

> **Supervisor 3:** And the fact that she's had to come to us. She didn't really have anywhere else to go.

This theme between having money and getting assistance in private legal practice is highlighted when a supervisor and student discuss why a client cannot get assistance from a solicitor but how this makes her eligible for assistance at the LAC:

> **Supervisor 3:** She was seeing [NAME OF FIRM OF SOLICITORS] about this… And [NAME OF FIRM OF SOLICITORS] have said that they'll help her but she said she can no longer afford them. [NAME OF FIRM OF SOLICITORS] in [TOWN/CITY].
>
> **Student 5:** Which is why she's come to us.

The importance of not having money and not being able to afford to pay for legal help is therefore significant. Student 5 commented on numerous occasions in just one semi-structured interview about how important it was to him that the clients were unable to afford to pay for legal services and the LAC was the last resort. This formed the very core of his habitus and identity as a student advisor:

> **Student 5:** Okay. When you come into the clinic, it's really about helping those who cannot afford legal advice.

Student 5: Why did I apply? Because when I got the advertisement, I saw that it's a clinic that's outside of university and its helping those who cannot afford legal advice.

Student 5: And I just got really in the element and I really did enjoy the experience of knowing that I am helping this client where they know they can't go anywhere else and like, the clinic is the last resort and you are providing them with a little bit of hope that they can sort out their legal matter.

Student 5: The issues we're looking at is really is the clinic the last resort?

Student 5: … we're here to help those who can't afford legal advice. The clinic's the last resort and therefore we'll do our utmost best to provide them with some advice or if not, we'll refer them to somewhere who can help.

This identity of only helping those who could not afford legal assistance or get help elsewhere may have contributed to this student, who was usually both empathetic and sympathetic towards clients, showing little desire to help those clients who could afford to pay for legal services:

Student 5: With low need, if this person's got a pot of money at home then they really need to go find a solicitor. If the person's got a solicitor, really, then, well they shouldn't be coming here either.

The necessity of making money in the economic sphere also placed a premium on time within the legal practice field. Supervisor 2, who had formerly practised in law as a legal aid solicitor, relayed her professional habitus to the students in conversation. Whilst she distinguished the LAC field from the legal practice field, by pointing out that in legal practice advice often has to be given on the spot, she explained the need to work quickly in practice:

> **Supervisor 2:** It was fast but you don't always need, I think people… think you should go on for a long time… Actually when you are in practice, you… get all the information as quickly as you can… And obviously as you can't advise then that's… you shouldn't, don't worry if you've got all the information [SUPERVISOR AND STUDENT 3 LAUGHING]. Don't think you need to… just keep asking questions to make it longer [STUDENT 3 LAUGHS].

Alumni 2 & 3, with the benefit of working in practice, also relayed the importance of working quickly, especially in 'fixed fee' cases, where a failure to work quickly directly related to their ability to 'earn money':

> **Alumnus 3:** Some of ours is fixed fees. But…
>
> **Alumnus 2:** You've got to work as quickly as you can with fixed fees because if you dawdle on something you're not earning any money, are you?
>
> **Alumnus 3:** No, yeah. Exactly.

Historically, and unlike other professions such as medicine or teaching, the legal profession has predominantly operated within, and accordingly has been heavily influenced by, the economic field of power. As a consequence, and as considered in chapters 1.8 and 1.9, time and economic sustainability, and the pressures that this generates, have been central to the legal profession's development[605]. Time and economic sustainability represents a phenomenon, a way of thinking that influences how the profession reasons, thinks and understands. It is one of the legal profession's epistementalities and its unquestioned *doxa*. Through its supremacy within the field it represents the rationality for much of the action that is or is not taken. The economic importance of time is highlighted in both dialogical discourses and is a considerable contributing factor for many lawyers and law firms. It contributes towards the abstraction and subordination of clients to the legal case and the displacement of the client's narrative. Considering the substantive issues, as well as the formal requires more time, which conflicts with the epistementality of the field. Whilst the supervisor distinguishes the field of practice from the field in which the LAC operates, through relaying this information to the students, the supervisor is imparting the epistementality or *doxa* of the practice field and circulating this as a way of thinking to the students. These findings do therefore suggest that the epistementalities of a field can influence similar fields, even where the logic does not apply. However, through being able to identify such epistementalities, why and how they originate and their applicability to a field provides the opportunity to examine them more critically.

[605] Nicolson (n 15) 52.

The epistementality of time and economic sustainability pressures were however not just limited to the profit-making field of legal practice. Student 5, who attended the local Law Centre on a placement through the LAC, witnessed the negative changes to levels of service following austerity measures and financial cuts to the service provision:

> **Student 5:** I think the first two years that I went, I really enjoyed it but the last time it wasn't very good at all. I think the fact is with the welfare benefits like, especially because [the CEO]'s not there a lot of times now and the last time we went, it was, you know [NAME]... one of the welfare benefits solicitors, he wasn't there... so I had two new student advisors who had never been there before and I had to juggle myself in between two interviews trying to help them which shouldn't really happen. They should have... they didn't... [NAME] Law Centre didn't take account of we're having new people and maybe should have tried to separate it out because they knew there was only three people turning up and a new person. It's very difficult for a new person to interview someone on for instance a PIP application or ESA application without any guidance before that. So I thought that was a bit difficult and they weren't as friendly as they could have been. Whereas like when I first started there was a tour, there was a tour when I first started. People welcomed us saying hello and things but it was just... it was really quiet. No-one spoke. No-one gave them a tour. And it was just a bit, it was a bit... it wasn't a nice experience for them at all.

Student 5 also explained how due to the limited resources, and the limited help provided by the receptionist, he had to supervise other student advisors between two separate interviews, and reflected upon the negative impact this may have had upon the client:

> **Student 5:** When we had one of the student advisors in the interview, I asked the receptionist, because she does welfare benefits as well, if she could just help the student advisor. Because of course, I was stuck in an interview with another student advisor and all the receptionist kept on coming and saying "I've got to go now, I've got to go now" and I went "right, okay" I'm going to have to fadge between both interviews which I thought it was a stretch on me and that could have affected the client, you know, the client interview because... the client is getting interviewed and all he is doing is getting disturbed between doors opening and there isn't... It's a delicate and it's an emotional subject talking about their disabilities and why they can't do certain things or they can't do… just day to day activities and I just thought it was, it was not a good experience.

Whilst not directly relevant to the LAC field, the economic sphere and the epistementalities that it generated cast a shadow across the student experiences, bringing awareness to the students that their altruistic identities may soon be succumbed by the economic nature of the legal practice field. The alumni reflected upon their own transition from altruistically minded students to practising lawyers and their change in professional identity:

> **Alumnus 2:** I think we all become lawyers because we want to help people, fundamentally. [STUDENTS AGREEING]

Alumnus 4: Everyone's got their own…

Alumnus 2: I just think you change on the way.

Alumnus 1: That's deep. [LAUGHTER]

Alumnus 3: That is true.

4.2.2.3.2.1 Ethical tensions in the Neo-liberal Legal Practice Field

The economic sphere and its influence, considered in chapter 1.7, is heavily influential in the legal practice field and the alumni commented upon the ethical tensions that it created, through strategies and counter strategies adopted by the legal actors within this field. The field was also influenced by the formalistic nature of practice. Alumnus 2, who out of all the alumni's dispositions matched most with Christine Parker's attributes of a 'moral activist', through his constant battling for justice with large commercial defendants, talked about how through practising as a lawyer in this field he had become more objective and de-sensitised to clients as individuals:

Alumnus 2: You get used to it. You get de-sensitised don't you?

Alumnus 3: Yeah. In a way, because you just think well I, you know, I heard this story, or a similar story, yesterday. Sometimes you'll get a story and it's like "wow"… that's bad.

Alumnus 2: I know what you mean. When I get an asbestosis client in now, I'm just like "oh, it's another asbestosis client"…

Alumni 5, who as student 5 had been very client-centric, considered that he had become less considerate and more judgemental of clients:

> **Alumnus 5:** Don't you find it's easier to… judge now you're in practice… You were talking about care proceedings and I did a bit of that in family. And… sometimes you just judge the client on...

However, alumnus 3 who adopted a role similar to Christine Parker's 'ethics of care'[606] worked on legally aided care claims, with more direct contact with clients, disagreed and argued that working in practice and dealing with vulnerable clients had taught her not to judge. This alumnus looked for mechanisms to support the client and find solutions to their difficulties:

> **Alumnus 3:** To be honest it's taught me not to judge. Because… on first impressions you might think "oh yeah, she's had all the kids removed; she's a druggie; she's a scrote"… she doesn't deserve those kids. It's… she could be… really vulnerable, she could be suffering from domestic violence, she could have mental health issues; she could have been abused in the past; there's so [EMPHASIS] many things… playing to it and sometimes they just need a chance. You know, to show… like have a parenting assessment… I can do this, I can do that. You're just… pulling them away from… a situation that they're in; putting them in another one and seeing…

[606] Parker (n 364) 70-71.

The contrast between the alumni's views raised interesting points, particularly around Bourdieu's concept of habitus. Alumnus 2 had always demonstrated a politically motivated passion for social justice whilst at the LAC and had exhibited a greater passion for the political and social cause, rather than necessarily the individual. Although, in the LAC the culture had encouraged him to think about the client's perspective, once in a different more formalistic environment where the economic sphere was heavily influential he had found himself 'de-sensitised' to the client and predominantly focused upon the injustices that arose. He felt that he was in a constant battle with the cash rich defendant insurance companies and their solicitors and their unfair superior status and questionable tactics. Whilst student 2 lamented upon how fed up he was with his job, his job suited the dispositions that I had witnessed in him and his passion for a social cause, although this was clearly negatively impacting upon his wellbeing due to the injustice he felt. His WhatsApp group, for sharing ideas, was typical of how he had worked together with other students during his time at university.

Alumnus 3 had always displayed caring convictions but suggested that through working in the area of care proceedings and with the firm she was working, she had become *less* judgemental than during her time at university and presumably in the LAC. Rather than adopting a value neutral disinterested approach, she saw the individual as a person, often a construct of their own terrible background. She reflected upon how first and surface impressions would likely lead to bias and prejudice and emphasised how important it was to understand the client in the context of her history and experiences. Alumnus 3 recognised how many of her clients were vulnerable. She took an interest in the client's histories in

order to understand their present and to hopefully achieve a supportive resolution for their future. She used the metaphor 'pulling them away from…' in recognition of the work involved in attempting to move the client from a negative situation towards more positive circumstances. Her perspective incorporated the hybrid relational approach to professionalism examined in chapter 1.12.

Of most surprise and concern, was alumnus 5 who related that he had become *more* judgemental since entering into practice. This alumnus, who as student 5, had demonstrated a substantial passion for helping the clients now related that he was *more* judgemental of the clients he was supposedly helping. He had worked in the same area of care proceedings, as part of his training contract, as alumnus 3, but in contrast to his client centric approach evidenced in the LAC, had become more judgemental of the clients he was helping.

This raised the question whether the alumni were displaying the dispositions of their original habitus or if a vocational habitus had been framed within their vocational environment[607]. As both alumnus 3 and alumnus 5 exhibited altruistic client-centred dispositions whilst working in the LAC, the findings would suggest the latter. Through their social, cultural and emotional participation in the law firm and the structural influence of the firm, they both relayed that they had become less or more judgemental respectively in their new roles. Despite both alumnus working in the same area of law, albeit alumnus 5

[607] Colley, James, Diment & Tedder (n 559) 471.

had only done this as part of his training contract, they both provided entirely dichotomous changes to their dispositions. This would suggest that whilst solicitors in similar areas of law may display similar dispositions, the environment of the law firm in which they worked was more conducive to the heightening or lessening of specific dispositions. Alumnus 3 demonstrated how in her vocational environment, a vocational habitus with substantive dispositions was possible and valued. This did not surprise me. I had professionally had a lot of contact with employees from the law firm in which alumnus 3 worked and I recognised some of the character relayed by alumnus 3 to the senior partners/solicitors I had met in the firm. Whilst I had less knowledge or experience with alumnus 5's law firm, upon reviewing the 'about us' section of their web page, there was an emphasis on history, tradition, placing business before individuals and emphasising the high quality of legal service provided. By contrast, alumnus 3's firm's web page used language such as 'passionate' and 'making a difference to people's lives' and an emphasis on caring about helping clients. The very language used in both firm's descriptions about themselves embodied the vocational habitus that both alumnus had relayed.

In contrast, the vocational habitus of alumnus 2 matched with some of the dispositions he had displayed in the LAC. However, he found the job emotionally laborious through his passion against injustice and having to face perceived injustices on almost a daily basis. Not dissimilar to alumnus 5 however, he felt that his habitus had become less client-centric and more de-sensitised to client's needs. These, albeit small findings, may suggest that although the students adopt a vocational habitus within the LAC, this is not static and is subject to change, depending upon the valued dispositions and characteristics of the law firm that they

are eventually employed. However, working in the LAC can help a student identify the area of law / firm with whom they may seek future employment. Alumnus 1 explained how the dispositions and professional identity that she developed within the LAC had helped her identify that she wanted to work in a forward facing role, helping the public. She consequently through her work in the LAC was able to match her habitus with the dispositions and characteristics of a private client lawyer and consequently enter into a career that she enjoyed.

The vocational habitus developed by the alumni in the law firms in which they worked, contributed to the values, dispositions and beliefs that they related[608] and how they responded to clients either with sympathy, neutrality or judgementally. The alumni's transition in characteristics from the LAC identity to a professional lawyer identity therefore appears to have been influenced by the inherent values of the law firm to which they were transitioning.

The findings do however, suggest that students may develop a vocational habitus with dispositions and values during their time within the LAC, which they remember and value and can influence them in their future careers. The vulnerable nature of the clients and emotive nature of the cases in the LAC was highlighted in the discussions between the alumni, as a predominant feature of working in the LAC. Substantively, the students recalled

[608] ibid 488.

how personal and important the cases were from the client's perspective, particularly by alumnus 4, whose clients, in contrast, were now large commercial clients:

> **Alumnus 4:** It's more just brought… for me, like the whole… all of them… I remember all of them in their own way because it's not like anything I do now. And it's a lot more easier for me to remember… there were a lot more emotive cases… one of mine was a young girl that came in with her grandma and… she wanted to change her name at the school because the grandad who had the same surname had been publicly [named] in the papers…
>
> **Alumnus 3:** Oh yeah, I remember that one.
>
> **Alumnus 4:** … for being a [TYPE OF CRIMINAL].
>
> **Alumnus 2:** Bloody hell.
>
> **Alumnus 4:** And I'd not come across anything like it before. I don't think I ever will and it was just… I think it's just working on cases that are <u>so</u> [EMPHASIS] personal and so important to that person.

It is not clear if the cases were more personal or if having to reflect on the case, from the client's perspective, made the cases more personal. However, whilst reflecting upon the 'development' from their student advisor identity to that of a practising solicitor, the alumni did recognise that they had retained some of their client centric dispositions from their work in the LAC. This was despite pressure to adopt the profit making necessity of the neo-liberal legal practice field identified in chapter 1.8. The pressure in this field to make profit was visible to the alumni, who tried to resist some of the influence exerted upon them. They

analogised supervisor 4 (the researcher), in his position as Director of the LAC, to an imaginary 'eye of Sauron' watching over their ethical practice within the legal practice field. All of the alumni reflected that whilst they were no longer student advisors, they had still retained some of their student advisor identity, albeit through a feeling of guilt from an imaginary disapproval:

> **Alumnus 3:** Because you get so... when you get into work, obviously, everything's about costs and meeting targets and, you know, bringing in the money and you forget about all of that. But I think that our experience in the law clinic obviously hasn't allowed us to forget.
>
> **Alumnus 2:** Yeah. Or at least I think "oh god if [SUPERVISOR 4'S NAME] was in the room now" [LAUGHTER].
>
> **Alumnus 3:** Yeah.
>
> **Alumnus 6:** I can feel [SUPERVISOR 4'S NAME] eyes burning into me. [LAUGHTER].
>
> **Alumnus 2:** Like the eye of Sauron! [LAUGHTER]
>
> **Alumnus 4:** I actually had that the other week.
>
> **Alumnus 3:** I've had that before.

The alumni all reported upon how the commercial logic of the field heavily influenced the legal practice field and particularly unethical behaviour. Alumnus 2 talked about how he worked in litigation and predominantly brought industrial disease claims against large insurance companies with his cases funded through conditional fee agreements. However,

as his ‘costs’ were not paid until and unless the case was settled successfully, he described how the insurance companies would resort to tactics to ‘starve’ the cash flow of the claimant law firms. Alumnus 2 lamented upon how the economic sphere created inequality, favouring the cash rich insurance companies and defendant solicitors:

> **Alumnus 2:** Because there’s not equality of arms. Because the defendants are backed by the insurance companies who are financed by the banks and they can instruct all the best briefs; they’ve got money to run the cases all the way to trial, when they shouldn’t do… they try and starve, because it’s an actuarial system, so they try and starve small firms out of cash flow. And on top of that, obviously all your cases are running to trial, you know, you’ve got to settle X amount or bill X amount and you can’t because the defendant insurers are running them all… why else? [GASPS] It’s hard to explain… It’s just because there’s not equality of arms basically.

Alumnus 2 also explained the ‘dirty tactics’ he had witnessed by some of the defendant solicitors:

> **Alumnus 2:** People not paying; the client’s died; taking it to trial because he’s dead so they don’t have a witness on the box at trial. You know, they’re just so dirty. Dirty tricks. Like disclosing documents a week before trial and trying to slip it in the bundle. And the judges letting them have it. Letting it in. It’s ridiculous. Shocking. Shocking behaviour. [LAUGHTER]

He emphasised how claimant solicitors were perceived to have inferior cultural capital to the defendant solicitors. Such inferiority was most likely as a consequence of the lack of status of the claimant clients and the superior financial status and power of the clients that the defendant solicitors represented. As explored in chapter 1.6, status has always been an important factor in the habitus of the legal profession[609]. The type of client represented therefore directly related to the deemed status of the solicitor. He suggested that there was even a perceived bias by the courts towards the defendant solicitors:

> **Alumnus 2:** Because even the courts act favourably to the defendants, I've learnt in practice. We're like the scourge of the earth because we're bringing a claim like… In my opinion if you've got a positive medical report on file and the expert who has a duty to the court… through part thirty five, and it's a clear cut case, the insurers shouldn't be running it all the way. But they do. They defend everything. It's a joke.

Unsurprisingly, alumnus 4 who had a different perspective through working for a large predominantly defendant focused international firm of solicitors, representing high status clients, took an alternative approach. She suggested the solicitors for the defendant did not really have a choice and reduced her explanation to a formalistic justification where the defendant solicitor had to comply with a de-contextualised 'checklist' of instructions, with little or no regard to the individual claimant pursuing the claim:

[609] Burrage (n 133).

Alumnus 4: So they wouldn't be able to not run it. They wouldn't be able to… to meet probably their internal… checklist of what they have to do before anything settles. They probably do have to take it as far as it can go.

The strategy of the insurance companies described by alumnus 2 of starving the claimant firms of cash flow, did have the consequence of the claimant law firms looking to settle claims as quickly as possible. Often this was by any means possible and sometimes involved the 'under-settling' of claims, where clients were advised to accept defendant's offers for figures lower than the solicitor's perceived value of the client's claim. The economic sphere therefore was influential in fostering unethical practice, in this area. The large defendant firms adopted questionable strategies and practices in order to save money and the small claimant firms responded unethically by under-valuing claims to clients in order to settle cases, receive payment for their costs and to financially survive within the neo-liberal sphere. Whilst alumnus 2 was working in this field and talked about how he had become desensitised to clients, he did retain some of his client-centric student advisor identity, combined with his passion for justice. In a conversation with alumnus 3, he explained how rather than openly refusing to adopt the pressured practice by his employer, which would no doubt have resulted in him losing his job, alumnus 2 adopted a practically wise, phronetic[610] approach to apply strategies to assist the client:

Alumnus 2: ... It [the LAC] just makes you aware of how the law might affect the client. You know, that is one of the aims of the clinic, wasn't it? It was to make

[610] Aristotle (n 471).

lawyers more ethical and it does make you go into practice thinking that. And sometimes, you know, even when I'm working, I think to myself, flipping heck … And you think… is this the right thing to do? You know, say for example, if the firm wants to get X number of costs in at the month and the client's got a part 36 [type of offer] in but it's undervalued, and your supervisor or your boss or the partner says right you need to settle that case. "Tell the client to accept that offer". And you've got to go and accept that and you're undercutting the client. But at the end of the day, it's you either do that…

Alumnus 3: It's for costs definitely…

Alumnus 2: … or it's your job. And the law clinic brings that to your attention because when I have to do that type of thing… we don't have to do it all the time but… you know, it makes you think well no, I'm going to phone the defendants and try to get some more money or, you know, I'm going to tell the client to take it but if no-one's in the room, I'm going to tell him, off the record: "say no".

Alumnus 3: Yeah. You try to think of ways around it, don't you?

Alumnus 2 further reflected that lawyers who have not been involved with a client-centric law clinic and who were purely educated in a formalistic de-contextualised law degree, did not even realise how unethical that they were acting in such circumstances, and might not only succumb to this approach but not even realise that any conflict existed. With such lawyers, the client may represent simply a conceptual abstract and be secondary to the legal problem and more importantly bringing in financial costs. Alumnus 2 explained:

> **Alumnus 2:** Yeah, but sometimes you can't obviously. But it draws that to your attention because a lot of students who probably haven't been to the law clinic and don't think about how it affects the clients: the law; they'd just do it like that [CLICKS HIS FINGERS].

> **Alumnus 3:** Because you get so... when you get into work, obviously, everything's about costs and meeting targets…

The pull of the economic sphere, combined with a purely formalistic legal education can prove to be antithetical to promoting ethical practice. Many of the other alumni reflected upon unethical practices that they had witnessed in their short period of employment, including witnessing a partner of a firm destroying an important document and seeing others backdating file notes. Contrary to the reflective culture in the LAC, where identifying mistakes was seen as a strength in order to improve, they identified the culture in legal practice was to hide and deny mistakes. Such an approach is not dissimilar to the usual approach taken on the formalistic law degree, where success and not failing is everything. Student 5 reiterated how the law degree was about the individual and achievement:

> **Student 5:** With the law degree, it's really about just getting yourself ready for practice, getting yourself... learning about the law, getting knowledge of the law to help you with your degree really and to pass and get a good grading. So the impact is just really on you when you're having... when you're doing your law degree.

However, unlike on the law degree, in practice the client is impacted by the conduct of the

lawyer. The alumni discussed how unreflective many lawyers were in practice and alumnus 4 linked this to those lawyers 'not caring'. They discussed how they had retained reflective practice as an important element of their professional identity, despite a lack of this method of learning being evident within the legal practice field:

Alumnus 4: I think the reflective part of it as well...

Alumnus 3: Oh yeah...

Alumnus 4: ... subconsciously does stick with you [ALUMNUS 2 & 3 AGREEING]. Because I remember at the time it was like a forced… thinking what you did, what you're gonna do...

Alumnus 3: How am I going to think reflectively? But now it just happens anyway.

Alumnus 4: But I do find myself… especially if I cock something up, sat thinking "well what have I learnt from it?" Like when I calm down, I'm...

Alumnus 3: What do I need to do to prevent this from happening?

Alumnus 4: Yeah and it does subconsciously treat... like <u>condition</u> [EMPHASIS] you to think like that [ALUMNUS 2 AGREEING] and it does make you handle things that you do wrong in practice better because...

Alumnus 6: You reflect on it...

Alumnus 4: Yeah, you're taught to think of it as more of a positive than "oh my god like I can't..."

Alumnus 6: Yeah, "I've just messed that up".

Alumnus 4: Everything's ruined forever. It's like well what have I learnt from it [ALUMNUS 2 & 3 AGREEING].

However, alumnus 6 did make the proviso that when admitting to errors, you did need to be careful in practice whom to open up with:

Alumnus 6: Provided that the person that's overlooking isn't into kicking you in the back. [LAUGHTER]

4.2.2.4 Summary

The more experienced students, together with one notable less experienced student, demonstrated the substantive nature of their dispositions as student advisors, in contrast to the formalistic self-pursuant dispositions on the law degree. The students displayed some or all of Weber's substantive characteristics of caritas, fraternity and equality adopting a collegiate approach to working together, assisting the weak and vulnerable and trying to deal with clients on an egalitarian basis, through listening to their issues.

The LAC represented a transitional and liminal moment for the students where they departed in identity through their role as a student advisor from a formalistic student self to a more substantive identity and role of helper in the law, developing a vocational habitus with substantive dispositions, values and beliefs. A number of the students related to the clients[611], as many represented their own family backgrounds and local communities. Whilst

[611] Albeit some too much and to their emotional detriment. Hochschild (n 600); Westaby (n 600).

the clients represented their past and present, the solicitors they encountered represented the future. The students observed the characteristics and dispositions of the solicitors they encountered and began to learn about the influence of the economic sphere upon the legal field, in contrast to the LAC, where the identity of the student advisors was as an advisor of last resort assisting the most disadvantaged and vulnerable. One of the students commented upon how he saw the student advisor role as helping clients in contrast to the role of solicitor, where the need to make a profit often represented an obstacle.

Two of the alumni reported how they had become more detached in practice from their student advisor role, whilst another, working with particularly vulnerable clients reported she had become more subjectively understanding, suggesting the importance of the vocational habitus and vocational environment for imparting dispositions, values and beliefs. Some of the students and alumni demonstrated identities and roles similar to those identified by Christine Parker, but the majority of the student advisors and alumni represented more complex nuanced identities.

The alumni identified ethical tensions and dilemmas in legal practice, especially arising from the influence of the economic sphere, even though the alumni had only relatively recently graduated. However, all of the alumni reported how they still drew upon traits learned within the LAC field, such as client-centricism, identifying ethical conflicts and reflective practice. They also reflected upon how these dispositions differed from many with whom they worked and the cultural and social capital within the legal practice field. Whilst all the

alumni acknowledged they had different roles and jobs they light-heartedly reflected upon how they had all learnt similar values and reflective skills through their work in the LAC:

Alumnus 3: It's interesting that we all do completely different things.

Alumnus 2: It's really, really interesting.

Alumnus 3: But we've all learnt the same values! [LAUGHTER]

Alumnus 4: We can all reflect...

Alumnus 6: And take criticism on the chin! [LAUGHTER]

Alumnus 4: [ALUMNUS 3'S NAME] doesn't get criticism. She just gets stars!

Alumnus 3: Well some things never change! [LAUGHTER]

CHAPTER FIVE: EPISTEMIC PRACTICE AND FORMALISTIC TENSIONS IN THE FIELD

5.1 Epistemic Practice in the Legal Advice Clinic

Whilst students in the LAC were involved in a number of different tasks and projects, their predominant role was as a student advisor in the LAC. The procedure in the LAC involved two students supervised by an academic and related to a series of meetings, outlined in chapter 2.5.1 of the methodology. In the post interview meeting, participants reflected upon, amongst other things, the client, the information that had been provided, the client's legal problem, possible solutions and information needed for the selection panel meeting. In the selection panel meeting, the students outlined the case, the risks involved and the needs of the client to a selection panel. The selection panel consisted of a different supervisor chairing the panel, with two other students who had not been previously involved in the case. The panel then decided after discussing the case and analysing the risks and needs with the students, if it was a case that the LAC could deal with. All of the cases observed were accepted. The final meeting took place between the student and original supervisor, where the student followed a series of set criteria of questions aiding reflection. The post interview and reflection meetings took place in one of the two ground floor interview rooms and the selection panel meetings took place on the first floor, around a large rectangular table. For the selection panel, the two presenting student advisors sat on one side and the supervisor chair of the selection panel and two other students sat on the other side of the table.

It was clear that the supervisors held the power and most cultural capital in all of the meetings. This was articulated both in oral language through questioning the students and advising the students what should be done, and in non-oral communication expressing positive open body language such as hand gestures. In contrast, the more experienced and confident students did express themselves positively verbally and non-verbally with hand gestures to reinforce points. However, the less-experienced students tended to only speak when directly questioned and/or prompted, rather than independently making their own suggestions. Their body language was also defensive with their arms and legs often crossed under the table and/or with them fiddling with items such as hair or pens whilst others were speaking. The students and supervisors were predominantly smartly dressed in the post interview meetings, as this meeting directly followed the meeting with the client. In the selection panel and reflection meetings the students were dressed more casual in their usual university attire.

Through adopting the concept of epistemic practice, it is possible to focus upon the investigative processes by which the participants seek to problem solve, the ways in which they develop their knowledge and how they verify the perceived truth through their activities. It is possible to explore what they do, how they go about doing it and how they justify this between themselves[612]. The supervisors conducted the meetings very differently and how the meetings were conducted depended upon the style and habitus of the supervisor, the type of case, the area of law and the type of client. For example, in one post interview meeting, supervisor 1, who was a former practising solicitor, adopted a method

[612] Jensen, Nerland & Enqvist-Jensen (n 114) 867–880.

similar to a case method approach of elucidating information and identification of issues from the students through a series of questions. Out of the two students involved, the student more experienced in the LAC, albeit an academic year behind the other student, dominated discussions with the supervisor. Their discussions and contributions were more or less of equal proportion in time, with the supervisor largely asking the questions and the experienced student answering her.

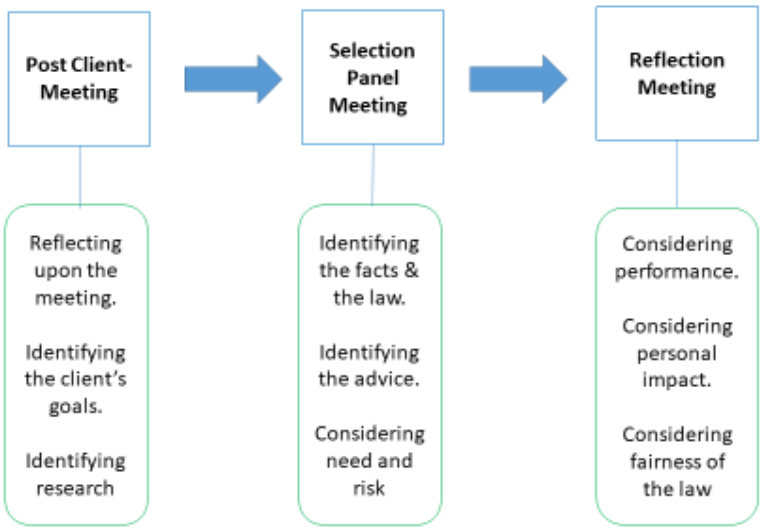
In another interview, involving supervisor 2, also a former practising solicitor, the supervisor represented the role of knowledge provider, with the students asking questions on how they should proceed. Both students in this interview were less confident in their body language and one student adopted typing notes into the computer as a way of complying with the situation but not directly influencing its direction. This case related to a court application and the supervisor encouraged a zweckrational approach, where the participants discussed possible individuals who might object to the client's application, as a means to establishing the likelihood of success of the case.

In other post interviews conducted by supervisor 3, who had no background in legal practice, the supervisor would identify the issues then generate discussion around these issues, allowing the students' to influence the direction of conversation and to provide their opinions on how to take the case forward.

5.1.1 The Post Interview Meetings

Whilst the post interview meetings were conducted differently, almost all of the meetings contained common central elements. In the post interview meeting, participants would

reflect upon how the meeting had gone, including commenting upon the client, the case and their own techniques. The participants discussed what the client wanted to achieve, if it was achievable and what areas they would need to research. In the selection panel meeting, the student advisors identified the facts of the case and relayed the law to the selection panel identifying what their advice was likely to be. In line with the LAC's procedures, the students also had to consider the substantive personal needs of the client as well as the formalistic risks of providing advice in the case. In the final meeting, the meeting was structured through a series of questions where the students would reflect upon their own performance, devise strategies for future, reflect upon the impact of the case upon themselves and the client and would then consider the fairness of the law, in the area they had been considering. The formulaic nature of these meetings is outlined in the diagram below:



5.1.2 Recognising Emotions

As recognised in the previous chapter, focusing upon the client, including the client's feelings and emotions represented a distinctive theme, particularly in contrast to the

students' identity on the more formalistic law degree. As elucidated in chapters 1.9 and 1.12, recognising and dealing with emotions is an important element in both reflective CLE and relational/hybrid lawyering. In variance to the students' usual de-contextualised work on the law degree, recognising the client as an individual and taking account of the client's emotions was important to these student advisors' identity. They identified how on the law degree the individuals concerned in the legal scenarios were generally unimportant and subservient to the legal issue and the problem being addressed. Even with legal problem solving in tutorials, the legal problem represented an overarching entity in its own right for discussion. However, in the LAC, the position was entirely different, where due to the very nature of its status as being a haven for those who could not obtain help anywhere else, the clients seeking assistance often displayed a variety of negative emotions, including frustration, distress and embarrassment. In one conversation supervisor 3 reflected with student 5 on the emotional impact of the case upon the client:

> **Supervisor 3:** I mean, she's… distraught isn't she?
>
> **Student 5:** She was.
>
> **Supervisor 3:** And she's very, very frustrated and upset about it all.

In her client post-interview meeting, student 1 reflected upon how the emotions of the clients represented a difference between her work on the law degree and her work in the LAC:

> **Student 1:** And I think that's the big difference to actually being in here and doing it with real people to seeing it on paper is that… there's emotions behind these people… and she did feel quite stupid… and embarrassed for what… she admitted… I

> haven't even told my other son, I haven't told my brothers until last week because I felt so embarrassed about it.

As considered in chapter 1.9, students had to deal with problems, and consider both the substantive, as well as the formative, unlike the problems they faced in tutorials with one logical single formalistic answer[613]. In this case, which was considered earlier, the client had sent a significant amount of money to her daughter's boyfriend's bank account upon the premise that her daughter had informed her that she needed the money, as she was in rent arrears and about to be evicted by her landlord. In reality, the daughter knew that she was not being evicted and the money was in fact for her boyfriend. However, the client's daughter did not confess to her mother that they had both deceived her until much later and after she had fallen out with her boyfriend. The daughter did not know what the money had been used for, by the now ex-boyfriend, but believed he had used it to pay his own mortgage arrears. A formal agreement to pay the money back including terms of when the money should have been repaid, how much and by whom was never made either orally or in writing. The client attempted to contact the ex-boyfriend twice by letter regarding the matter, but did not receive a reply.

This case therefore related to a very emotive issue where the client had been deceived by both her daughter and daughter's ex-boyfriend. The client wanted to know her legal position and how she might recover the money against the ex-boyfriend, who had

[613] Luszcz (n 206) 35.

benefitted from this deceit. Unfortunately, as a consequence of there being no privity of contract between the client and daughter's boyfriend and no likely intention to create legal relations, the client had no legal case to pursue the daughter's boyfriend. The students were therefore left with the unenviable task of having to not only deal with a client that had been 'duped' but to also advise the client that she had no legal case against the responsible individual who had benefitted from this. Emotions therefore arose as a distinct theme in this case. In the post interview meeting with the client, supervisor 1 suggested that the students should take account of the client's feelings when writing the letter of advice. The supervisor did however make a distinction between writing professionally and writing with warmth, seeing the two as separate and distinct:

> **Supervisor 1: …** I mean they are massive legal challenges… for her and the risk… there are risks as well but to do that in a way that is clear… and professional, also has a bit of warmth…

As outlined in chapter 1.3, the separation of emotions from professionalism is a well-established value of the professional habitus in the practising of law[614]. Having made a clear distinction between professionalism and exhibiting emotions, the supervisor suggested an amalgamation of the two variant and opposing formalistic and substantive spheres into the advice being written. Taking account of emotions in writing the letter is likely to have both zweckrational and wertrational elements. It may be zweckrational to the extent that through taking account of the client's emotions and how the client might react to the information provided, the advice may better enable the client to understand the advice they

[614] Westaby (n 600) 153.

are receiving. However, as taking account of the client's emotions is often seen as separate to professionalism in the professional habitus, it might be argued that this supervisor's rationality for the action of writing with 'a bit of warmth' may be wertrational. This was due to the inherent value and intrinsic property of taking account of the client's feelings and the likely negative impact the advice would have upon her emotions. Writing with 'warmth' might be something 'good' to do, in the circumstances.

The supervisor and students relayed how the client's emotions presented challenges to writing this letter of advice. It was challenging, as it needed the students to have regard to the clients' substantive feelings and emotions, whilst also providing formalistic advice on the law and the two did not necessarily combine well. As seen in chapter 1.3, supervisor 1 contrasted this with the law degree where substantive feelings of individuals was deemed irrelevant:

> **Supervisor 1:** Yeah. You can't factor that into an exam question. Or a scenario… in a seminar… whatever. So… in terms of her, sort of, sensitivity, I suppose, her personal feeling of self-worth around this issue…that does present some challenges doesn't it, do you think in terms of how you might write to her? …

The supervisors representation that substantive emotions, sensitivity and feelings cannot be incorporated into the teaching or assessment on a law degree is also representative of the perceived formalistic *doxa* in law[615], epitomised by the doctrinal approach[616]. The supervisor

[615] Bourdieu (n 69); Sheldon & Krieger (n 29) 883-897.
[616] Kimball (n 163) 131; Kissam (n 163); Rubin (n 163).

also sought to make clear in the discussions that her consideration of the client's feelings and emotions did not represent empathy:

> **Supervisor 1:** … It's not empathy, it doesn't go as far as empathy but there's a sort of… there's a connection… there, you know, that this is going to be, this is probably going to be very disappointing… for you…

This elucidation by the supervisor that her approach did not represent empathising with the client as a person, is reflective of the professional habitus and the legal profession's historical approach to empathy and emotions examined in chapters 1.3 and 1.7. Traditionally, the legal profession's predominant values have been power based[617] with little time for emotions and where attributes such as empathy have often been associated by the legal profession with a non-masculine approach and negative cultural capital[618]. The supervisor later returned to the consideration of sympathy and empathy with student 2 in her reflection meeting and acknowledged the sympathy and empathy with the client that the students demonstrated but contrasted this with the harsh reality of legal practice where the client would have been charged for advice, even though a positive solution could not be achieved:

> **Supervisor 1:** I suppose one thing I remember asking you is… because I think you both felt… had a great deal of sort of empathy for the client and I think in fact you had a lot of sympathy for the client as well [DEEP BREATH] and I think I remember

[617] Sommerlad (n 243) 190.
[618] Thornton (n 396)*;* ibid 212-213.

saying to you ‘how would you have felt if you’d had to ask her for some money on account of costs yeah?

Student 2: Oh yeah... No. That [CHUCKLING] wouldn’t have… wouldn’t go down well. She’s here to reclaim money and we’re asking her for more money. So, I don’t know how I would have approached her with that question.

Supervisor 1: But you would have had to deal that.

Student 2: You’d have to deal with it, yeah.

Whilst the supervisor did not admit to displaying empathy, she relayed to the student that both students had been showing empathy. However, in this context, she identified the conflict between feelings of sympathy and empathy and the nature of the legal practice field, which meant that such feelings might conflict with the neo-liberal need to make a profit as examined earlier and in chapter 1.8. Therefore whilst acknowledging the value and acceptance of the disposition within the vocational habitus of a student advisor, she alluded to the difficulty of displaying such feelings when in the legal practice field.

Supervisor 1 also relayed that as well as taking account of the client’s feelings for the purposes of the letter of advice, it was also important to take account of the client’s emotions in the client meeting:

Supervisor 1: … I thought you handled that really well actually because she was… clearly, she felt very embarrassed didn’t she? And when she first came in… what did she say?

Student 1: Oh she said… before we start I don't have green written on me and I don't have mug written on me.

Supervisor 1: Actually, what she was feeling was…

Student 1: …embarrassment.

Student 2: …embarrassment.

Supervisor 1: She was feeling very embarrassed.

Student 1: Definitely.

Supervisor 1: So I think, I think when you said… the world might be a better place if… we all had the benefit of hindsight, I think that was a really… it was quite a mature thing to say… but I think it sort of… made her feel also that… nobody was judging her… for motivations or anything like that… You were just trying to establish the facts and you weren't passing a judgement.

In their discussions following the meeting with the client, the supervisor and students discussed the clients' negative emotions including feelings of low self-worth and sensitivity surrounding the legal problem. They also recognised that these emotions and feelings could consequently result in the client exhibiting negative behaviour ranging from aggression to diffidence. However, through accounting for and attempting to understand the client's emotions and feelings, the students were able to recognise there were emotional reasons for the client's behaviour. Student 2 in her reflection meeting with supervisor 1, reflected upon how the client had initially been quite aggressive with her, but how she later

understood that this could be explained by the client's feelings of embarrassment, through being deceived:

> **Student 2:** I thought oh god, she can be [LAUGHING] a little bit aggressive. Because when I said hi to her… just outside as well, she was like "I'm just reading this paper". I was like "it's fine, we can explain it to you when we get into the room" and straightaway I feel... bad because I judged her straightaway thinking "ooh she's a little bit aggressive". But, as she got talking and we got to know the story and her a little bit more, I think, it came out that she was quite embarrassed of what had happened and she felt really silly about it.

However, whilst there may have been some wertrational value for the students taking account of the client's emotions, the predominant purpose relayed by the supervisor was a zweckrational strategy of putting the client at ease, to get the client to 'open up', so that the necessary legally formalistic information could be extracted from the client in the meeting. As confirmed by student 5, in his semi-structured interview, getting the client to 'open up' was an important skill of a student advisor, albeit and unlike supervisor 1, he did consider that being sympathetic and empathetic was also important:

> **Student 5:** You have to be sympathetic and empathetic towards your clients. You have to have great interpersonal skills… get your client to open up to you.

In contrast to the students sympathetic and empathetic position, whilst supervisor 1 considered it important to get the client to 'open up' through considering the client's emotions and feelings, this was explicitly on a zweckrational basis, as a means to an end, to

extract information from the client for the purposes of the legal case. Whilst the supervisor encouraged the consideration of the client's substantive sphere, this was for the formalistic end of establishing the legal facts and represented the habitus of the legal practice field.

5.1.3 Extracting Legal Facts

The students and supervisor reflected upon how difficult they had found establishing the legal facts from the client. Similarly, to Sarat and Felstiner's findings[619], they encountered significant hurdles in negotiating the formalistic field with the clients in their meetings. To the client, her substantive social sphere and the actual reality of the situation was more important than the 'abstract'. Put simply, from the client's perspective, the daughter's boyfriend had concocted the plan and benefited from it, therefore he should be liable. However, the reverse was the position in law. In the legal sphere the conceptually abstract was more important and what the client thought was happening and what her intentions were. This was the case even though what the client thought was happening, was *not* actually happening. The client meeting therefore required a meticulous dissection of the client's thoughts and intentions of the situation for the interpretation and classification[620] of events. The supervisor and students discussed the difficulties in trying to get the client to relay what she *thought* was happening, in contrast to her explaining what *actually* was happening:

> **Student 1:** It was much more difficult than I thought it was going to be, that. I think it was difficult getting from her because obviously she was saying everything now that

[619] Sarat & Felstiner (n 38) 93.
[620] Abbott (n 36) 40-44.

> it has all happened and it was really important to try and understand what she thought at the time … and I do think at the time she thought she was lending that money to [her daughter] and that [her daughter] would pay it back… not him… which is the problem.

What the client was thinking was central to the colligation, classification and narrowing process[621], whereas the client's substantive sense of justice through being aware of what had actually happened was unimportant to the legal position. Student 1 even reflected that the daughter's boyfriend would have likely recognised that he should pay the money back but reiterated that the client's thoughts and intentions in the legal sphere were more important:

> **Student 1:** I mean I think he would have known that she expected that money to be paid back… but the fact is she didn't think she was lending it to him.

The supervisor and student discussed the difficulties that they had faced in the colligation process. They recognised that the client was more interested in what actually happened and described the client as 'projecting' reality on to the situation in the course of their discussion:

> **Supervisor 1:** She was projecting in a sense what she's doing is projecting what actually happened… onto what she thought was happening… at the time to try and make sense...

[621] ibid. Santos (n 37) 18.

> **Student 1:** ... obviously she was saying everything now that it has all happened and it was really important to try and understand what she thought at the time …

The use of the word 'projecting' is particularly interesting given that this would suggest that the information the client was relating was somehow not the 'truth' of the situation. However, the client's understanding and priorities relating to the issue were in line with the social truth and ordinary logical perceptions. The daughter's boyfriend had manipulated the daughter, deceived the client and taken the money. She understandably believed these to be the most relevant and pertinent facts to her case; demonstrating the injustice that she had suffered at the hands of her daughter's ex-boyfriend. The difficulties arising in the interview did not therefore arise from the client's reality but rather the legal sphere's logic, which was at odds with normative understanding. When trying to understand why the difficulties arose in the interview, the supervisor is referring to the legal, rather than social reality, and ascertaining responsibility for the difficulties in the client being unable to disentangle her focus on the full facts and her opinion from the facts only relevant to the legal position. It is unsurprising therefore, that clients, in these circumstances, may suffer from hysteresis[622] and disorientation, through having to navigate between the two conflicting substantive and formalistic spheres. This hysteresis also provides the reason for the importance of being able to ask the 'right questions', which supervisor 1 describes as 'absolutely pivotal' to the discussions in the interview which forms an integral part of the professional habitus.

[622] Bourdieu (n 69); Courtney (n 98) 1054-1067; McDonough & Polzer (n 286) 357-379.

For supervisor 1, the meeting between the client and students is an opportunity to extract information through questions for the purposes of colligation, rather than a meeting to discuss the problem generally. In the meeting, the students were expected to take control of the interview through the questions that they asked. It was of utmost importance that the questions asked were therefore relevant to the legal position. The client is seen as a witness to relate the legal facts but also as someone who cannot be trusted to relay the appropriate facts autonomously and as someone who must be guided through the skilled use of questions in order to obtain the pertinent legal facts in order to analyse and consider the client's legal problem. The legal problem therefore becomes in the interview an entity, which is superior and independent to the client[623]. Through this lens, the students with their knowledge of the legal sphere must extract from the client the relevant pertinent facts. Whilst it is the client who is seeking the help and assistance, the client, her interests and beliefs are subsidiary to extracting the relevant legal information as a *means* to analysing and solving the legal problem. Keeping the client focused on the legal problem through questions is seen and relayed as therefore a necessary skill for the students:

> **Student 1:** I think it was quite hard to keep the client on track… and this is what is important.

The student sees negotiating the client through the interview and her questions relating to the facts pertinent to the law as difficult. The consequence is the position where a client wants to express her own views, which whilst relevant to her understanding of the situation, is not relevant to the legal position. This results in the students attempting to manage the

[623] Simon (n 42) 490.

client and keeping her focused on providing the facts relevant to solving the legal issue. The analogy to a train staying on track is to ensure that this course of action represents a means to them arriving at the destination of receiving all the appropriate formalistic information, in order to offer legal advice. This can be contrasted with the alternative analogy of leaving the tracks, which may result in disaster or at best going in the wrong direction. This importance of staying on track is emphasised to the students by the supervisor who highlights the danger of not exploring the relevant legal facts through questions to the client:

> **Supervisor 1:** So if you hadn't of explored first of all… whether there was agreement you would have gone seriously off track. Wouldn't you?

Going seriously off track would have resulted in a failure to obtain the relevant information and consequently not having the information to solve the entity that is the legal problem. Student 5 in his ethnographic interview also acknowledges the importance of questions and directly relates the importance of asking the right questions to providing the correct advice:

> **Student 5:** I think if you learn if you've got a good client and you ask the right questions and ask them in a chronological order and get everything that you need, I think you should be okay when you are providing advice for your client.

Presumably, a 'good' client is a client who keeps on track and answers the questions as asked, allowing for the provision of legal advice. Therefore, whilst listening and considering the client's emotions and feelings is important to getting the client to open up, the client opening up too much can result in a crisis for the colligation process, necessitating a

strategy to 'keep the client on track'. Whilst time is not necessarily a premium in the LAC, in the legal practice field, it is an important resource in both the fee-paying private sector and not for profit sector, where taking too much time in an interview may result in others not being assisted. Supervisor 2, who was a former legal aid lawyer, refers to her own professional habitus. She relates that in practice it is important to get the information as quickly as possible and to know when to stop asking questions and end the interview:

> **Student 4:** It went faster than I thought it would…
>
> **Supervisor 2:** It was fast but you don't always need… I think people… think you should go on for a long time… Actually when you are in practice you get… all the information as quickly as you can… And obviously as you can't advise then… don't worry if you've got all the information [SUPERVISOR AND STUDENT 3 LAUGHING]… don't think you need to… just keep asking questions to make it longer [STUDENT 1 LAUGHS].

Therefore, time is a reason to focus upon the formalistic in the client interview and sometimes to the detriment of the substantive, particularly in the economic and time pressured environment of the legal practice field. Many of the supervisors and students grappled with the difficulties that keeping the client on track creates, with clients wanting to talk about issues that were important to them but not necessarily the legal problem:

> **Supervisor 3:** But he did keep going off on a tangent.
>
> **Student 13:** He did, yeah.

This created problems where students felt that they had to metaphorically forcibly extract the information from the client:

> **Student 1:** ... we almost did, sort of, have to drag it out of her.

Discussions and reflections about managing or controlling client interviews were therefore commonplace in the post interview meeting:

> **Supervisor 3:** He was quite difficult to control though. It was hard to draw it to a close, wasn't it?
>
> **Student 13:** It was. But I think we got there in the end but he could have definitely kept talking for a few hours.

Supervisor 1 relayed that managing the interview alone was not enough and underlined the importance of asking the 'right questions':

> **Supervisor 1:** Well I'm wondering if it's not that the client has misled us, it's maybe that the client's just not…
>
> **Student 7:** Understood.
>
> **Supervisor 1:** Answered… Maybe we've not asked the right questions… because it seems she wasn't entirely clear about what it was she was getting under the terms of the order. If we'd asked a client about her income, it sounds as if she's given us advice about her income. But did we ask her if she had any capital?

Asking the right questions, specifically related to the right questions for the purpose of ascertaining the formalistic issues, rather than a substantive approach, for example, of taking an interest in the client. Knowing the right questions was an important skill, which enabled a legal professional to identify the key issue(s) to the formalistic sphere. However, student 4 recognised in his reflection meeting with supervisor 2, the importance of 'delicate questioning' and bringing substantive emotions and empathy into account when asking clients questions:

> **Supervisor 2:** So, what do you think you would do differently on another time as a result of... what have you learned from what's happened?
>
> **Student 4:** Maybe the interview and how you approach the client as it was emotional and certain questions that we didn't ask... we were being quite direct... And... I wouldn't say we were being emotionless but there was times that you stepped in and you kind of… I don't know what the word is, but you...
>
> **Supervisor 2:** A bit empathetic?
>
> **Student 4:** Yeah. Empathetic. That's it. Towards the client. That's one thing er...
>
> **Supervisor 2:** Yeah, I mean it was quite a shock... it was quite an unusual case wasn't it? So, you're sort of expecting someone to go sort of fairly... you know... it was quite an unusual case. It was quite difficult circumstances, so it's being very empathetic to understanding… being delicate in your questioning, rather than abrupt.

Being delicate in questions, represented a strategy for eliciting information from the client whilst also acknowledging the asynchrony between the advisors and clients perception of

relevance[624]. Through adopting this strategy, the supervisor emphasised the importance of teasing out the relevant information from the client, whilst also acknowledging the client's narrative and emotions. It can involve acknowledging and appeasing the stress of the client and is a more sophisticated form of questioning involving accounting for the substantive sphere, whilst also extracting information relevant to the formalistic sphere. Such an approach is similar in epistementality to the approach of Citizen Advice and other agencies in the not for profit sector. The belief or *doxa* of this mini field is that unless the grain of distress is acknowledged and understood, it is not possible to discover the issues relevant to the legal problem and formalistic sphere. However, despite an acknowledgement of this epistementality, the narrowing process remained important and supervisor 1, in particular, emphasised the need to colligate, classify and diagnose problems in the formalistic sphere. In a selection panel meeting, supervisor 1 championed this process to the students, analogising solicitors who could successfully identify the formalistically relevant information as being like magicians with super hero powers. She related the identification of information important to the formalistic sphere, analogising this to finding a golden nugget amongst irrelevant materials or pulling a rabbit out of a hat:

> **Supervisor 1:** … you've got to manage detail really, really carefully. Your skill… as a solicitor and an adviser is working out *exactly* [EMPHASIS] what the issue is… it's like developing laser vision. You see all of this stuff and what you've got to do is you've got to find that nugget in the middle of all of this stuff. Because what the client has done is the client's given you a lot of things that are not particularly helpful to you. Yeah? And that's because the client doesn't know what you need to know. [PAUSE]

[624] Sommerlad & Sanderson (n 320) 5.

> So, we're practising on developing laser vision... That's… when you see how brilliant solicitors work, it's sort of like they're magicians [STUDENTS 5 & 7 LAUGHING] because… they've seen the rabbit in the hat before anyone else has seen it. It's really brilliant to see.

Whilst emotions may be considered in the context of speaking with the client and how the questions are asked, in the colligation process, issues that were not relevant to the legal sphere, such as emotions were usually diagnosed away, in order to 'assemble a picture' and structure the client's case. In a selection panel meeting that was significantly the longest of all the selection panel meetings recorded, supervisor 1 emphasised on numerous occasions, the necessary zweckrational means of obtaining, preparing and organising formalistic evidence to consider the client's case, rather than just adopting a substantive desire to help a client:

> **Supervisor 1:** You can't just get... unfortunately, what we want to do is make it all right, don't we? We want to find that mysterious hidden pot of... money. And we want to restore justice to her because her husband... her ex-husband has flouted a decision of the court and we want to put all of that right. Yeah? But... we've got to... get all of our ducks in a row really to be able to do that. Yeah?

The supervisor also adopted a formalistic approach to the selection process and admonished the students for failing to ask the client the 'right' question in their meeting, through making assumptions about the client's financial position:

Supervisor 1: I think it's a contingency issue, I think it's just a question that arises now that you've seen the consent order. Yeah? It's about eligibility to access the LAC. We've assumed that she's eligible because she's in receipt of benefits. But you now have a consent order which suggests… which doesn't suggest but which raises the issue of whether or not she has a capital sum that may exclude her. You don't know that she does. You've no reason to believe that she hasn't told you the truth. The problem is you didn't specifically ask the question. And it didn't occur to you to ask the question. One, because she's got benefits, and that's a perfectly good conclusion to reach but you've now got something which may cast doubt on that…

Making assumptions was therefore relayed as a perilous mistake within the formalistic sphere, with supervisor 1 referring to this as another possible reason to go 'off track' in gathering information relevant to the formalistic sphere:

Supervisor 1: Yeah… What did you assume? You assumed there was agreement didn't you?

Student 2: I assumed there was a clear written agreement that he's going to pay.

Student 1: Not even that, we just assumed that… the money… went to the ex-boyfriend for the use of the ex-boyfriend. And it, it clearly…

Supervisor 1: that he might have used it to buy a car or something like that. So if you hadn't of explored first of all… whether there was agreement, you would have gone seriously off track. Wouldn't you?

> **Student 1:** Definitely, definitely, it would have gone all round about how much was lent, how he's ignored her, what he was supposed to pay back and hasn't and then at the end probably come to, well actually, it wasn't, it was for my daughter… and this is how it came about.

The danger of making assumptions in the formalistic sphere of law was again reiterated by supervisor 1 in the reflection meeting, relating this to making flawed decisions:

> **Supervisor 1:** It's really dangerous to make assumptions about anything really, when you're a solicitor, if you are basing decisions on those assumptions.

However, whilst making assumptions about pertinent facts for the legal sphere was relayed as dangerous, the supervisor did speculate about the client and her thoughts, albeit these were not directly linked to the legal advice being provided:

> **Supervisor 1:** [DEEP INTAKE OF BREATH] Did you get the feeling you were telling her something that she might have already known but… [DEEP INTAKE OF BREATH] didn't really want to face up to.

Therefore, whilst it was unacceptable to make conjecture about facts relevant to the formalistic sphere, there is a particular irony that it was permissible to speculate about non-formalistic issues, such as the client's and other party's hidden personal thoughts and feelings.

5.1.4 Legitimisation through Documents

With the hysteresis created by the mismatch between the logic of the two spheres and the tendency of clients to go off on a tangent or not readily volunteer information relevant to the formalistic sphere, documents became of huge significance within the field. Documents had the potential to both provide the 'full picture' and legitimise or de-legitimise the client and her case. Documentation recognised as relevant within the formalistic sphere was essential for a legally formalistic understanding of the situation and therefore an ability to advise the client upon their legal position and possibilities. See appendix 5 for an example of some of the analysis of documents.

Many documents fell as relevant within the legal practice field. These included evidential documents, supporting the parties' assertions and denials. As has already been considered, clients did not always understand the legal sphere and therefore their advice on facts pertinent to the legal sphere could be confused and incorrect. Documentation therefore allowed an understanding of what had happened:

> **Student 5:** ... you can believe what your client says but sometimes, of course some things are slight… I wouldn't say exaggerated or that they're lying but they're maybe taken out of proportion for instance, or they're slightly deterred or maybe just can't remember; so sometimes maybe you can't take exactly your client's word for it. You've got to ask for the documents and if they've got the documents, get them to send them in, so you have a full picture of what's happened in the case.

Previous court orders also provided the basis for what could and could not be done in the future. Similarly to evidential documents, the client's interpretation of these orders was not always correct:

> **Supervisor 1:** We've got a situation where there was an initial client interview and at the time of the interview, we didn't have a copy of the court order which defines the settlement on divorce... the fact of the court order raises some sort of gaps really in the information that we got at the time of the interview and also it seems that the clients understanding of what she was entitled to under the court order is not reflected in what the court order actually says.

The students relied upon statutes and case law to interpret findings the courts had made, in order to hypothesize on what decisions could be made in the future on the basis of the given set of circumstances that the client had relayed.

Documents also represented a means to achieving goals for clients in the future and helped assist the client with what they wanted to happen. This included specific documents such as court application forms and future court orders. For example, in one case the circumstances suggested that a specific type of order was needed from the court to assist the client in achieving her objectives:

> **Supervisor 2:** … I think it's probably going to be that child arrangements order isn't it that she's going to need… Because she said she wanted to share, didn't she? The parental responsibility.

However, the precedence of documents within this field had the unfortunate effect that the client as an individual and person, could be lost to both the documents received and the documents needed being prioritised over the client herself. The documents therefore had the effect of providing legitimacy for the client both in her past and future possibilities in the formalistic sphere but de-legitimising the client within the substantive sphere. This de-personal focus resulted in the client's power or capital within the field and formalistic sphere depended upon the documents that they could produce. Such a formalistic primacy of documents unsurprisingly collided with the client's own social substantive sphere of norms and values where substantive issues such as characteristics, emotions and feelings remained important. The precedence of documentation in the legal practice field therefore resulted in the client and substantive issues being subordinated to an inferior position.

Documentation was also a feature of the LAC procedure, where students had to comply with many protocols including meeting the client, data protection, selection panel, research, writing a client letter, phoning a legal friend and essential practice. Alumnus 3 reflected upon how formulaic and 'regimented' the LAC procedure was in contrast to the often chaotic area of law in which she worked:

> **Alumnus 3:** And it's thinking outside the box as well. With the LAC, everything's quite regimented. You know what's coming, you know what you need to do. You know, you need to write this letter, you've let the client know this is the plan, but in real life there is no plan. Anything could happen at any point. I've had social workers

> ringing me saying I'm about to remove and I'm like "urgh" [LAUGHTER]. Do you know what I mean? You've got to think on your feet and do something.

The students had a number of standard letters/forms both to send to the client, such as the confirmation of appointment letter, information for clients form and post-meeting letter; as well as forms/letters to complete, such as the attendance form, research record, selection panel form, advice to client letter and student reflective feedback form. Therefore, whilst the documents served an important purpose of enhancing quality and encouraging reflection, the importance and value of documents was reiterated in the epistementality of the vocational environment of the LAC. One of the key forms completed by the students related to the selection panel meeting.

5.1.5 The Selection Panel Meeting

The main purpose of the selection panel meeting was to assess the appropriateness of the case for the LAC through a consideration of the needs of the client and the risks of taking the case on. Student 7 explained the process for completing the form in preparation for the selection panel in her semi-structured ethnographic interview:

> **Student 7:** So after the post meeting, with the supervisor we present, we do the document which is a risks and needs; so, the student advisor will sit down and we'll do this: go through the facts of the case, and then you highlight the areas of risks and the needs to the client or … yeah, mainly it is the needs of the client and then you present that to the selection panel.

The most commonly discussed risk in the selection panel meetings was financial:

> **Supervisor 2:** "Reason for decision. High financial risk of getting it wrong. Impact quite high.

The students and supervisors directly related the greater the financial value of the case to the amount that they could be sued for negligence, if the advice was wrong. There was a direct correlation between the higher the amount relating to the case, the higher the risk to the LAC:

> **Student 16:** Maybe high risk because of the amount of money that's involved. There's a lot of money involved in it.

> **Student 17:** It's just that... yeah; it is mainly because of the damages that everything that the financial cost that is involved with the case. That's the only risk.

Finances were also the most commonly discussed element for assessing need. However, rather than considering the value of the case, the client's income and assets were the most important consideration for the issue of 'need'. In contrast, to legal assistance provision in the neo liberal sphere, the lower the client's income and assets, the higher the need and concurrently the greater the likelihood for assistance. This represented a fundamental difference between the epistementality of the legal practice field and the mini field of the LAC. However, the supervisors tended to adopt a formalistic calculative approach to

finances, when considering the client's needs:

> **Supervisor 2:** So, she's on approximately £x to a £y... x, y, z... yeah, probably £x a month, in pension isn't she? Yeah. So, just put approximate. Because it's all on there isn't it? State and NHS pension [PAUSE]... now, is it something she could get legal aid for? No, coz it's contact isn't it... residence... so, not eligible for legal aid [PAUSE]...

Supervisor 1 discussed how holding savings would preclude the client from assistance by the LAC:

> **Supervisor 1:** Well, I do take the point… most people can't afford legal fees but the issue actually is not so much whether she can afford it, it's whether she has a sum of money that would preclude us from assisting her. Is that right? If she had said to you I've got twelve thousand pounds in the bank, what would you have said in terms of need?
>
> **Student 5:** Obviously, that's a lot; it's not a high need. Because she can afford.
>
> **Supervisor 1:** It's not high need. Okay.

As well as financial needs, the selection panels considered knowledge, emotional needs and if the clients were able to get help elsewhere. Students talked about how needs could 'outweigh' risks and student 7 reflected upon a case that she had dealt with where the client's emotional needs outweighed the risk of taking the case:

Student 7: … sometimes it just really personal because I've had a case where the client had been going to a gym for 25 years and they were thinking of closing it down. But for him, because it was so personal, he had been using it for so long, I think the need for him was quite high because he needed to know where he stood. And I think that's where his need outweighed any risk.

Whilst need was linked in to financial need i.e. if the client could afford to pay for a solicitor, it was also linked to a consideration of other possibilities such as if legal aid might be available or if charities, such as Shelter, might be able to provide representation. Cases were only taken on if assistance was not available elsewhere and consequently this formed an important element of the identity of the LAC and those who worked in it. Consideration of this factor generated further discussion at how 'unfair' the law was to some of the most vulnerable and disadvantaged who were unable to access legal advice. Supervisor 2 discussed in her post interview meeting with the students, preparing for the selection panel, how 'unbelievable' it was that the client in their case could not get legal advice anywhere else:

Supervisor 2: It's definitely high need isn't it? I mean, it's just <u>unbelievable</u> [EMPHASIS] that you can't get legal advice for something like this, really.

Student 4: Yeah, cos this is like the last option, it's with grandma and… where does he go from there, cos no one else wants to take him? Yeah, definitely low risk, high need I think.

The discussions related to a case where a child's mother had unexpectedly died and he had subsequently been separated from his siblings. His dad was unable to look after him, as a consequence of illness and his grandmother was looking after him but needed parental responsibility, in order to make decisions on the child's behalf. The case provided an example of the emotive and vulnerable nature of the cases discussed by the alumni in the previous chapter and the inherent unfairness of the system of legal provision. However, through the system of assessing need and discussing the cases in the selection panel, the students and supervisor were not only considering the *is*, of law but also the *ought*[625].

The vulnerable nature of the clients and the LAC being the last resort also invoked a sense of professional responsibility in the students. Student 5 and student 7 in separate ethnographic interviews contrasted the responsibility in the LAC to the law degree:

> **Student 5:** Oh, it completely differs because whereas in... academics, when you're looking at a case, it's not real… it's a case... I'm studying this case for my exam, that's basically what it is. When you have it at the law clinic, this client's real, you need to help this client. If this client doesn't get the help, where are they going to go? And I think that's what's the big difference like this is going to directly affect your client. So you have to do the best that you can do for that client whereas because it impacts upon them it's not just on you, so when you're looking at your academics if you don't want to look at that case it's only affecting you. I think that's also another issue

[625] Thornton (n 235) 485.

as well [ILLEGIBLE] looking at. When you're at the clinic, everything that you do affects your client really.

Student 7: I think the values on the law degree are more about passing the year and just getting through it and graduating but the values here are more personal in terms of you're not dealing with something you can just throw over. It's an actual person so anything that you say or do or advise is going to effect this individual and it might just… because it might be the only advice they get, it could just impact their life in a good way or a bad way.

Recognising the vulnerability and needs of clients in the selection panels, through discussing and assessing their personal needs precipitated a consideration of the client as a person, as well as scrutiny at a meso and macro level of the unavailability of legal assistance and the impact that this had at a micro level upon the client. Through the structure of the LAC requiring a detailed analysis of such issues and being an advice provider of last resort, the case therefore became to the students much more than an overarching legal problem. Students were thinking critically about accepted norms and values and applying a 'narrative imagination' to understand, value and empathise with the client's perspective[626]. This consideration of the substantive, as well as the formalistic represented the epistementality of the LAC and an important conduit for the beneficent identities displayed by the experienced student advisors.

[626] Nussbaum (n 16) 10-12.

Through considering the client's substantive sphere, students and supervisors often expressed admiration for the clients in tackling their issues in such difficult circumstances, with little assistance. They discussed how resourceful clients could be and talked about clients 'stepping up':

> **Supervisor 2:** But… she's quite resourceful in some sense, because she's explored all those other… avenues.

> **Student 4:** I think his mum kind of thinks that he's, he's getting better but he's not fully fit as well… so she's kind of stepped up.
>
> **Supervisor 2:** Yeah, definitely.

In one case in particular, and contrary to the students' usual experiences with clients, one client attended the LAC with bags of organised bundles of documents. The organisational skills of the client, together with her understanding of the formalistic sphere, became a topic of discourse in the post interview and selection panel meetings about the case, where the supervisors and students expressed veneration for her qualities and knowledge:

> **Supervisor 3:** Right this is incredibly… [PAUSE] complicated. She discussed it… Well she was brilliant in that. She's had to look this up this herself and she's so on the ball really.

Student 16: So organised…

Supervisor 3: Very, very organised.

Contrary to their usual experiences with clients they commented upon how the client understood all the legal jargon and had completed necessary documents such as the 'letter before claim', how she did not go off on a tangent in discussions, had undertaken research and was able to provide organised documentation as evidence. However, this client did very much represent the exception.

5.1.6 The Reflection Meeting

Upon completion of the case, the students met individually with their supervisor to reflect upon what they had learned throughout the case. As identified in chapter 1.9, reflective practice is integral to a social justice model of LAC[627]. The meeting was structured through a questionnaire that the students had to complete before the meeting and formed the basis of discussions. The questionnaire asked the students to consider what went well, why it went well, what did not go so well, what the student will do differently next time, what the impact of the case was on the client and the student and if the law adequately met the needs of society.

The students found the final two questions more challenging, as they were aimed at the students thinking beyond the usual formalistic linear type thinking on the law degree. When

[627] Barry, Dubin & Joy (n 137); Dubin (n 277); Imai (n 41).

considering the penultimate question, students commented that they hoped that the client would feel satisfied with the service they had provided and in one case, that their advice would provide some closure for the client. However, illuminating the biases embedded in the legal system and its actors represented an important theme throughout chapters 1.7, 1.9 and 1.12 in the education of students[628], effective clinical legal education[629] and the development of professional identity[630]. Considering the consequences of law and the ethics and values of law also accords with the recommendations of the Quality Assurance Agency for Higher Education (QAA) Benchmark statement[631], the MacCrate Report[632], the Statement of Best Practices[633] and Carnegie Report[634] considered in chapter 1.10. Some students, with prompting from the supervisor, reflected upon injustice and the power imbalances arising from only one of the parties to a legal matter being represented:

> **Supervisor 3:** So rather than him having to start from scratch if she <u>does</u> [EMPHASIS] initiate proceedings, he's already got a little bit of... power himself then hasn't he in having that information.
>
> **Student 13:** Yeah, exactly. He knows what to expect and... the process really... the step by step process.
>
> **Supervisor 3:** Because she'd already been to see a solicitor, so she's... had that power in a way, didn't she, on her side because she'd got the information and she

[628] Kennedy (n 220) 313; Grigg-Spall & Ireland (n 223) ix.
[629] Goldfarb (n 254) 717; Goldsmith (n 269) 415.
[630] Lopez (n 356); Alfieri (n 1); Gabel (n 328).
[631] QAA (n 280)
[632] American Bar Association (n 163).
[633] Stuckey *et al*. (n 224).
[634] Sullivan *et al*. (n 348).

knew what the position was? So, whatever the rights and wrongs of it all, you are then giving him a little bit more power back, aren't you? By giving that information.

Student 13: So they're all on an equal footing, I guess?

Supervisor 3: Yeah. That's the aim of it isn't it, really? And that is part of justice in the law isn't it?

However, students struggled with the final question upon the adequacy of the law. Out of the seven reflection meetings observed, more than half answered the question suggesting that the law was adequate in the area that they had assisted the client. This was despite the client having to seek the assistance of the LAC and being unable to obtain help elsewhere. These students demonstrated a lack of critical awareness and understanding from the client's perspective and of the wider issues arising from the legal problem. The students, who were predominantly inexperienced, struggled to think about the law from a critical perspective, in the context of social, political and economic structures[635]. Whilst one of the students who was very experienced suggested the law was adequate and was not really challenged by his supervisor, the other three students' viewpoints were all challenged by their supervisor. In one meeting a student felt that law was adequate as the client could seek legal action or pursue her claim. However, his supervisor pointed out that the client had come for help from the LAC with nowhere else to go. She also pointed out the power imbalance and injustice and how vulnerable the client was, particularly focusing upon how it had affected the client as a woman:

[635] Grigg-Spall & Ireland (n 223) ix.

Supervisor 3: Because I felt... I know when I sat and listened to her... I felt how alone she was really and how little redress she would have.

Student 6: Because she's starting her life again.

Supervisor 3: She is. She's had to start all over again and he seemed to have the upper hand really because of the way he was managing the finances and she'd been quite dependent on him, hadn't she? Because she'd looked after the children. So I think it showed you how vulnerable that woman would be. You know she's sacrificed everything. She's stayed at home but she'd also given quite a lot back in the financial aspects of it as well. Yet, she was left high and dry with having to start from scratch again...

Student 6: Yeah definitely.

Supervisor 3: ... with two children so... maybe think about that really and whether there is now quite a large gap in the... [law]

Student 6: Yeah, I think there is.

The inexperienced students, in particular, did not display a critical, deeper understanding of the impact of the law from the client's perspective, without prompting and explanation from the supervisor. Despite struggling themselves to provide the advice, they suggested that the law was relatively straightforward. This may reflect upon the positivistic conditioning they had received on the law degree, as considered in chapter 1.3, where they were encouraged to view the law in a linear purely rule based manner and they were not experienced in considering the contextualised social, political and economic form of the law

from a substantive and also a layperson's perspective.

With students 3 and 4, and in two separate meetings, supervisor 2 struggled in her attempts to get the students to reflect upon how inadequate the law was. Supervisor 2 had to specifically identify to student 3, how complex the area was and how much research both her and her partner had undertaken in order to find the answer:

> **Supervisor 2:** I thought it was a pretty complex area of law really wasn't it, because there were a couple of options and I mean I was looking at it thinking which one is it? [LAUGHING] Surely you, with all your research and all that research you've done…

In supervisor 2's reflection with student 4, student 4 stated he believed the law was quite straightforward with lots of websites, including a government website providing an application form. This statement was made despite him and his partner not being able to provide the advice within the 14 day period stated in the LAC protocols for providing advice and with him and his partner, also having to seek the assistance of an academic member of staff, who was a specialist in family law, for help in writing the advice. Supervisor 2 attempted to gently coax him into understanding that the law was not straightforward but what followed was a discourse where student 4 was unwilling to accept that his original position might not be based upon the soundest of rational foundations. As the discourse progressed, student 4, in defence of his position, remarkably sought to infer that maybe it was the client's fault for being older, and not going to the right sites, and maybe that someone else might have been able to find the information:

Student 4: It depends because she's older… she had… the computer and she had been researching but maybe she hadn't gone to the right sites and if she had someone else helping her, who was more used to using the computer, she might have been able to find more relevant information…

In the exchange, the student refused to or found difficult comprehending the point that the law should be accessible to everyone and that the individual was not culpable for failing to have the necessary skills to circumnavigate the internet in what was, a complex of area of law. This reluctance to admit his misinterpretation may be reflective of the academic field of law's orientation towards competitiveness and reluctance within this field for students to admit failure[636]. In a change of tact, supervisor 2 pointed out that at the meeting, the client did not even know what order she had needed. This prompted further discussion, where the student suggested that the client had at least been going in the right direction. In one final exchange, and after unsuccessfully trying to negotiate the student into arriving at a different conclusion, the supervisor made clear, that if the client had attempted to do this by herself she would have been unsuccessful and implicitly, the grave implications this would have for what she had wanted to achieve:

Supervisor 2: She certainly didn't come knowing she had to get a child arrangements order did she?

Student 4: No. She like googled it she said and she'd given us certain things, so she knew the kind of direction of… but she was calling it a residency order before, which

[636] Mertz (n 29) 26-27.

is what it was called before, so she didn't… I don't think she found stuff relating to the law right now.

Supervisor 2: So, she would have got it wrong really, if we hadn't [LAUGHING] have been here. She would have got it wrong and she wouldn't have been able to apply for what she needed.

Whilst struggling to acknowledge the difficulties the client faced in accessing the legal sphere, student 4 did however recognise in the reflection meeting that he needed to be less emotionally reserved and more sympathetic and empathetic in his discourse with the client. The discussion does however highlight the importance of incorporating a critical legal discourse, into the exchanges between supervisor and students. Without such intervention, students can work on cases without even considering the implications of their work or the deep social, political and economic meaning of both the work that they are undertaking and the injustices that the clients face through the inaccessibility of the law. Students dealing with cases without any reflective element of consideration, may simply iterate their linear learning on the law degree, but in a 'real life' context, without deeper substantive wider considerations.

5.2 Tensions, Dilemmas and Conflicts from Legal Habitus in the Field

Whilst the objective structure of epistemic practice within the LAC field existed to promote more substantive thinking, conflicts nevertheless arose. Many of these tensions arose from the epistementality of the legal practice field and the legal habitus of the supervisors, who

were former practising solicitors, seeking to convey the formalistic and economic reality of the practice field, which had the corresponding effect of subduing substantive thoughts or idealism. This has been examined already in much of the analysis considered in this chapter, and will be revisited later on. However, in the students and supervisors discussions, being non-judgemental arose as a clear theme, for both contrasting substantive and formalistic reasons.

Supervisor 1 emphasised the need to be non-judgemental situated on a formalistic rationale. This approach advocated neutral detachment[637] and disinterested service[638] representing her own professional habitus and the *doxa* of the legal practice field.

> **Supervisor 1:** Yeah. It is really important to always bear in mind that there are always going to be lots and lots and lots of reasons... behind why a client ends up... with us, with the particular problem that they have. And in some cases, they may never have helped themselves and, you know, but our job is not about whether we like the client, like you say, it's not… it helps if you do [EMPHASIS], although sometimes that might get in the way, but, it's our…
>
> **Student 2:** Not to make it personal.

To emphasise this point and the wertrational value of neutral detachment, supervisor 1, analogised the situation, where they had not judged an initially aggressive client, who turned out to have been innocently deceived of money in a civil case, to the lawyer of a

[637] Bourdieu (n 93) 814 819-820; Granfield (n 172).
[638] Rosenthal (n 217) 22.

mass murderer of children and families and his relationship with his client:

> **Supervisor 1:** I was listening to the radio yesterday and you know… is it Anik Brevers [Anders Breivik]… I can't remember. The guy in Norway who shot… who went on to the island and shot all the children.
>
> **Student 2:** Oh yeah.
>
> **Supervisor 1:** Yeah. And he's been in isolation for five years and he's just… made an application under the Human Rights Act… I think… His lawyer was being interviewed on the radio last night and the interviewer said… is it difficult being his lawyer and he said yes it's very difficult being his lawyer. And he said "do you like your client?" [PAUSE] and… he said "I'm not going to answer that question". Which I… thought… was a very, you know, I mean it was a very [DEEP BREATH] odd [EMPHASIS] question to ask in a way. But it was not, you know, it's not a relevant question…
>
> **Student 2:** It's not relevant yeah.
>
> **Supervisor 1:** It's not a relevant question to ask… And what he said was "I don't answer questions like that. I don't quote my client. And I'm not going to answer questions like that.

Whilst it is very difficult to reconcile adopting a similar approach to dealing with an innocent victim in a civil law matter, to representing the perpetrator of the mass murderer of children in a criminal case, this discourse highlights both the epistementality and *doxa* of the legal practice field and the irrationality of the legal sphere from a substantive perspective. It does however represent the rationale of the formalistic sphere, where the lawyer's emotions and

feelings, together with the clients' actions and conduct are not relevant, outside of necessary legalistic considerations. This is most likely a reason for the silencing and displacement of client narratives and the violent interpretive struggle[639] that Sarat and Felstiner witnessed between client and lawyer interaction[640]. Understanding the rationale of the formalistic sphere also represents to those practising in the law, a superior level of technical knowledge to the substantive sphere[641] as examined in chapter 1.3. This technical knowledge is also situated on the formalistic approach to ethics considered in chapter 1.10. In the supervisor/student discussion, supervisor 1, with her knowledge and habitus from the practice field questioned the rationale of the radio interviewer for asking the lawyer whether he liked his mass murdering client. Whilst such a question might be entirely relevant to the substantive sphere, it demonstrated little or no knowledge of the epistementality and *doxa* of the legal field or understanding of the technical formalistic sphere and the concepts of neutral detachment or disinterested service. When such matters were considered, the technical knowledge of the customs and language of the formalistic sphere was inflated as superior to ordinary substantive knowledge involving emotions and feelings. Such technical knowledge and understanding therefore defined the participant's expertise and the participant as an expert within the field.

The supervisor also reiterated how being non-judgemental was important to not making assumptions when colligating the information at the client meeting, as this could result in missing invaluable information for the legal case. She explained how when extracting information from the client, it was necessary to 'navigate' difficult client issues and

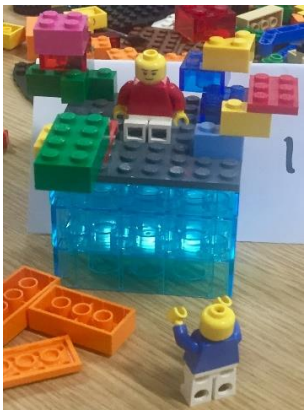
[639] Alfieri (n 33) 2125.
[640] Sarat & Felstiner (n 38) 93.
[641] Parsons (n 31) 457 460; Talcott Parsons, *The social system* (London: Routledge 1991 [1951]) 305.

personalities. As already considered, identifying the key information and not making assumptions about the client or her case, was relayed as being of the utmost importance when meeting with the client. Supervisor 1 also correlated possible bias with making assumptions and suggested that the students should reflect upon how they responded to certain types of people and situations, to ensure for instrumentally calculative zweckrational purposes that they did not allow any bias to lead to them making assumptions and missing key facts in the colligation process:

> **Supervisor 1:** I mean we talked about other things you learned about… Not making rash judgements about clients … As solicitors you'll have massive range of characters and personalities with all sorts of [DEEP BREATH] personal baggage, you know, that you have to, sort of, help navigate really. So I think it's important that you understand and have some insight into <u>how</u> [EMPHASIS] you respond to particular types of people and particular types of situations. So, you can… check yourself, like you say that you're not jumping to conclusions; that you don't miss something. That there are no, sort of, biases really or assumptions that you make. It's really dangerous to make assumptions about anything really when you're a solicitor, if you are basing decisions on those assumptions.

However, this can be contrasted with the approach of some of the students who advocated the importance of being non-judgemental for substantive egalitarian reasons. As examined in chapter four, student 21 described her student identity as being on the same level as the client and removed her LEGO® person's legs, leaving the upper half with outstretched arms towards the client symbolising her non-judgemental approach. Student 12 saw a career in

law as helping people and actually raised her LEGO® client to a higher level of importance, standing below the client with outstretched arms offering to help:



> **Student 12:** Mine is... helping people. So that's me and then that's a client who's got loads of problems around them and then they're problems that we've already helped solve. And then... my arms are out because... to let them know that I'm there. So whatever they need, if I can help them, I will.

Student 25 talked about the importance of taking account of the client's feelings and how the LAC represented a judgement free and welcoming environment, where the students sympathised with the client's situation and positively looked to construct a 'way forward' to establish a solution:

> **Student 25:** Yeah. Because the client felt like quite a lot of guilt herself. So it was nice that she could come in to like this sort of environment where we weren't saying... "well what were you doing? Where were you? Why did it... why did it happen?" We were saying "we're really sorry that it did happen. It has happened. Let's try to come… to some sort of... way forward".

Student 25 elaborated that she felt it important that the client believed them to be sincere and to care about her story and narrative[642] and linked such an approach into not passing judgement:

> **Student 25:** I think as well because there was... obviously... me and the student advisor weren't... we weren't mothers ourselves, she felt a bit like… we were just students but I think actually us acknowledging that we are really sorry for what's happened to you… I hope she's okay... ... she… thought it's sincere. It was like 'oh… they do care'. They're not just here to… pass judgement on the... kind of be like well where were you... kind of thing. So it was really good and so next time that if you get a sensitive case like that, I'd apply it again there.

In a formalistic sense, being non-judgemental and caring is not compatible. However, importantly student 25 felt that supervisor 1, who whilst adopting a zweckrational approach to emotions had encouraged her to take account of emotions. This was to take account of the client's emotions in order to extract the relevant information but student 25 had adopted a more substantive wertrational approach of caring about the client and her problem for the inherent value of doing so. Seemingly, whilst the purpose of taking account of emotions differed, the two both agreed on the importance of taking this into account but student 25 went beyond simply taking account of the client's emotions to a position of caring about the client.

[642] Miller (n 34) 1-2.

Supervisor 2 adopted a more pragmatic role, acknowledging the client's emotions and feelings in the client meeting through sympathy and empathy but relaying 'detached concern' following the client meeting. This supervisor's professional habitus had involved her dealing with vulnerable clients in practice and this approach was not uncommon to the approach taken by professionals dealing in cases with harrowing circumstances[643]. The following extract, highlighted how supervisor 2 acknowledged the terrible circumstances of the case but pragmatically did not dwell upon this and moved immediately on to considering the facts relevant to the legal situation:

> **Supervisor 2:** That's awful his mum dying at x of y very suddenly… just so upsetting. But if… and so there's x kids, y of them she said were with a younger, that were staying with… Yeah they are obviously his kids and the other x are from a former partner.

Supervisor 3, who did not have a legal practice background, related a far more substantive outlook than the other two supervisors and saw the wertrational value in listening to the client and allowing the client to relay her narrative, even though this resulted in the meeting taking longer. Whilst supervisor 1 suggested in discussions that the role of legal advisor was not as a counsellor for the client, supervisor 3 suggested to the students that the two role types of acting as a counsellor and as student advisor were not exclusive and to a certain extent they were acting as counsellors, allowing the clients to air their frustrations:

[643] Westaby (n 600).

Supervisor 3: In areas that weren't that relevant because he obviously is angry and wants to get it off his chest, so… [SOUND OF PAPER RUSTLING] you were his counsellor [LAUGHING] to some extent I think in there you two, weren't you?

In further discussion, supervisor 3 recognised the value of the substantive dialogue between the student advisors and the client and allowing the client to 'offload' their worries on to the student advisors. As well as describing their role as a counsellor, she depicted their role as similar to that of a social worker[644]. She recognised the importance to the client of the students just listening to him and how this could represent to the client an important and separate element of the service, in addition to the legal advice provision:

Supervisor 3: So he might have really welcomed being able to offload that on you.

Student 13: Yeah it was a very sensitive issue and I don't think he's going to anyone else about it. Obviously... his doctor or anything...

Supervisor 3: No... no. So you... you become a bit of a social worker [LAUGHS] sometimes, don't you. Because I don't know whether solicitors would be able to spend as <u>long</u> [EMPHASIS] as you do with the clients, so even in this thing I think you're doing... some good for them even before you get to the advice stage. So, I think you managed it well between you. I think there was... yeah... a good relationship between you. Okay and then you got on to the selection panel. How do you think that went? Who was... on the selection panel?

[644] Harrits (n 390); Brooks & Madden (n 27) 343.

Supervisor 3 also related to the relationship developed with the client and the importance of this. Out of the three supervisors, this supervisor represented the closest to Christine Parker's relational model of lawyering and ethics of care[645]. However, the shadow of the future solicitor role and the influence of the neo-liberal economic sphere loomed over discussions with the supervisor expressing doubts that in legal practice, with the financial premium of time, that it would be possible to spend as much time with the client in substantive dialogue. This discourse demonstrated that supervisor 3 recognised the difference between the role of student advisor and practising lawyer and how unlike lawyers, the student advisors did not have the same time constraints and could take account of the client's substantive sphere. She did however warn the students that whilst the 'social worker/counsellor' approach they had taken was the right one, they would unlikely be able to do this in a law firm, representing the difference in epistementalities and *doxa* of the LAC and practice fields.

Whilst there were some clear values and beliefs within the LAC field, some values were not as clear and depended upon the habitus of the participants in discourse. Whilst substantive values were promoted and evidenced, predominantly by the students and supervisor 3, suggesting that these dispositions were valued within the field, the perceptions and rationale for emotions and feelings was more nuanced. This would suggest that the field

[645] Parker (n 364).

was not as straightforward as situationists might relay[646], as considered in chapter 1.9, with conflicting messages and rationales for action.

5.2.1 Specific Tensions, Conflicts and Dilemmas

As a consequence of their professional habitus, the supervisors who were former lawyers relayed logics from the academic field, legal practice field and formalistic sphere. The formalistic *doxa* that substantive emotions, sensitivity and feelings was not relevant to and could not be incorporated into teaching or assessment in legal education was relayed by supervisor 1, despite her emphasis on the importance of understanding emotions to extract information in the LAC. The legal practice field also represented an altogether different logic to that of the LAC. In the legal profession, professionalism is seen as separate to exhibiting emotions[647]. However, as identified by alumnus 4, in the previous chapter, working in the LAC was unlike anything she had ever done before or anything she has done since. Through the LAC's criteria of 'high need' and only helping those who could not obtain help elsewhere, the cases were extremely personal to the clients and acknowledging and dealing with emotions was central to effectively assisting a client.

The former practising solicitors struggled with adapting the logic of the legal practice field to the logic of the LAC. Empathy is a non-masculine characteristic with little cultural capital in the legal practice field but many of the students relayed this in their discussions regarding the case. Supervisor 1, a former solicitor supervisor, acknowledged the need to consider

[646] Rhode (n 285) 1029-1030; Milgram (n 284).
[647] Thornton (n 396); Sommerlad (n 243) 212-213.

emotions and praised the student advisors for exhibiting empathy and sympathy but did not advocate it herself. Whilst acknowledging that a letter imparting bad news should show some warmth on the basis of the inherent value of doing so, she conveyed to the students that it was important to take account of emotions, as a means to put the client at ease and to extract information from clients by 'asking the right questions' in order to identify the key legal facts. Supervisor 2, the other solicitor supervisor, emphasised the importance of being empathetic and sympathetic when asking the questions. However, whilst conceding understanding a client's emotions could create a connection with the client, supervisor 1 made clear that this was not empathy. In contrast, many of the students went beyond just a consideration of the client's emotions and exhibited their own emotions in reaction to the client. This was where the line fell for supervisor 1. In the formalistic approach to colligation and classification, taking account of the client's substantive sphere could be justified, however revealing one's own emotions and particularly feelings of empathy was not professional.

A recognition and understanding of the client's emotions but a detachment of one's own emotions could be justified upon the basis of over identifying with a client and the potential damage to the self. Two alumni working in similar areas of law described contrasting viewpoints of becoming more judgemental and less judgemental in legal practice, whilst others described becoming less attached and others more attached. The difficulty with a seemingly objective 'one size fits all' approach is it does not account for different agents nor the influence of different fields, different habituses and different generative mechanisms. Whilst emotions can open up the self to feelings of despair, they can also invoke feelings of

altruism, as was demonstrated by many of the student advisors. Alumnus 1 spoke about how through empathising with the client, she found it rewarding to be able to assist the client and how this led to her pursuing a career in a more people based area of law:

> **Alumnus 1:** Because I can remember when I had… it was a guy who his kid had been taken off… I don't know if his mum had run off or something with the kid, and he wanted to know his rights to get him back. And he was showing me his pictures on his phone and like, crying… and he was getting upset and… he just wanted to know how… I don't think the kid was taken off him, I think she'd run off with the kid. And he just wanted to know his rights and it was just… I thought this is definitely what I want to do because it felt so rewarding to be able to help that person.

It was not just through recognising the client emotions but through feeling their own emotions that the students developed their beneficent desire to help the clients. Therefore, whilst feeling emotions might not have necessarily been important to the former solicitor supervisors, they play an important part of the student advisor identity. The student advisors related aspirations to achieving substantive justice but were often confronted with the reality that this was often subordinated by procedural justice, which may be unjust in its accessibility and substantively unfair.

In these scenarios, students had to circumnavigate these different perceptions of justice, together with emotion and knowledge clashes where the logic of the formalistic sphere confronted the rational logic of the substantive sphere. Consequently, whilst students

respected and sympathised with the clients, the clients could never be trusted to relay the correct information for the formalistic sphere. This created a juxtaposition of respect and distrust, where the information relevant for the legal sphere was crucial to providing the correct legal advice but through discounting the client's narrative, the client could feel isolated and degraded and might not provide the necessary information. Further, focusing on the legal problem alone could raise the danger of elevating the legal problem to the position of a conceptually superior entity, to which the client was a subordinate and where documents legitimised or de-legitimised a client's position.

A further similar juxtaposition arose where the students successfully put the client at ease, to such an extent that the client opened up too much, requiring the students to bring her back on track. Opening up too much, impacted upon the time spent with the client and in the legal practice field, where costs are not claimable by the hour or restricted, this time is unrecoverable and means loss of finance. Time therefore represented an important premium and supervisor 2 related to the students the importance of getting information as quickly as possible in practice. However, recognising such restrictions arising from the economic sphere, did not apply to the appointments in the LAC, the non-solicitor, supervisor advocated a more counsellor/social work type role which allowed for the clients to talk and for the students to listen.

Whilst the students sought to understand the client's emotions, sympathised and empathised with the clients and displayed an altruistic desire to assist, many found difficulty in reflecting from the perspective of others, particularly the client, or of the law and access

to justice in the context of social, economic and political structures. Through interactive discourse former solicitor supervisor 2, encouraged the students to reflect on the level of accessibility to the law and non-solicitor supervisor 3, enabled the students to reflect at a much deeper level of inordinate levels of power and concepts of justice. Without such prompts, the students may have learned the law but nothing about its context or impact. It is therefore vital that reflection in LACs is shaped and guided in a way to consider these viewpoints.

Being non-judgemental was universally agreed from both formalistic and substantive perspectives, however for entirely different reasons. The formalistic *doxa* represented a wertrational value of access to representation for all, even, or arguably especially, the most morally repugnant. But at a time when there is no access to justice for many, can this still be justifiable? Should child murderers have greater access to legal representation than a hardworking, low paid cleaner who has been unfairly dismissed? Is it significant that lawyers representing child murderers are paid whilst lawyers acting *pro bono* are not? However, such notions require an acceptance of subjectivity and as considered throughout this thesis, subjectivity is the enemy of formalism. The students relayed substantive reasons of equality, fraternity and caritas, however such ideals conflicted with the formalistic notions of neutral detachment and disinterested service.

5.2.2 Winter's Dilemma Analysis

The work for the student advisors and the supervisors represented a complex maze of navigating tensions, conflicts and dilemmas, arising from habitus, the field and the

formalistic and substantive spheres. Through applying Winter's consideration of ambiguities and judgements, I developed a perspective document summarising the issues raised by the opinions of the students, alumni and supervisors, at a similar level of abstraction to how they were presented in the transcripts and the tensions that they created. The students' perspective document can be provided to a student and the supervisor's perspective to a supervisor before commencing their role in a LAC as a basis to discuss their identity and role together with the contradictions and likely tensions that may arise and the strategies to manage these situations.

CHAPTER SIX: CONCLUSIONS

6.1 Findings

All the data was collected and analysed through a Bourdieusian, Weberian and epistemic cultures theoretical framework. This theoretical lens, with which I viewed the data, also complimented my epistemological and ontological position as a critical realist, observing generative structures[648] and the influence of the underlying mechanisms of social structure on the conscious and sub-conscious action of individual agents. Through adopting this theoretical, epistemological and ontological position as a researcher, I was able to analyse and interpret the social phenomena[649] and how it was both constructed and experienced by the participants.

This research examined the emergent professional identities within the context of a university LAC and analysed how the students and supervisors made sense of their professional roles and identities. With the theoretical framework, the study also considered the tensions and conflict that arose between a substantive relational approach within a technocratic formalistic field.

The student advisors, who were new entrants to the field, saw participation in the field as an instrumentally calculative means to primarily develop their confidence, as well as to develop skills, which would be useful to gain entry into the legal practice field. Their awareness of the legal practice field and its stress and pressures was generally very limited,

[648] Roy Bhaskar, *The Possibility of Naturalism: A Philosophical Critique of the Contemporary Human Sciences* (2nd edn, London: Harvester Wheatsheaf 1989).
[649] Bryman (n 67) 18.

and they saw it as a transformative place where they would *become* a lawyer with all the corresponding skills and attributes. However, in their desire to develop themselves, the new student advisors predominantly exhibited a level of 'anxiety' representing the lack of development of their own habitus for their future professional field and their corresponding lack of the cultural capital of being able to act in a confident manner. However, through participating in the LAC, they displayed hope that through putting themselves outside of their comfort zone in the LAC, that they could build their habitus and confidence to prepare themselves for their professional future selves and the legal practice field.

Two different themes emerged from the data with the more experienced student advisors of 'kinship' and 'a beneficent character'. In direct contrast to the formalistic attributes of competition and achievement on the law degree[650] considered in chapter 1.3, the students demonstrated substantive attributes of collegiality and fraternity in the LAC. The students saw these attributes as a wertrational value and a rationality in itself for social action. Such was the case, they believed in these values even where it might impact negatively upon their own development. The more experienced students also demonstrated the substantive notion of equality both in their dealings with each other and the clients and emphasising a more dialogical and relational approach[651] to helping the client, as appraised in chapter 1.12.

There was some evidence to suggest the procedures of the LAC and particularly the identity of the LAC, as an advice provider of last resort, impacted upon the students feelings of

[650] Daicoff (n 172).
[651] Parker (n 364). 70.

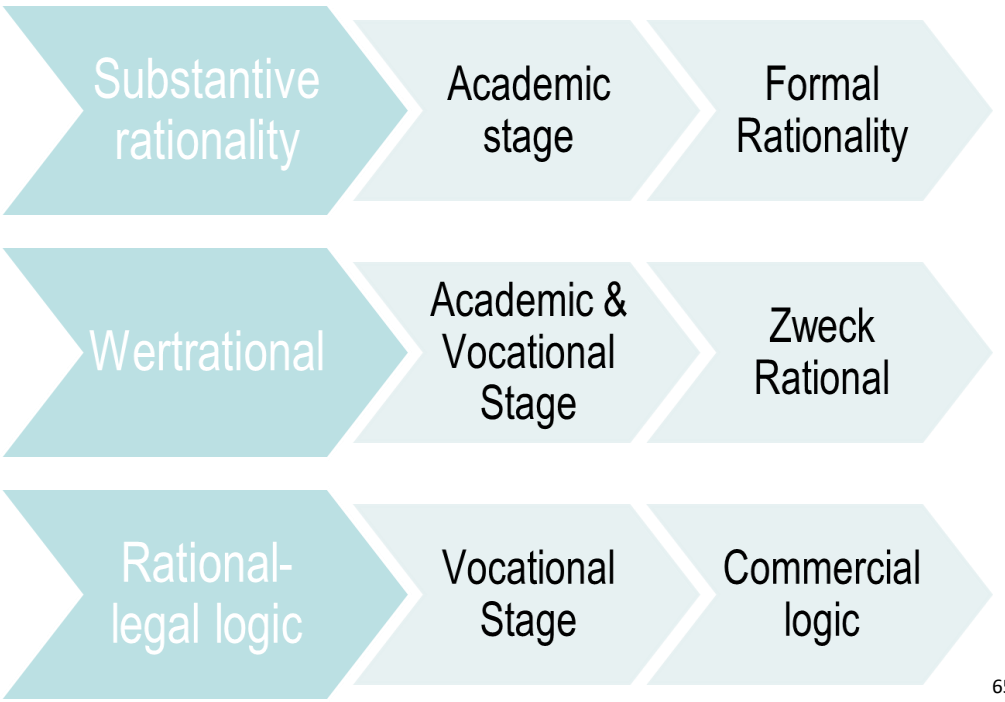
professional responsibility and desire to help the client. The students were aware that if they did not help the clients that they would be unlikely to be able to obtain help elsewhere. Whilst formalistic characteristics were valued, the LAC environment also nurtured and supported altruistic characteristics, with students being praised for displaying such attributes. However, a major influence upon the students was family[652]. A number of students relayed their desire to help to their own families; and to some students, the clients represented their own habitus, experiences and family. They recognised that their own families and communities would be unable to afford to pay for legal advice and they related this to the clients that they were helping. However, to two students, in particular, the similarities between the client's circumstances and their own personal experiences from childhood, created emotional turmoil as they associated the clients account to their own personal narrative.

Whilst the students exhibited many Weberian substantive features and the influence of their family backgrounds was evident, the supervisors with solicitor backgrounds brought their habitus and formalistic understanding (epistementality and *doxa*) from the legal practice field to discussions and relayed the cultural capital of colligation and classification[653]. Whereas the students considered emotions and feelings as important for the substantive value of taking them and the client into account, the supervisors with solicitor backgrounds considered them on an instrumentally calculative zweckrational basis to put the clients at ease in order to extract information from them in the interview.

[652] Jenkins (n 454).
[653] Abbott (n 36) 40-44.

The process and involvement in the LAC for the students represented a liminal moment for students in their professional identity formation[654]. Liminality was examined in chapter 1.3, and from an anthropological sense, constitutes a transition between life stages. During these liminal phases, existing order may be disrupted, in order to make way for new transitions. As identified by the alumni in chapter 4, their journey involved significant changes and transitions in the different fields that they encountered, from moving away from a substantive rationality whilst at university, to being faced with the commercial logic of the legal practice field. The alumni reflected upon how they had started their law degree with a substantive rationality, however how they had 'changed along the way'. During the academic stage of their development, students' rationality was converted to a more objective formal rationality[655]. Such a rationality and approach necessitated the systematic dismantling of subjective attachments such as emotions and feelings and pre-existing vernacular notions of 'justice'. The students during their vocational stage and involvement with the LAC were encouraged towards acting zweckrationally on an instrumentally calculative basis to achieve the desired end of legal advice provision. Finally, when in legal practice, the alumni had to adjust from operating purely upon the basis of a rational legal logic, to having to work within the commercial logic of the economic sphere, recognising the law firm as a commercial entity that needed to 'make a profit'. The transitions are outlined in the following diagram:

[654] Francesca Bargiela-Chiappini, 'Liminal ethnography: understanding segregated organisations' [2007] Qualitative Research in Organizations and Management: An International Journal, (2) (2) 126 doi: 10.1108/17465640710778520.
[655] Poole (n 212).



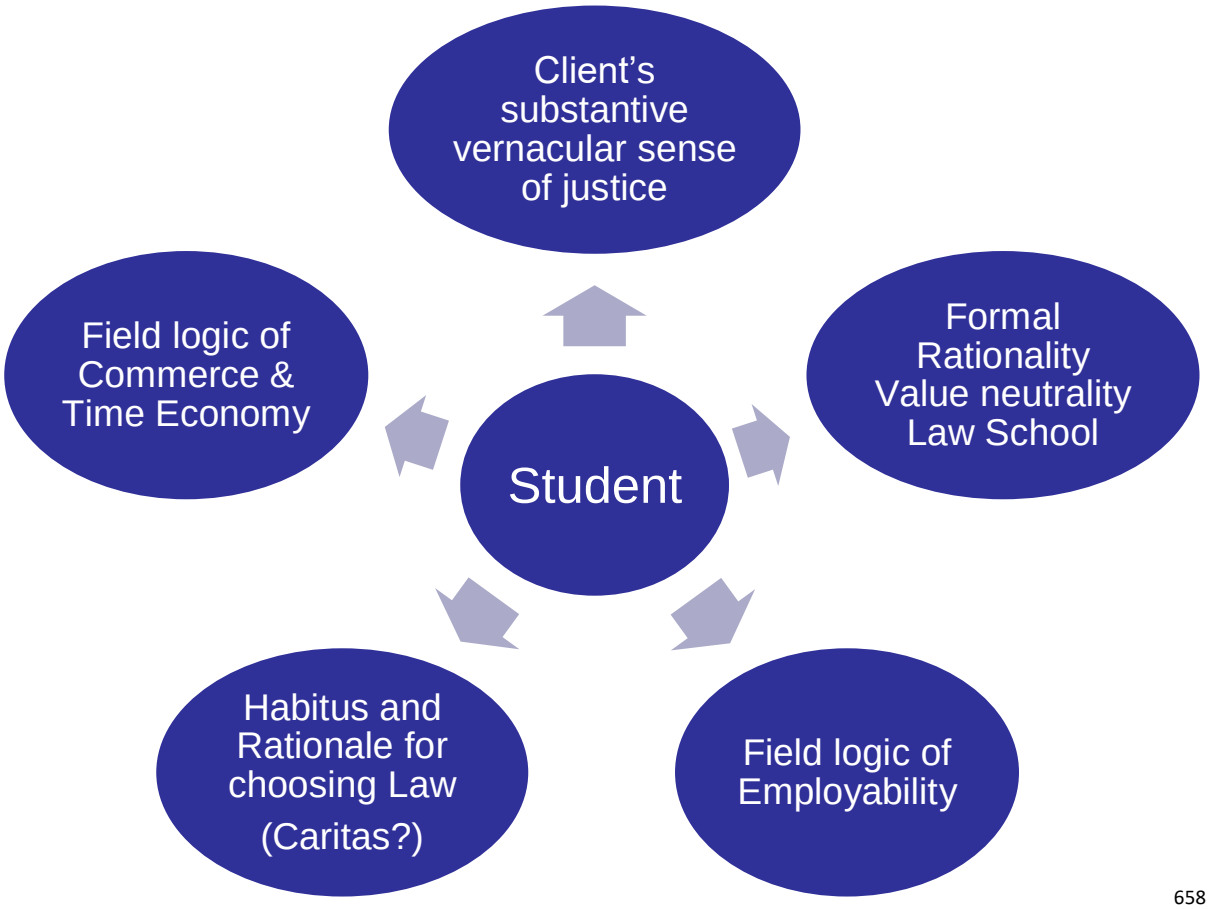
[656]

In light of the systematic dismantling and re-construction of individual habituses, it is perhaps unsurprising that tensions, conflicts and dilemmas arose. The tensions, in the context of this LAC, were examined in chapter 5 and emerged in dialogical discourse between the students and solicitor supervisors. Whilst the students' wanted to help the client achieve substantive justice, the solicitor supervisors relayed the reality of the prevalence of the formalistic sphere and how a consideration of procedural justice and formalistic necessities was of greater significance. Students were non-judgemental of clients, for substantive egalitarian reasons, however solicitor supervisors communicated the importance of this from the formalistic perspective of neutral detachment and disinterested service[657]. Competing logics, rationalities and messages surrounded the students in the

[656] Diagram used in Philip Drake & Peter Sanderson, 'Formal and Substantive Conceptions of Justice in Law Students Sense-making of Advice Practice in CLE' [2018] International Legal Ethics Conference, 6-8 December 2018; University of Melbourne.

[657] Rosenthal (n 217) 22.

work that they undertook in the LAC. The following diagram outlines some of the tensions and dilemmas the students faced:



[658]

However, despite the formalistic sphere and logic of commerce and time economy creating tensions with a more substantive outlook, one supervisor, noticeably without a practice background, brought a more substantive relational perspective[659] to being a counsellor/social worker for the client. Whilst it is not clear why this supervisor adopted this substantive approach, it was significant that she did not have a solicitor habitus and whilst

[658] Diagram used in Philip Drake & Peter Sanderson, 'Formal and Substantive Conceptions of Justice in Law Students Sense-making of Advice Practice in CLE' [2018] International Legal Ethics Conference, 6-8 December 2018; University of Melbourne
[659] Brooks & Madden (n 27).

she operated within the academic field, had been only minimally exposed to the legal practice field.

6.2 Significance of the Findings

The significance of this research is that it not only empirically considers professional identity formation in the context of a university LAC through a very specific set of theoretical lenses, but it has also examined and provided insight into the substantive and formalistic tensions that arise between the participants in their interactions. Whilst ethnographic research has been undertaken of lawyer and client discourse, little ethnographic research has been previously undertaken of the dialogical discourse between supervisors and students; the complex and nuanced messages relayed in discussions and the consequent tensions that arise.

The LAC field operated within the legal practice field and comprised the habituses of the participants with most power. Effectively out of four supervisors, two relayed formalistic practices from their professional background. Two other supervisors (if I include myself) relayed formalistic practices but with a more nuanced substantive approach to taking account of the personal narratives of the client. However, this was left to chance and the personalities and characteristics of the supervisors involved. Reflecting upon my time at the LAC, I recall how students expressed frustration from having to prepare differently depending upon which supervisor was chairing the selection panel. I suspect the habitus and dispositions of the supervisors may have been a major cause. The procedures do require some substantive considerations, such as in the selection panel, considering the client's

needs, and in the reflection meeting, considering the impact upon the client and the fairness of the law. However, the supervisors with legal practice backgrounds tended to approach this in a more formalistic manner, particularly the selection panel, focusing very heavily upon the financial element of need, rather than its more substantive emotional element.

Whilst many of the procedures in this university LAC were specifically designed to help direct towards a more reflective hybrid outlook[660], they were often hostage to the perspective of the supervisors. As three out of the four supervisors originated from legal practice backgrounds, together with the LAC operating within the formalistic fields of legal practice and legal education, it was unsurprising that procedures were commonly interpreted in a formalistic sense. Whilst the predominantly formalistic thinking supervisors did acknowledge and even praise students' substantive altruistic motives and expressions of sympathy, they also relayed formalistic messages in their dialogue, emphasising the importance of functional specificity[661]. However, in direct contrast to their learning on the law degree, the more experienced students, the non-solicitor supervisor, and on occasion, the solicitor supervisors, demonstrated a more hybrid approach to the client, acknowledging the client within the legal problem. Some of the students also recognised the inaccessibility of the law, relating this to metaphors such as barriers and having to build bridges. However, a number of students did display difficulty in displacing their own

[660] Harrits (n 390).
[661] Parsons (n 31) 457 460; Parsons (n 31) 305.

viewpoints as students educated in the law and seeing the inaccessibility of the law from the layperson client's perspective.

This research therefore highlights the need for LACs to consider their pedagogical *values* and *purpose*. LACs might choose to adopt a solely formalistic approach. However, importantly this should be an informed conscious decision, with an awareness of the alternatives and the advantages and disadvantages of the different approaches. Otherwise, the formalistic approach is just a default position, where university LACs simply reflect and echo the clinical supervisors own experiences or ideas of legal practice. As has been considered within this research, making an informed decision is not without tensions or dilemmas, given the prevailing formalistic *doxa* of the field. It requires a consideration of the role of CLE, including whether it is to prepare students for the legal practice field; if it is to promote a more relational substantive hybrid professional approach; and/or if it is to encourage more expansive and holistic thinking.

In line with Bourdieusian theory and a critical realist epistemology, generative structural mechanisms operate to propel the practice and education of law in a formalistic direction. Through a recognition of this and the discussions that can lead from this, it is possible to question the prevailing epistementality and *doxa* of the law and give consideration towards a more hybrid professional approach. However, this will create dilemmas, not least as recasting the field of clinical legal education, with a change in cultural capital towards a more relational, substantive and holistic outlook may leave some CLE practitioners in a state

of hysteresis[662], threatening their current position of power in the field. The dynamic of change would therefore not only represent a change to students in their learning but also a change to tutors in their thinking and in their teaching, where new skills and knowledge may be necessary. The dilemma analysis at appendix 1, represents the voices of the participants in this study and therefore provides a starting point for discussions and can assist students and supervisors to consider the conflict and tensions that can arise, and support a dialogue for possible strategies of reconciliation.

The alumni of the LAC identified the ethical conflicts that arose in their short time in legal practice, particularly from the influence of the commercial logic of the economic field of power. They recognised these conflicts and tried to address them as best they could, with their limited power in the field. The alumni however, attributed their recognition of the ethical conflicts and their consequent wertrational action to combat unethical action to the development of a reflective client-centric habitus during their time in the LAC. The alumni suggested most other lawyers did not even recognise the dilemmas, which would suggest that clinical legal education can also contribute towards preparing law students to be able to face the ethical tensions that arise in practice, particularly between the commercial logic and the client. Against this background, together with many academics also arguing for more relational lawyering[663], there may be an appetite for change, particularly in America, following a number of progressive reports into legal education [664].

[662] McDonough & Polzer (n 286) 357.
[663] Binder & Price (n 28); Macfarlane (n 367) 52; Howieson and Priddis (n 367); Barry, Dubin & Joy (n 137); Parker (n 364); Brooks & Madden (n 27).
[664] American Bar Association (n 163); Stuckey *et al*. (n 224); Sullivan *et al.* (n 15).

6.3 Limitations of the Study

The research involved the study of one university LAC. Whilst many of the outcomes of the research are generalizable, as different LACs have different priorities and procedures and different socio-demographics of students, some of the findings in this research may not always be generally relatable to all university LACs.

The study was also not a longitudinal study and only represented a 'snap shot' of a university clinic at a particular time. It is therefore not possible to identify that the LAC caused students to be more collegiate and altruistic or if the students had applied to volunteer in the LAC because of these dispositions. As it was a snap shot, it was also not possible to identify if the more experienced students initially demonstrated anxiety and a lack of confidence similar to the new student advisors in this study (although a successful alumni did allude to this). It was also not possible to consider if the more anxious less-experienced students later moved on to displaying characteristics of kinship and a beneficent character.

6.4 What now?

As this research related to students from a 'new' university with a particular socio-demographic, I have identified a 'Russell Group' university with a LAC with similar procedures but a completely different socio-demographic to undertake further research. Studying this LAC will allow me to examine and compare through a similar ethnographic study the different influential factors, such as the institutional, the socio-demographic of

student advisors and clients and a LAC in a mainstream curriculum. Through undertaking such a study, it will be possible to further consider through my theoretical and epistemological framework, the external generative structural influences on the behaviour, dispositions and actions of the agents and the similarities and differences, between the two contrasting universities. By identifying the similarities as well as the differences, it will be possible to compare and contrast the emerging professional identities and the corresponding tensions, dilemmas and conflicts that arise.

This Russell Group university, has also encouraged participation in some of its clinical legal activities with students from non-law disciplines such as sociology, politics, economics, anthropology and philosophy. This will provide the opportunity to undertake research of the meaning that students from different disciplines provide to their encounters with the epistementalities of legal practice and can help feed into future ideas for a multi-disciplinary approach to clinical legal education.

6.5 Final Thoughts

This research moves the field of clinical legal education to new considerations requiring a re-imagination of its delivery in the future. It highlights the need for legal educators to move from behind their own defensive mechanisms and to embrace a critical form of legal education where students are not just taught about the law and prepared to be lawyers, but are encouraged to openly question the perceived epistementalities and *doxa* of legal practice. Students not only reflect as a means to improve their own performance but also examine the perspective of others, the impact of the law on the clients and other parties, the communities that they work within and the society in which they live. Law does not

operate in a vacuum nor on a linear basis, however students of law are commonly taught in this way. Law is the product of social, political and economic structures, which students need to be aware of, to reflect upon and to understand the law in a deeper and more nuanced way.

This research provides a structure for reflective supervision that is generalizable to all university LACs. In this structure, pedagogical reflection is integrated throughout the whole process and not just 'bolted on' at the end. Its epistemic practice, and generation of epistementalities, is far more than a simple process of reflecting to improve performance. It involves reflecting upon the structures that law operates within and considering the perspectives of those caught upon within the Law.

This research de-myths contentions that former practising lawyers are necessarily the only or best academics to provide supervision in a LAC and suggests that academics without a professional practice background can bring completely different positive pedagogical perspectives to the students learning experience. CLE has a great deal to learn from not only its own non-practising academics but those of other disciplines, such as sociology, economics and politics. Rather than looking inward, CLE should be looking outward for new ideas and innovations. At a time when the world is increasingly changing and evolving, through the rise of artificial intelligence, the influence of transnational corporations and diminishing access to justice to the many, legal education should not be just a preparation for legal practice, not least as many law students do not become practitioners. Its primary goal must be to educate rather than replicate. The findings of this study and future studies

will take debate and further research forwards over what the purpose of legal educations *is*, what it *ought* to be and the consequent tensions and conflicts that can arise through pioneering a contextual, relational, hybrid approach to the learning of law.

Just as working in a LAC can represent a liminal moment for students, legal education may be at a liminal moment in its own development. After over one hundred years of the formalistic case method approach, it is now time for legal education to consider an alternative critical, contextual and relational methodology for the future education of law students.

6.6 Proposals for Practice in the Clinic and in the Classroom

The findings in this thesis suggest that rather than situating clinical legal education on a formalistic or 'soft positivistic' model[665], it should be rooted in a more multi-disciplinary paradigm taking account of the substantive micro impact on the individuals[666] involved in the legal problem, as well as the meso and macro social, political and economic factors and influences on the law. This approach is founded on the values of a liberal education, where students are encouraged to think critically about accepted norms and values, to welcome diversity and question stereotypes; and have the 'narrative imagination' to understand, value and empathise with other's perspectives[667]. It also draws upon the literature

[665] Johnson (n 193).
[666] As suggested in the MacCrate report and Stuckey *et al*'s Statement of Best Practices these considerations should not just be limited to the client. See the American Bar Association (n 163) 177, 181 & 213 and Stuckey *et al* (n 194) 61 respectively.
[667] Nussbaum (n 16).

surrounding critical legal studies and the formalistic, hierarchical and subordinate nature of the law relayed within this literature[668]. Reflective practice is of vital importance to these micro, meso and macro considerations, but importantly this should not just be 'bolted on' at the end of the experience and integrated into all of the teaching and experience within the Legal Advice Clinic[669]. It is important to structure these reflections, so that scrutiny at a substantive level is encouraged and natural tendencies in the legal field to focus on the formalistic, to the detriment of the substantive, is reduced. The focus on client needs in the selection panel[670] and encouragement to consider the emotional, as well as financial impact, of the legal problem on the client is an example of the incorporation of these considerations into the structure. However, this is not without problems. As identified in this thesis, even within such structured reflections, former practitioners have a tendency to focus on the financial and formalistic, with little consideration of the emotional. The 'fairness' or injustice of the law is also structured into reflections which, as also examined in this research, provided considerable difficulties for the students[671], whose ingrained habitus from the cultural capital of the legal academic field incorporated a formalistic outlook.

When considering whether the legal advice clinic should form an integrated part of the curriculum, I debated long and hard, with concerns that the extrinsic reward of an assessed mark, could impact upon the students' intrinsic motivations to help clients in need[672].

---

[668] Kennedy (n 216 & n220)
[669] Drake, Taylor and Toddington (n 288).
[670] See pages 269-276.
[671] See pages 276-282.
[672] See Richard M Titmuss, *The Gift Relationship: From Human Blood to Social Policy* (Policy Press 2019); Bruno S. Frey & Felix Oberholzer-Gee, 'The Cost of Price Incentives: An Empirical Analysis of Motivation Crowding-Out' [1997] The American Economic Review 746.

However, and whilst I do not have the answer to this psychological conundrum, my thesis' findings suggest clear benefits of integrating the legal advice clinic as a credit bearing course. Students have much greater time to learn and engage with focused reflection and I have been able to introduce social and legal theory into the students learning. From my epistemological and ontological position as a critical realist, I have exposed the students to different theoretical positions and a different more critical lens for observing the world. Understanding the tensions outlined in this thesis, created through Weber's formalistic and substantive spheres and rationalities for action, together with the influence of the cultural capital of the legal field and the powerful influence of neo-liberalism and the consequent dilemmas to practice that this creates, provides for a much deeper learning experience. Students are able to begin to question perceived doxas or epistementalities and recognise the influence of social, political and economic structures within which the law operates and of which the law is often representative.

Within the format of workshops, and through adopting a Vygotskian scaffolding approach[673], practical skills are considered but significantly learned through a theoretical lens. So for example, in the interviewing workshop, students are introduced to the ethnographic research of Sarat and Felstiner[674], when we discuss and consider the concept of functional specificity[675] and the inherent danger of subordinating a vulnerable client to a legal discourse that can have the effect of discarding their own personal narrative[676]. Rather than thinking like a lawyer, students are encouraged to think, within a theoretical

[673] Vygotsky (n 61).
[674] Sarat & Felstiner (n 39).
[675] Parsons (n 31).
[676] Alfieri (n 33); Michelson (n 35).

framework, like the client and consider how the client constructs her own meaning[677], whilst also importantly examining the structural obstacles created by the law and how the law can disproportionately impact upon the most impoverished and vulnerable[678]. Students are encouraged to empathise and sympathise and be non-judgemental of both the client and others but for egalitarian rather than formalistic reasons. Through acknowledging the tensions between Weber's value spheres and understanding the influence of the Bourdieusian field, students can begin to understand the epistementalities of law and why emotional skills and intelligence can conflict[679] with the predominant disinterested approach to legal practice[680], and are not as culturally valued within the legally formalistic sphere.

Students are also exposed to the different identities and roles of lawyering, from the traditional adversarial advocate[681] to the rebellious lawyer[682] and relational lawyer[683]. They are asked to reflect upon their own ideals and perceptions, the advantages and disadvantages of the different lawyering roles, how they perceive their future professional self and how this may influence their future action. The findings in this thesis suggest that through considering practical skills such as interviewing, research and letter writing, through a reflective theoretical base, students can begin to view law from an entirely different perspective. This pedagogical approach moves on from thinking that ethics is just about

[677] Miller (n 34).
[678] Sarat (n 45).
[679] Jones (n 184)
[680] Rosenthal (n 187)
[681] Parker (n 364)
[682] Lopez (n 356); Tremblay (n 356).
[683] Brooks & Madden (n 27); Parker (n 364); Macfarlane (n 367).

disciplinary codes and allows the students to position themselves in an advisor/client relationship and begin to understand their choices and decisions. They develop their meta learning[684] to recognise these choices and decisions and the problems that can arise, together with a critical perspective on the role of ethics in professional practice. Importantly, they construct their own ideas of not just what the law *is*, but what it *does* and what it *ought* to do.

Finally, in recognition of the confidence issues facing students examined in this research, and in promotion of both autonomy and collegiality, the theoretical and practical workshops are followed by the students presenting and discussing their own ideas with each other. These presentations start with the students providing a presentation about 'what makes a good presentation' in pairs or small groups. The purpose of this is to build the student's initial confidence to present and speak with each other. Importantly group sizes are kept low, so students over the weeks have already built up a camaraderie in their discussions and feel relaxed speaking in front of each other. The students are also introduced to the concept of a 'critical friend'[685] and following each presentation, the presenting group reflects upon their presentation with the group and discusses what went well, with peers providing positive reinforcement and suggestions for improvement[686].

---

[684] Donald Bruce Maudsley, *A Theory of Meta-Learning and Principles of Facilitation: An Organismic Perspective* (University of Toronto (Canada), ProQuest Dissertations Publishing 1979) NK40939.
[685] Paul Gibbs & Panayiotis Angelides, 'Understanding friendship between critical friends' [2008]. Improving Schools, 11(3), 213. DOI: 10.1177/1365480208097002.
[686] The first time, I provided this session, I prepared my own presentation as a reserve. I have never had to use this and I am consistently taken aback by the quality and innovation of these presentations which far exceed my own capabilities.

This initial presentation is followed in subsequent weeks by individual or group presentations on the areas of access to justice and the students' reflection upon their own experiences in the legal advice clinic, where the students draw upon theory and literature in support of their contentions. These two areas form the basis of the students' assessment at the end of the course[687] and through presenting these ideas to their peers, allows the students to work collaboratively to share their ideas and make suggestions to each other on ways to improve for their final assessment.

The students relay to me how this approach of student centred practical and theoretical learning represents an entirely different pedagogical experience to their usual classroom experience[688] and how enjoyable and enlightening they have found the course. The course consistently receives well above average student feedback scores and has been praised by the School's Director of Teaching and Learning for the student feedback provided. Building upon the findings of this thesis, the course continues to develop and this forthcoming semester will no doubt present challenges of its own whilst we adapt to a new Covid-19 era of social distancing and online teaching. However, the students' experience may perhaps be best summed up by one of the students who remarked in their survey of the course:

[687] The students are assessed on an access to justice (A2J) essay on an issue of their choice. Essays have ranged from air quality as a social justice issue to the detrimental impact of the legal aid cuts on family law and the access to justice of the families of the victims of the Grenfell tower disaster. The A2J essay is worth 50% of the marks. The students also submit a reflective coursework based upon their experiences on the course and in the Legal Advice Centre worth 25% of the marks and their Legal Advice Centre case file is reviewed from a procedural perspective, for the remaining 25% of the assessment, admittedly retaining some formalistic perspective to the assessment.

[688] Harris & Beinart (n 29) 315-316. Cownie (n 29) 123.

"It made me look at law from a critical perspective, seeing its faults in its application for those most vulnerable as opposed to an arbitrary study of statute and case law for my other exams."

My thesis has been a long and often arduous journey, however the findings in this research have not only highlighted the conflicts, tensions and dilemmas that can arise from this pedagogical method of learning but have also developed me as a teacher and my teaching methodology. Following its completion, my next task will be to develop, promote and educate clinical tutors in this methodological approach further at a local, national and global level.

BIBLIOGRAPHY

Abbott A, ‘Status and Status Strain in the Professions’ (1981) American Journal of Sociology 86 (4) 819

Abbott A, ‘Professional Ethics’ [1983] American Journal of Sociology 88 (5) 855

Abbott A, *The System of the Professions* (University of Chicago Press 1988)

Abbott M, ‘Seeking Shelter Under a Deconstructed Roof- Homelessness and Critical Lawyering’ [1997] 64 Tenn. L. Rev. 269

Abel R L, ‘Review Essay on M.S. Larson, The Rise of Professionalism’ [1979] British Journal of Law and Society 6 82

Abel R L, 'The Decline of Professionalism' [1986] 48 Mod L Rev 1

Abel R L, *The Legal Profession in England and Wales* (Basil Blackwell 1988)

Abel R L, ‘Choosing, Nurturing, Training and Placing Public Interest Law Students’ [2002] 70 Fordham Law Review 1563

Abel R L, ‘You never want a serious crisis to go to waste.” Reflections on the reform of legal education in the US, UK, and Australia’ [2015], International Journal of the Legal Profession, 22:1, 3 15. DOI: 10.1080/09695958.2015.1119026

Abel R L, ‘An Agenda for Research on the Legal Profession and Legal Education: One American’s Perspective’ in Sommerlad H, Harris-Short S, Vaughan S and Young R (Eds), *The Futures of Legal Education and the Legal Profession* (Oxford: Hart 2015)

Abel R L, ‘Lawyer self-regulation and the public interest: a reflection’ (2017) Legal Ethics, 20:1, 115 116. DOI: 10.1080/1460728x.2017.1334742

American Bar Association, *The report of At the Breaking Point: a national conference on the emerging crisis in the quality of lawyers’ health and lives: its impact on law firms and client services* (Chicago: American Bar Association 1991)

American Bar Association, *Legal Education and Professional Development – An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap* (The 'McCrate Report') (Chicago, ABA 1992)

American Bar Association, *Nonlawyer Activity in Law-Related Situations: A Report with Recommendations* (Chicago: American Bar Association 1995)

Alfieri A V, 'The Antinomies of Poverty Law and a Theory of Dialogic Empowerment' [1987] 16 N.Y.U. Rev. L. & Soc. Change 659

Alfieri A V, 'Reconstructive Poverty Law Practice: Learning lessons of Client Narrative' [1991] 100 Yale LJ 2107

Alfieri A V, 'Educating Lawyers for Community' [2012] Winconsin Law Review 115

Allport G W, *Personality: A Psychological Interpretation* (New York: Henry Holt & Co 1937)

Allport G W, 'The psychologist's frame of reference' [1940] Psychological Bulletin, 37 (1) 28

Amnesty International, 'Cuts That Hurt: The impact of legal aid cuts in England on access to justice'. (2016) <https://www.amnesty.org.uk/files/aiuk_legal_aid_report.pdf>

Applebaum L I, 'The Rise of the Modern American Law School: How Professionalization, German Scholarship, and Legal Reform Shaped Our System of Legal Education' [2005], 39 New Engl. L. Rev. 251

Archer M, 'Morphogenesis versus Structuration: On Combining Structure and Action' [1982] British Journal of Sociology 33(4) 455

Aristotle, Rackham H (trans) (1996) *The Nichomachean Ethics* (Wordsworth Editions Limited).

Arthur J, Waring M, Coe R & Hedges L, *Research Methods & Methodologies in Education* (Sage 2012)

Ashdown J, 'Shaping diversity and inclusion policy within research' [2015] Fordham Law Review 85, 2249

Askin F, 'Tribute to Arthur Kinoy' [2003] Rutgers Law Review, 56 (1) 1

Association of American Law Schools (AALS) Commission on Pro Bono and Public Service Opportunities in Law Schools, *Learning to Serve: A Summary of the Findings and Recommendations of the AALS Commission on Pro Bono and Public Service Opportunities* (Washington DC: AALS 1999)

Atkinson P & Hammersley M (1994) 'Ethnography and Participant Observation' in Denzin N K and Lincoln Y S (Eds) *Handbook of Qualitative Research* (Sage Publications 1994)

Becker H S, 'Culture: A Sociological View' [1982] Yale Review, 71 513

Baggini J, 'State school pupils lack confidence – you won't fix that in the classroom' *The Guardian* (15 January 2016) <https://www.theguardian.com/commentisfree/2016/jan/15/state-school-pupils-confidence-lessons-personality-private-education>

Bar Standards Board, Statistics about the Bar (undated) <https://www.barstandardsboard.org.uk/media-centre/research-and-statistics/statistics/practising-barrister-statistics/>

Bargiela-Chiappini F, 'Liminal ethnography: understanding segregated organisations' [2007] Qualitative Research in Organizations and Management: An International Journal, (2) (2) 126 doi: 10.1108/17465640710778520.

Barry C, Britten N, Barber N, Bradley C & Stevenson F, 'Using reflexivity to optimize teamwork in qualitative research' Qualitative Health Research 9 (1) 26

Barry M M, Dubin J C & Joy P A, 'Clinical Education for this Millenium: The Third Wave' [2000] Clinical Law Review 7 (1) 1

Bates I, '"A Job Which is 'Right for Me?" Social Class, Gender and Individualization', in Bates I & Riseborough G (eds) *Youth and Inequality*. (Buckingham: Open University Press 1993)

Beardsworth A & Keil T, 'The Vegetarian Option: Varieties, Conversions, Motives and Careers' [1992] Sociological Review, 40 253

Ben-David J, 'Professions in the Class Systems of Present Day Societies' (1963) Current Sociology 12 249

Bennett S D, 'On Long-Haul Lawyering' [1998] 25 Fordham Urb. L. J. 771

Bhaskar R, *A Realist Theory of Science* (Brighton: Harvester Press 1978)

Bhaskar R, *Reclaiming Reality: A Critical Introduction to Contemporary Philosophy* (Routledge 1989

Bhaskar R, Collier A, Lawson T & Norrie A (Eds), *Critical Realism: Essential Readings* (London: Routledge 1998)

Binder D A & Price S C, *Legal Interviewing and Counseling: A Client-Centred Approach* (West Group 1977)

Binder D, Bergman P and Price S, 'Lawyers as Counselors: A Client-Centered Approach' (1990) 35 N Y L Sch L Rev 29

Black D, *Sociological Justice* (Oxford University Press 1994)

Black J, 'Reconceiving Financial Markets - From the Economic to the Social' [2013] 13 Journal of Corporate Law Studies 401

Blaikie N, *Approaches to Social Enquiry* (Reprint (1993), Polity Press 1995)

Blaikie N, *Designing Social Research* (Cambridge: Polity 2000)

Blasi G, 'How Much Access? How Much Justice?' [2004] 73 Fordham L. Rev. 865

Bledstein B J, *The Culture of Professionalism* (New York: Norton 1976)

Bloch F S (Ed), *The Global Clinical Movement Educating Lawyers for Social Justice* (OUP 2011)

Blumer H, *Symbolic Interactionism; Perspective and Method* (Englewood Cliffs, NJ, Prentice Hall 1969)

Boon A, *The Ethics and Conduct of Lawyers in England and Wales* (3rd edn, Hart 2014)

Boon A & Webb J, 'Legal education and training in England and Wales: Back to the future?' [2008] Journal of Legal Education 58 (1)

Boon A & Whyte A, 'Looking back: Analysing experiences of legal education and training' [2007] The Law Teacher 41 (2) 169

Boud D & Feletti G (Eds), *The Challenge of Problem Based Learning* (Routledge 1997)

Bourdieu P, 'Systems of Education and Systems of Thought' [1967] International Social Science Journal 19 (3) 338

Bourdieu P, *Outline of a Theory of Practice*, Nice R (trans) Cambridge: Cambridge University Press 1977 [1972])

Bourdieu P, 'The Production of Belief: Contribution to an Economy of Symbolic Goods' in Collins R, Curran J, Garnham N & Scannell P (Eds), *Media, Culture and Society: A Critical Reader* (London: Sage 1986)

Bourdieu P, 'The Force of Law: Toward a Sociology of the Juridical Field' [1987] Hastings Law Journal 38 (5)

Bourdieu P, *Language and Symbolic Power*, G Raymond & M Adamson (trans), (Cambridge: Pollity 1990).

Bourdieu P, *The Logic of Practice* (Cambridge: Polity 1990)

Bourdieu P, *Sociology in Question,* Nice R (trans), (London: Sage 1993)

Bourdieu P, *In Other Words: Essays Towards a Reflexive Sociology,* M Adamson (trans) (Cambridge: Polity 1994)

Bourdieu P. & Passeron J C, (1979) *The Inheritors, French Students and their Relation to Culture*, R Nice (trans), (Chicago, IL: University of Chicago Press 1979)

Bourdieu P & Wacquant L J D, 'Towards a Reflexive Sociology: A Workshop with Pierre Bourdieu' (1989) *Sociological Theory* 7(1)

Bourdieu, P, and Wacquant L J D, *An Invitation to Reflexive Sociology* (University of Chicago Press 1992)

Bowcott O, Hill A and Duncan P, 'Revealed: legal aid cuts forcing parents to give up fight for children (26 December 2018) <https://www.theguardian.com/law/2018/dec/26/revealed-legal-aid-cuts-forcing-parents-to-give-up-fight-for-children>

Bowles S and Gintis H, *Schooling in Capitalist America* (Routledge & Kegan Paul, London, 1976)

W Bradley Wendel, ‘Legal Ethics and the Separation of Law and Morals’ [2005] 91 Cornell L. Rev. 67

Bradley Wendel W, ‘Legal Ethics as “Political Moralism” or the Morality of Politics’ [2008] 93 Cornell L. Rev. 1413

Bradney A, ‘Law as a Parasitic Discipline’ [1998] Journal of Law and Society 71

Bradney A, *Conversations, Choices and Chances: The Liberal Law School in the Twenty-first Century* (Oxford, Hart Publishing 2003)

Bradney A ‘The success of university law schools in England and Wales: or how to fail’ [2018] The Law Teacher 52 (4) 490

Bradney A & Cownie F in David Hayton’s (Ed), *British University Law Schools* (Hart Publishing 2000)

Bransford J & Stein B S, The Ideal Problem Solver: Guide for Improving Thinking, Learning, and Creativity (2d edn, W H Freeman & Co Ltd 1993)

Bridges S, McGrath C & Whitehill T L, *Problem-Based Learning in Clinical Education The Next Generation – Innovation and Change in Professional Education* (Springer 2012)

Britzman D P, *Lost subjects, contested objects: Towards a psychoanalytic inquiry of learning.* (Albany, NY: State University of New York Press 1998)

Brooks C W, *Pettyfoggers and Vipers of the Commonwealth: The 'Lower Branch' of the Legal Profession in Early Modern England*, 132-145, 277-278 (Cambridge University Press 1986)

Brooks S L, ‘Fostering Wholehearted Lawyers: Practical Guidance for Supporting Law Students' Professional Identity Formation’ [2018] St. Thomas L.J. 412

Brooks S and Madden R, “Epistemology and Ethics in Relationship-Centred Legal Education and Practice” [2011] 56 New York Law School Law Review 331

Brown J S & Duguid P, 'Borderline issues: Social and Material Aspects of Design' [1994] Human-Computer Interaction 9 3

Brubaker R, *The Limits of Rationality An Essay on the Social and Moral Thought of Max Weber* (Routledge 1984)

Bryman A, *Social Research Methods* (Oxford: Oxford University Press 2001)

Bryman A, *Social Research Methods* (3rd edn, Oxford University Press 2008)

Bryman A, *Social Research Methods* (5th edn, Oxford University Press 2016)

Buhler S, 'Troubled Feelings: Moral Anger and Clinical Legal Education' [2014] 37 Dalhousie L.J. 397

Burgess R (Ed), The Research Process in Educational Settings: Ten Case Studies (Falmer Press 1984)

Burrage M, 'From a Gentlemen's to a Public Profession: Status and Politics in the History of English Solicitors' [1996] 3 Int'l L J. Legal Prof 45

Burridge R & Webb J, 'The Values of Common Education: Rethinking Rules, Responsibilities, Relationships and Roles in the Law School' [2007] Legal Ethics 10 (1) 72

Byrom N, 'The State of the Sector: The Impact of Cuts to Civil Legal Aid on Practitioners and Their Clients' (illegal/University of Warwick 2013) <https://warwick.ac.uk/fac/soc/law/research/centres/chrp/spendingcuts/153064_statesector_report-final.pdf>

Campbell I and Charlesworth S, 'Salaried Lawyers and Billable Hours: A New Perspective from the Sociology of Work' (2012) 19 Int'l J Legal Prof 89

Campos P, 'The crisis of the American law school' [2012] Michigan Journal of Law Reform 46

Carney D, Dignan F, Grimes R, Kelly G and Parker R, 'The LawWorks Law School Pro Bono and Clinic Report 2014' (LexisNexis, 2014)

<https://www.lawworks.org.uk/sites/default/files/LawWorks-student-pro-bono-report%202014.pdf>

Carrington P D, 'Hail-Langdell!' [1995] 20 Law and Social Inquiry 691

Charmaz K C, *Constructing Grounded Theory* (London: Sage 2006)

Checkland P & Scholes J, *Soft Systems Methodology in Action* (Wiley 1990)

Clarke A E, *Situational analysis: Grounded Theory after the postmodern turn* (Thousand Oaks CA: Sage 2005)

Coffey A, 'Ethnography and Self' in Tim May (Ed) *Qualitative research in Action* (SAGE 2002)

Colley H, James D, Diment K & Tedder M, 'Learning as becoming in vocational education and training: class, gender and the role of vocational habitus' [2003] Journal of Vocational Education and Training, 55 (4) 471. DOI: 10.1080/13636820300200240.

Collier R, 'Be smart, be successful, be yourself'? Representations of the training contract and the trainee solicitor in advertising by large law firms [2005] International Journal of the Legal Profession 12

Collier R, 'Fatherhood, gender and the making of professional identity in large law firms: bringing men into the frame' (2019) International Journal of Law in Context 15. DOI:10.1017/S1744552318000162

Condlin R J, "Tastes Great, Less Filling': The Law School Clinic and Political Critique' (1986) 36 J. Legal Educ. 45

Cooper J & Trubek L G (Eds), *Educating for Justice: Social Values and Legal Education*, (Ashgate Dartmouth 1997)

Cooper J and Trubek L G, 'Social Values from Law School to Practice: an Introductory Essay' in Jeremy Cooper & Louise G. Trubek (Eds), *Educating for Justice: Social Values and Legal Education*, (Ashgate Dartmouth 1997)

Courtney S J, 'Corporatising school leadership through hysteresis' [2017] British Journal of Sociology of Education, 38 (7) 1054-1067. DOI: 10.1080/01425692.2016.1245131

Cownie F, *Legal Academics: Culture and Identities* (Hart Publishing 2004)

Cownie F, 'Exploring Values in Legal Education' [2011] Web Journal of Current Legal Issues 2

Cruz C Z, '[On the] Road Back In: Community Lawyering in Indigenous Communities' [1999] 5 Clinical Law Review 557

Cummings S, 'UCLA: Lawyers and legal clinical work in the USA; Colloquium: A need for legal clinical work? Theoretical & practical concerns' [2019] University of Southern Denmark

Cummings S & Rhode D, 'Access to Justice: Looking Back, Thinking Ahead' [2017] 30 Georgetown Journal of Legal Ethics 485

Cunningham K, 'Father time: flexible work arrangements and the law firm's failure of the family' [2001]. Stanford Law Review 53 967

Lawrence A Cunningham, 'A Prescription to Retire the Rhetoric of ''Principles-Based Systems'' in Corporate Law, Securities Regulation and Accounting' [2007] Vanderbilt Law Review 60 1409

Cutcliffe J R, 'Reconsidering reflexivity: Introducing the case for intellectual entrepreneurship' [2003] Qualitative Health Research 13 (1) 136

Daicoff S, *Lawyer Know Thyself: A Psychological Analysis of Personality Strengths and Weaknesses* (Washington DC: American Psychological Association 2004)

Danermark B, Elkstrom M, Jakobson L and Karlsson J C, (2005) *Explaining Society. An Introduction to Critical Realism in the Social Sciences* (Routledge: London and New York 2005)

De Sousa Santos B, 'The Law of the Oppressed: The Construction and Reproduction of Legality in Pasargada' [1977] 12 Law & Soc'y Rev 5

Decoteau C L, 'The AART of Ethnography: A Critical Realist Explanatory Research Model' [2016] Journal for the Theory of Social Behaviour 58. DOI. 10.1111/jtsb.12107

Del Caro A, "Dionysian Classicism, or Nietzsche's Appropriation of an Aesthetic Norm" [1989] Journal of the History of Ideas 50 (4) 589. DOI:10.2307/2709799

Denzin N K and Lincoln Y S (Eds) *Handbook of Qualitative Research* (Sage Publications 1994)

Denzin N K & Lincoln Y S, *The Sage Handbook of Qualitative Research* (Sage 2018)

Diamond M, 'Community Lawyering: Revisiting the Old Neighbourhood' [2000] 32 Colum. Hum. RTS. L. REV 67

Diener E & Crandall R, *Ethics in Social and Behavioural Research* (Chicago: University of Chicago Press 1978)

Donald J G, *Learning to think: Disciplinary perspectives* (San Francisco: Jossey-Bass 2002)

Drake P, 'It's Been Emotional: An Ethnographic Study of Student Interaction in a University Law Clinic' [2017] Socio-Legal Studies Association Annual Conference, Newcastle University.

Drake P, 'Law Outside the Vacuum' [2017] Journal of Vocational Educational Training Conference, Worcester College, Oxford

Drake P, 'The Anthropology of Crisis: Professional Identity Formation in Changing Times' [2018] Educating for Uncertainty: Education in Law and Criminal Justice in an Uncertain World Symposium, University of Leeds.

Drake P & Sanderson P, 'Formal and Substantive Conceptions of Justice in Law Students Sense-making of Advice Practice in CLE' [2018] International Legal Ethics Conference, University of Melbourne

Drake P & Sanderson P, 'Transactional ethics and ethical transactions in clinical legal education' [2019] Colloquium: A need for clinical work? Theoretical and practical concerns, University of Southern Denmark

Drake P, Taylor N & Toddington S, 'Ethical Engagement, Embedded Reflection, and Mutual Empowerment in the Clinical Process' in Ashford C and McKeown P (Eds), *Social Justice and Legal Education* (Cambridge Scholars 2018)

Drake P & Toddington S, 'Refashioning our ideas about lawyer and client collaboration' [2014] International Conference on Access to Justice and Legal Services, UCL, London.

Drake P & Toddington, S, 'The Depths of dialogue: Ethics, Interests and the Behavioural Economics of "Collaborative"' [2014] International Legal Ethics Conference: City University, London.

Drake P & Toddington S, ‘Structuring Ethical Values through Clinical Legal Education’ [2014] CLEO (Clinical Legal Education Organisation) Conference, Sheffield Hallam University.

Drake P and Toddington S, 'Clinical Pathways to Ethically Substantive Autonomy' [2013] International Journal of Clinical Legal Education 311. ISSN 1467-1069

Drake P & Toddington S, ‘Ethics and Outcomes: Autonomy and Technique in Legal Education’ [2013] Work Based Learning Annual Conference, Birkbeck College, University of London.

Dubois V, *The bureaucrat and the poor. Encounters in French welfare offices* (Farnham: Ashgate 2010)

Dubin J C, ‘Clinical Design for Social Justice Imperatives’ [1998] 51 SMU Law Review 1461

Duch B J, Groh S E & Allen D E, *The power of problem-based learning: a practical “how to” for teaching undergraduate courses in any discipline* (Stylus Publishing 2001)

Duncan N J, ‘Ethical practice and clinical legal education’ [2005] International Journal of Clinical Legal Education’ 7

Duncan N & Kay S L, ‘Addressing Lawyer Competence, Ethics & Professionalism’ in Bloch F S (Ed), *The Global Clinical Movement Educating Lawyers for Social Justice* (OUP 2011)

Dunn K & Kaplan P J, ‘The Ironies of Helping: Social Interventions and Executable Subjects’[2009] 43 Law & Soc’y Rev. 337

Dunn R, Roper V & Kennedy V, ‘Clinical legal education as qualifying work experience for solicitors’ (2018) The Law Teacher, 52:4, 439-452, DOI: 10.1080/03069400.2018.1526480.

Eatough V and Stainton-Rogers W, ‘Interpretative Phenomenological Analysis’ in Willig C & Stainton-Rogers W (Eds), *The SAGE Handbook of Qualitative Research in Psychology* (SAGE Publications Limited 2013)

Economides K, ‘Cynical Legal Studies’ in Cooper J & Trubek L G (Eds) *Educating for Justice: Social Values and Legal Education* (Ashgate Dartmouth 1997)

Engler R, ‘The MacCrate Report Turns 10: Assessing its Impact and Identifying the Gaps We Should Seek to Narrow’ [2001] 8 Clinical Law Review 109

Erlanger H S & Lessard G, 'Mobilising Law Schools in Response to Poverty: a Report on Experiments in Progress' [1993] Journal of Legal Education 43 199

Evetts J, 'The Sociological Analysis of Professionalism Occupational Change in the Modern World' [2003] International Sociology 18 (2) 395. DOI:10.1177/02685809 03018002005

Evetts J, Professionalism: Value and ideology [2013] Current Sociology Review 780. DOI:10.1177/0011392113479316

Evetts J, 'Professionalism, Enterprise and the Market: Contradictory or Complementary?' in Sommerlad H, Harris-Short S, Vaughan S and Young R (Eds), *The Futures of Legal Education and the Legal Profession* (Oxford: Hart 2015)

Ewick P & Silbey S S, *The Common Place of Law* (The University of Chicago 1998)

Federle K H, 'The Ethics of Empowerment: Rethinking the Role of Lawyers in Interviewing and Counseling the Child Client' [1996] 64 Fordham L. Rev. 1655

Filmer P, Phillipson M, Silverman D & Walsh D, *New Directions in Sociological Theory* (London: Collier-Macmillan 1972)

Fines B G, 'Fundamental Principles and Challenges of Humanizing Legal Education' [2008] 47 Washburn L.J. 313

Fish S, 'The Law Wishes to have a Formal Existence' in Austin Sarat and Thomas R Kearns (Eds), *The Fate of Law* (University of Michigan Press 1991)

Flood J, 'Legal Education in the Global Context. Challenges from Globalization, Technology and changes in Government Regulation'. [2011] Report for the Legal Services Board. <http://www.legalservicesboard.org.uk/wp-content/media/International-legal-education.pdf>

Frank J, 'A Plea for Lawyer-Schools' [1947] 56 Yale LJ 1303

Francis A, 'The business context: legal ethics, the marketplace and the fragmentation of legal professionalism' [2005] International Journal of the Legal Profession, 12 (2) 173

Freedman J O, *Idealism and Liberal Education* (University of Michigan Press 1996)

Freire P, *Pedagogy of the oppressed,* Ramos M B (trans) (Penguin Books 1972)

Frey B S & Oberholzer-Gee F, 'The Cost of Price Incentives: An Empirical Analysis of Motivation Crowding- Out' [1997] The American Economic Review 746

Fuller M, Dimensions of Gender in a School: Reinventing the wheel?, in Burgess R (Ed), *The Research Process in Educational Settings: Ten Case Studies* (Falmer Press 1984) 97

Gabel P, 'Critical Legal Studies as a Spiritual Practice' [2009] 36 Pepperdine Law Review 515

Galanter M, 'The Hundred-Year Decline of Trials and the Thirty Years War' [2005] 57 Stan. L. Rev. 1255

Galanter M, 'A World without Trials' [2006] Journal of Dispute Resolution 7

Gallie D, 'Are the unemployed an underclass? Some evidence from the social change and economic life initiative' [1994] Sociology, 28 (3) 737

Gauntlett D, *Creative explorations: New approaches to identities and audiences* (London: Routledge 2007)

Gauntlett D & Holzwarth P, 'Creative and visual methods for exploring identities' [2006] Visual Studies, 21(1), 82. DOI:10.1080/14725860600613261

Genn H, & Genn Y, *The Effectiveness of Representation at Tribunals, Report to the Lord Chancellor*. (London: Lord Chancellor's Department 1989)

Gersen J S, 'The Socratic Method in the Age of Trauma' [2017] 130 Harv. L. Rev. 2320

Gherardi S, 'Professional knowing-in-practice: rethinking materiality and border resources in telemedicine' in Tara Fenwick & Monika Nerland (Eds), *Reconceptualising Professional Learning*. (Routledge 2014) 11

Gibbs G, *Learning by Doing: A guide to teaching and learning methods* (Oxford Brookes University 1988)

Paul Gibbs & Panayiotis Angelides, 'Understanding friendship between critical friends' [2008]. Improving Schools, 11(3), 213. DOI: 10.1177/1365480208097002.

Gillham B, *Case Study Research Methods* (London: Continuum 2000)

Gilligan C, *In a Different Voice. Psychological Theory and Women's Development* (Harvard University Press 1982)

Glaser B G, *Theoretical sensitivity* (Mill Valley, CA: The Sociology Press 1978)

Glaser B G, *Doing Grounded Theory* (Mill Valley: Sociology Press 1998)

Gobo G, *Doing Ethnography* (Sage 2008)

Goffman E, *The Presentation of Self in Everyday Life* (Anchor Books 1959)

Goldfarb P, 'Beyond Cut Flowers: Developing a Clinical Perspective on Critical Legal Theory' (1992) 43 Hastings LJ 717

Goldfarb P, 'Back to the Future of Clinical Legal Education' [2012] 32 Boston College Journal of Law & Social Justice 32 279

Goldsmith A J, 'An Unruly Conjunction - Social Thought and Legal Action in Clinical Legal Education' [1993] 43 J Legal Educ 415

Gonzalez T, 'A Quiet Revolution: Mindfulness, Rebellious Lawyering, and Community Practice' [2016] 53 Cal W L Rev 49

Granfield R, *Making Elite Lawyers: Visions of Law at Harvard and Beyond* (New York: Routledge 1992)

Graves J, 'An essay on rebuilding and renewal in American legal education' [2013] Touro Law Review 29

Green F, Parsons S, Sullivan A and Wiggins R, 'Dreaming big? Self-valuations, aspirations, networks and the private-school earnings premium' [2018] Cambridge Journal of Economics 42 757. DOI:10.1093/cje/bex023

Grenfell M, *Pierre Bourdieu Key Concepts'* (2nd edn, Acumen Publishing Limited 2012)

Grey T, 'Langdell's Orthodoxy' [1983] 45 U. Pitt. L. Rev. 1

Grigg-Spall I & Ireland P (1992) 'Introduction' in Grigg-Spall I & Ireland P (Eds) *The Critical Lawyers Handbook* [Pluto Press OUP]

Grix J, Introducing Students to the Generic Terminology of Social Research [2002] Politics 22 (3) 175 179–181. DOI:10.1111/1467-9256.00173

Guth J & Ashford C, 'The Legal Education and Training Review: regulating socio-legal and liberal legal education?' [2012] The Law Teacher, 48 (1) 5 6. DOI: 10.1080/03069400.2013.875304

Hall P A, 'Social Capital in Britain' [1999] *British Journal of Political Science* 29(3) 417

Hammersley M, 'The Researcher Exposed: A Natural History' in Burgess R (Ed), The Research Process in Educational Settings: Ten Case Studies (Falmer Press 1984) 15

Haralambos M & Holborn M, *Sociology Themes and Perspectives* (8th edn, Harper Collins 2013)

Harré R, *Principles of Scientific Thinking* (Chicago: University of Chicago Press 1970)

Harris A, Lin M & Selbin J, 'From "The Art of War" to "Being Peace": Mindfulness and Community Lawyering in a Neoliberal Age' [2007] 95 Calif. L. Rev. 2073

Harris P & Beinart S [2005] 'A survey of law schools in the United Kingdom, 2004' The Law Teacher 39 (3) 299

Harrits G S, 'Being Professional and Being Human. Professional's Sensemaking in the Context of Close and Frequent Interactions with Citizens' [2016] Professions & Professionalism 6 (2) 2

Hay C, *Political Analysis. A Critical Introduction* (Basingstoke: Palgrave 2002)

Heritage J, *Garfinkel and Ethnomethodology* (Cambridge: Polity 1984)

Hmelo-Silver C E & Eberbach C, 'Learning Theories and Problem-Based Learning' in Bridges S, McGrath C & Whitehill T L, *Problem-Based Learning in Clinical Education The Next Generation – Innovation and Change in Professional Education* (Springer 2012) 3

Hochschild A R, *The Managed Heart: Commercialization of Human Feeling* [2003] (Berkeley: University of California 2003)

Hosticka C J, 'We Don't Care about What Happened, We Only Care about What Is Going to Happen: Lawyer-Client Negotiations of Reality' Social Problems (1979) 26 (5) 599

House of Commons Library Briefing paper, 'Small claims for personal injuries including whiplash' (23 August 2018) <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN04141>

Howieson J and Priddis L, 'A Relational Model of Family Lawyering: Exploring the Potential for Education, Practice and Research' [2014] 29 Can J Fam L 173

Hundley V & Van Teijlingen E R, 'The Role of Pilot Studies in Midwifery Research' [2002] RCM Midwives Journal 5(11) 372

Hupe P, 'Dimensions of discretions: Specifying the object of street-level bureaucracy research' [2013] Der moderne staat – Zeitschrift für Public Policy, Recht und Management 6(2) 425

Hynes S and Robins J, *The Justice Gap: Whatever Happened to Legal Aid?* (Legal Action Group 2009)

Imai S, 'A Counter-Pedagogy for Social Justice: Core Skills for Community-Based Lawyering' [2002] 9 Clinical L. Rev. 11 195

James C, 'Lawyers' wellbeing and professional legal education' [2008] The Law Teacher 42 (1) 85 DOI: 10.1080/03069400.2008.9959763

James C, 'Legal practice on time: The ethical risk and inefficiency of the six-minute unit' [2017] Alternative Law Journal 42(1) 61

James C, Strevens C, Field R & Wilson C, 'Student Wellbeing Through Teacher Wellbeing: A Study with Law Teachers in the UK and Australia' [2019] Student Success 10 (3) 76

Jariath N, Hogerney M & Parsons C, 'The Role of the Pilot Study: a Case Illustration from Cardiac Nursing Research' [2000] Applied Nursing Research 13 (2) 92

Jenkins R, *Social identity* (London: Routledge 2008)

Jensen K, Nerland M & Enqvist-Jensen C, 'Enrolment of newcomers in expert cultures: an analysis of epistemic practices in a legal education introductory course' [2015] High Educ 70 867. DOI: 10.1007/s10734-015-9872-z

Jones E, 'Transforming legal education through emotions' [2018] The Journal of Legal Studies 38 450

Kazun A, (2016) Juridical Field or Legal Profession? Comparison of Bourdieusian Theory and Theory of Professionalism for Studies of Legal Community' (2016) Comparative Sociology 15 572

Keeva S W, 'Practicing from the Inside Out' [2002] Harvard Negotiation Law Review 97

Kelly B, 'Methodological Issues for Qualitative Research with Learning Disabled Children', International Journal of Social Research Methodology 10 (1) 21

Kennedy D, 'Legal Education and the Reproduction of Hierarchy' [1982] Journal of Legal Education 32 591

Kennedy D, Liberal Values in Legal Education [1986] 10 Nova L.J. 603

Kim Y, 'The Pilot Study in Qualitative Inquiry' [2011] Qualitative Social Work 10 (2) 191

Kimball B, 'Warn Students That I Entertain Heretical Opinions Which They Are Not To Take as Law: The Inception of the Case Method Teaching in the Early Classrooms of the Early C.C. Langdell 1870-1883' (1999) 17 Law & Hist. Rev. 57

Kimball B A, 'The Proliferation of Case Method Teaching in American Law Schools: Mr. Langdell's Emblematic "Abomination," 1890-1915' (2006) 46 Hist. of Educ. Q. 192

Kimball B A, *The Inception of Modern Professional Education: C. C. Langdell, 1826-1906* (University of North Carolina Press, 2009)

Kinoy A, 'The Present Crisis in Legal Education' [1969] 24 Rutgers Law Review 1

Kissam P C, *The Discipline of Law Schools: The Making of Modern Lawyers* (Caroline Academic Press 2003)

Knorr-Cetina K, 'Epistemic cultures: How the sciences make knowledge' (Cambridge, MA: Harvard University Press 1999)

Knorr-Cetina K, 'Objectual practice' in Schatzki T R, Knorr-Cetina K & von Savigny E (Eds), *The practice turn in contemporary theory*. (London: Routledge 2001) 175

Krieger L S & Sheldon K M, 'What Makes Lawyers Happy?: A Data Driven Prescription to Redefine Professional Success [2015] The George Washington Law Review 83 (2) 554

P Kristiansen & R Rasmussen, *Building a better business using the Lego serious play method* (Hoboken, NJ: Wiley 2014)

Kruse K R, 'Fortress in the Sand: The Plural Values of Client-Centred Representation' [2006] Scholarly Works. Paper 32

Langbein J H, 'The Disappearance of Civil Trial in the United States' [2012] 122 Yale L J 522

Larson M S, *The Rise of Professionalism*. (University of California Press 1977)

Larson M S, *The Rise of Professionalism* (Transaction Publishers 2013)

Laumann E O and Heinz J P, 'Specialization and Prestige in the Legal Profession' [1977] American Bar Foundation Research Journal 155

Law Society, 'Early legal advice' (undated) <https://www.lawsociety.org.uk/policy-campaigns/campaigns/early-legal-advice/>

Law Society, 'Proposals to widen access to the legal profession could have the opposite effect' (undated) <http://www.lawsociety.org.uk/news/press-releases/proposals-to-widen-access-to-the-legal-profession-could-have-the-opposite-effect-warns-law-society/>

Law Society, 'Solicitors Qualifying Exam' (undated) <https://www.lawsociety.org.uk/law-careers/becoming-a-solicitor/solicitors-qualifying-exam/>

Law Society, 'A short history: The Law Society 1825 to today' (2016) <file:///C:/Users/v02331pd/Downloads/law-society-hall-booklet-april-2016.pdf>

Law Society, *Access Denied? LASPO four years on: a Law Society Review* (2017) <file://nask.man.ac.uk/home$/Downloads/lapso%204%20years%20on%20review.pdf>

Law Society, 'Annual Statistic Report 2017 <https://www.lawsociety.org.uk/support-services/research-trends/annual-statistics-report-2017/>

Law Society, 'Trends in the solicitors' profession. Annual Statistics Report 2017 (2018) <https://www.lawsociety.org.uk/support-services/research-trends/annual-statistics-report-2017/>

LawWorks, 'LawWorks Briefing: A new route to qualification for solicitors – Solicitors Qualifying Exam (SQE)' (undated) <https://www.lawworks.org.uk/sites/default/files/LWBriefing-A-new-route-to-qualification-for-solicitors.pdf>

LawWorks, 'The LawWorks Law School Pro Bono and Clinics Report 2014' <https://www.lawworks.org.uk/solicitors-and-volunteers/resources/lawworks-law-school-pro-bono-and-clinics-report-2014>

Le Brun M & Johnstone R, *The Quiet Revolution: Improving Student Learning in Law* (The Law Book Company Limited 1994)

Lee R G, 'From profession to business, the rise and rise of the city law firm' [1992] Journal of Law and Society, 19(1) 31

Leech N L & Onwuegbuzie A J, 'Beyond constant comparison qualitative data analysis: Using NVivo' [2011] School Psychology Quarterly, 26(1) 77

Leering M, 'Conceptualizing Reflective Practice for Legal Professionals' [2014] Journal of Law and Social Policy 23 83

Leering M, 'Enhancing the Legal Profession's Capacity for Innovation: The Promise of Reflective Practice and Action Research for Increasing Access to Justice' (2017) 34 Windsor Yearbook of Access to Justice 189

LEGO® SERIOUS PLAY®, The science of LEGO® SERIOUS PLAY® (Enfield, CT: Executive Discovery LLC 2006)

Levi E H, 'An Introduction to Legal Reasoning' (1948) 15 University of Chicago Law Review 501

Lopez G, 'Reconceiving Civil Rights Practice: Seven Weeks in the life of a Rebellious Collaboration' [1989] 77 GE. L.J. 1603

Lopez G, ‘Training Future Lawyers to Work with the Politically and Socially Subordinated: Anti-Generic Legal Education’ [1989] 91 West Virginia Law Review 305

Lopez G, *Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice* (Westview Press 1992)

Luszcz M A, ‘Theoretical Models of Everyday Problem Solving in Adulthood’ in Sinnott J D (Ed), *Everday Problem Solving: Theory and* Applications (Praeger 1989)

MacCrate R, ‘Educating a Changing Profession: From Clinic to Continuum’ [1997] 64 Tennessee Law Review 64 (4) 1099

MacFarlane J, *The New Lawyer: How Settlement Is Transforming the Practice of Law* (UBC Press Vancouver Toronto 2008)

Macfarlane J, 'Bringing the Clinic into the 21st Century' [2009] 27 Windsor YB Access Just 35

MacKinnon C, *Sexual Harassment of Working Women: a Case of Sex Discrimination* (Yale University Press 1979)

Martin P W *et al*., ‘Of Law and the River and of Nihilism and Academic Freedom’ [1985] Journal of Legal Education 35 (1) 26

Mason J, *Qualitative Researching* (2nd edn, London: Sage 2002)

Matasar R A, ‘The viability of the law degree: cost, value, and intrinsic worth’ [2011] Iowa Law Review, 96

Mather L & Yngvesson B, ‘Language, Audience, and the Transformation of Disputes’ [1981] 15 Law & Soc'y Rev 775

Maton K, ‘Habitus’ in M Grenfell (Ed), *Pierre Bourdieu Key Concepts* (2nd edn, Acumen Publishing Limited, 2012) 49

Maudsley D B, *A Theory of Meta-Learning and Principles of Facilitation: An Organismic Perspective* (University of Toronto (Canada), ProQuest Dissertations Publishing 1979) NK40939

Maughan C & Webb J, *Lawyering Skills and the Legal Process* (Cambridge University Press 1995)

May T (Ed), *Qualitative research in Action* (Sage 2002)

Mayo M, 'Providing access to justice in disadvantaged communities: Commitments to welfare revisited in neo-liberal times' [2013] Critical Social Policy 33 (4) 679

McDonough P and Polzer J, 'Habitus, hysteresis and Organizational Change in the Public Sector' [2012] The Canadian Journal of Sociology 357

McGee J, Guihot M and Connor T, 'Rediscovering Law Students as Citizens: Critical Thinking and the Public Value of Legal Education' [2013] 38 Alternative LJ 77

McGivern G, Currie G, Ferlie E, Fitzgerald L, & Waring J (2015) 'Hybrid manager-professional's identity work: The maintenance and hybridization of medical professionalism in managerial contexts' [2015] Public Administration, 93 (2) 412

McKinney C J, 'Legal aid lawyers aren't on £200 an hour' (Full Fact [GB], 6 July 2015) <https://fullfact.org/law/legal-aid-lawyers-arent-200-hour/>

Menkel-Meadow C, Taking Law and ___ Really Seriously: Before, during and after the Law (2007) 60 V and. L. Rev. 555

Merry S E, *Getting Justice and Getting Even: Legal Consciousness Amongst Working Class Americans* (University of Chicago Press 1990)

Mertz E, *The Language of Law School: Learning to "Think like a Lawyer"* (New York: Oxford University Press 2007)

Michelson E, 'The Practice of Law as an Obstacle to Justice: Chinese Lawyers at Work' [2006] Law & Soc'y Rev 40 (1) 1

Milgram S, *Obedience to Authority* (New York: Harper & Row 1974)

Miller B, 'Telling Stories about Cases and Clients: The Ethics of Narrative' [2000] 14 Geo J Legal Ethics 1

Ministry of Justice, 'Legal Aid Statistics in England and Wales, 2013-2014' (2014) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/366575/legal-aid-statistics-2013-14.pdf>

Moliterno J E, 'An Analysis of Ethics Teaching in Law Schools: Replacing Lost Benefits of the Apprentice System in the Academic Atmosphere' [1991] 60 U. Clin. L. Rev. 83

Montgomery J, 'Incorporating Emotional Intelligence Concepts into Legal Education: Strengthening the Professionalism of Law Students' [2008] 39 U. Tol. L. Rev. 323

Moorhead R, Sherr A & Paterson A, 'Contesting Professionalism: Legal Aid and Nonlawyers in England and Wales' [2003] Law & Society Review 37 (4) 765

Mossman M J, *The First Women Lawyers: A Comparative Study of Gender, Law and the Legal Professions* (Hart 2006)

Muller J & Young M, 'Disciplines, skills and the university' [2014] Higher Education, 67 (2) 127

Muoio R, Wolcott L, Seigel H, 'A Win-Win Situation: The Pilot Program' [1995] Journal of Continuing Education in Nursing 26 (5) 230

National Archives, 'Lawyers' (undated) <https://www.nationalarchives.gov.uk/help-with-your-research/research-guides/lawyers-further-research/#2-types-of-lawyers

Neuberger D, *Access to Justice: Welcome address to Australian Bar Association Biennial Conference* (2017) < https://www.supremecourt.uk/docs/speech-170703.pdf>

Nicolson D, (2008): 'Education, education, education: Legal, moral and clinical' (2008), The Law Teacher, 42:2, 145-172 http://dx.doi.org/10.1080/03069400.2008.9959773

Nicolson D, 'Legal education, ethics and access to justice: forging warriors for justice in a neo-liberal world' [2015] International Journal of the Legal Profession 22:1, 51-69, DOI 10.1080/09695958.2015.1047840

Nicolson D & Webb J, *Professional Legal Ethics: Critical Interrogations* (Oxford, Hart Publishing, 1999) ch. 6

Noordegraaf M, 'From "Pure" to "Hybrid" Professionalism, Present-Day Professionalism in Ambiguous Public Domains' [2007], Administration & Society, Vol 39 (6) 766. DOI: 10.1177 / 0095399707304434.

Nussbaum M, 'Education and Democratic Citizenship: Capabilities and Quality Education' [2006] Journal of Human Development, 7 (3) 385. DOI: 10.1080/14649880600815974

Nussbaum M, 'Education for Profit, Education for Freedom' (2009) Liberal Education Summer <https://files.eric.ed.gov/fulltext/EJ861161.pdf>

O'Brien M T, Tang S and Hall K, 'No time to lose: Negative impact on law student wellbeing may begin in year one' [2011] The International Journal of the First Year in Higher Education 2 (2) 49

Ogletree Jr. C, 'Reparations: A Fundamental Issue of Social Justice' [2002] The Black Collegian

Orr K, *College Cultures and Pre-Service Trainee Teachers: a study in the creation and transmission of ideas about teaching* (Doctoral thesis: University of Huddersfield 2009)

Papert, S & Harel I, *Situating constructionism* in Papert S & Harel I (Eds.), Constructionism. (Ablex Publishing Corporation 1991)

Papert S & Harel I (Eds.), Constructionism. (Ablex Publishing Corporation 1991)

Parker C, 'A Critical Morality for Lawyers: Four Approaches to Lawyers' Ethics' [2004] Monash University Law Review 30 (1) 49

Parsons T, The Professions and Social Structure [1939] Social Forces 17(4) 457

Parsons T, *The social system* (London: Routledge 1991 [1951])

Paterson A, *Lawyers and the Public Good: Democracy in Action* (Cambridge, Cambridge University Press 2011)

Peabody M A & Noyes S, 'Reflective boot camp: adapting LEGO® SERIOUS PLAY® in higher education' [2017] Reflective Practice, 18 (2) 232. DOI: 10.1080/14623943.2016.1268117.

Pearce R G, 'MacCrate's Missed Opportunity: The MacCrate Report's Failure to Advance Professional Values' [2003] Pace Law Review 23 (2) 574

Perry S E, 'Appropriate Use of Pilot Studies' [2001] Journal of Nursing Scholarship 33 (2) 107

Pevsner N, *The Englishness of English Art* (London 1993)

Pillow W, Confession, catharsis, or cure? Rethinking the uses of reflexivity as methodological power in qualitative research, *International Journal of Qualitative Studies in Education* [2003] 16:2, 175-196, DOI: 10.1080/0951839032000060635

Poole M, 'The Making of professional vandals: How law schools degrade the self' [2011] Legal Scholarship Network <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2029993>

Porter S, 'Critical Realist Ethnography' in May T (Ed), *Qualitative Research in Action* (Sage: London Thousand Oaks New Delhi 2002)

Prescott P A & Soeken K L, 'The Potential Uses of Pilot Work' [1989] Nursing Research 28 (1)

Pruett M K & Jackson T D, 'The Lawyer's Role During the Divorce Process: Perceptions of Parents, Their Young Children, and Their Attorneys' [1999] 33 Fam. L. Q. 283

Pualani Enos, V and Kanter L H, 'Who's Listening – Introducing Students to Client-Centred, Client-Empowering, and Multidisciplinary Problem-Solving in a Clinical Setting' [2002] 9 Clinical L Rev 83

Quality Assurance Agency for UK Higher Education (QAA), 'Subject Benchmark Statement Law' (November 2019) <https://www.qaa.ac.uk/docs/qaa/subject-benchmark-statements/subject-benchmark-statement-law.pdf?sfvrsn=b939c881_16>

Quigley W P, 'Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations' [1995] Ohio N. U. L. Rev. 21 455

Rapley T, 'Interviews' in Seale C, Gobo G, Gubrium J F & Silverman D (Eds) *Qualitative Research Practice* (London: Sage 2004)

Rhode D L, 'Policing the Professional Monopoly: A Constitutional and Empirical Analysis of Unauthorized Practice Prohibitions' [1981] 34 Stan L Rev 1

Rhode D L, *In the Interests of Justice: Reforming the Legal Profession* (Oxford University Press 2003)

Rhode D L, *Access to Justice* (Oxford, Oxford University Press 2004)

Rhode D L, 'Access to Justice: Connecting Practices to Principles' [2004] 17 Geo. J. of Legal Ethics 369

Rhode D L, 'An Agenda for Legal Education and Research' [2013] Journal of Legal Education 62 (4) 531

Rhode D L, 'What We Know and Need to Know About the Delivery of Legal Services By Nonlawyers' [2016] 67 South Carolina Law Review 429

Rhode D L, 'Virtue and the Law: The Good Moral Character Requirement in Occupational Licensing, Bar Regulation, and Immigration Proceedings' [2018] Law & Social Inquiry 43 (3) 1027

Leonard L Riskin, 'The Contemplative Lawyer: On the potential contributions of mindfulness meditation to law students, lawyers, and their clients' [2002] 7 Harvard Negotiation Law Review 1

Rolfe G, Freshwater D & Jasper M, *Critical Reflection for Nursing and the Helping Professions* (Palgrave 2001)

Rose F, 'The Evolution of the Species' in Andrew Burrows and Alan Rodger (eds), *Mapping the Law: Essays in Memory of Peter Birks* (OUP 2006)

Rosenthal D E, *Lawyer and Client: Who's in Charge?* (Russell Sage Foundation 1974)

Ross L and Nisbett R, *The Person and the Situation: Perspectives of Social Psychology* (London: McGraw Hill, 1991)

Rubin E, 'What's Wrong with Langdell's Method, and What To Do About It' (2007) 60 V and. L. Rev. 609

Sagoff M, *The Economy of the Earth: Philosophy, Law, and the Environment* (2nd edn, Cambridge University Press 2008)

Saks M, 'Analyzing the Professions: The Case for the Neo-Weberian Approach' (2010) Comparative Sociology 9 (6): 887–915. doi:10.1163/156913310X522624

Saks M, 'Defining a Profession: The Role of Knowledge and Expertise (2012) Professions & Professionalism, 2(1) 1–10

Sampson H, 'Navigating the waves: the usefulness of a pilot in qualitative research' [2004] *Qualitative Research* 4(3) 383. DOI: 10.1177/1468794104047236

Sampson H & Thomas M, 'Lone Researchers at Sea: Gender, Risk and Responsibility' [2003] *Qualitative Research* 3(2) 165

Samuelsson C, Lundeborg I and McAllister A, 'Experiences from Two Swedish Speech and language Pathology Education Programmes using Different Approaches to Problem-Based

Learning' in Bridges S, McGrath C, Whitehill T L (Eds), *Problem-Based Learning in Clinical Education, The Next Generation* (Springer 2012) 47

Sandbach J and Johnson C, 'Impacting Justice: The contribution of clinical legal education and law school clinics to pro bono and access to justice in England and Wales' (Paper for the European Network for Clinical Legal Education and International Journal of Clinical Legal Education Conference, Comenius University, Bratislava, 2009) <https://www.lawworks.org.uk/sites/default/files/Impacting-Justice-Paper-INJCLE-ENfCLEpdf.pdf>

Sanders A, 'Poor Thinking, Poor Outcome? The Future of the Law Degree after the Legal Education and Training Review and the Case for Socio-legalism' in Sommerlad H, Harris-Short S, Vaughan S and Young R (Eds), *The Futures of Legal Education and the Legal Profession* (Oxford: Hart 2015) 148

Sanderson P & Drake P 'Making sense of the law in a time of austerity' [2018] "Law and Citizenship Beyond the States" Research Committee on Sociology of Law Conference, University Institute of Lisbon.

Sarat A, '".. The Law Is All Over": Power, Resistance and the Legal Consciousness of the Welfare Poor' [1990] Yale Journal of Law & the Humanities 2 (2) (6) 343

Sarat A & Felstiner W L F, Vocabularies of Motive in Lawyer/Client Interaction, [1988] *Law & Society Review* 22 (4) 93

Sarat A & Scheingold S A, *Cause Lawyering, Political Commitments and Professional Responsibilities* (Oxford University Press 1998)

Sarat A & Scheingold S A, *Cause Lawyers and Social Movements* (Stanford University Press 2006)

Sayer A, 'Alternatives and counterfactuals in critical social science' [1994] Thirteenth World Congress of Sociology, Bielefeld

Schön D, *The Reflective Practitioner: How professionals think in action* (New York: Basic Books 1983)

Schön D, *Educating the Reflective Practitioner* (Jossey-Bass 1987)

Schatzki T R, Knorr-Cetina K & von Savigny E (Eds), *The practice turn in contemporary theory*. (London: Routledge 2001)

Schultz U and Shaw G, *Gender and judging: overview and synthesis* in Schultz U and Shaw G (Eds), *Gender and Judging* (Oxford: Hart 2013)

Schultz U and Shaw G (Eds), *Gender and Judging* (Oxford: Hart 2013)

Seale C, Gobo G, Gubrium J F & Silverman D (Eds) *Qualitative Research Practice* (London: Sage 2004)

Seielstad A M, 'Community Building as a Means of Teaching Creative, Cooperative, and Complex Problem Solving in Clinical Education' [2002] 8 Clin. L. Rev. 445

Shaffer T L*, On Bring a Christian and a Lawyer: Law for the Innocent* (Brigham Young University Press 1981

Shaffer T & Cochran R, Lawyers, Clients and Moral Responsibility (West Academic 1994)

Shapiro M, 'On the Regrettable Decline of Law French: Or Shapiro Jettet Le Brickbat' [1981] 90 Yale LJ 1198

Sheldon K M & Krieger L S, 'Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory'. Personality and Social Psychology Bulletin [2007] 33 (6) 883. DOI: 10.1177/0146167207301014

Sherr A and Webb J, 'Law Students, the External Market, and Socialization: Do we make Them Turn to the City?' [1989] Journal of Law and Society 16 (2) 225

Silver M A, 'Emotional Intelligence and Legal Education' [1999] 5 Psychol. Pub. Pol'y & L. 1173

Silverman D, *Doing Qualitative Research* (2nd edn, London: Sage 2005)

Silverman D, *Doing Qualitative Research* (3rd edn, Safe 2010)

Silverman D, *Doing Qualitative Research* (4th edn, Sage Publications Ltd 2017)

Simkovic M and McIntyre F, 'The Economic Value of a Law Degree' (2014) The Journal of Legal Studies 43 (2) 249

Simon W H, 'Homo Psychologicus: Notes on a New Legal Formalism' [1980] 32 Stan. L. Rev. 487

Simon W H, 'Authoritarian Legal Ethics: Bradley Wendel and the Positivist Turn' [2012] 90 Tex. L. Rev. 709

Sinnott J D (Ed), *Everday Problem Solving: Theory and* Applications (Praeger 1989)

Smith K J M and McLaren J P S, 'History's Living Legacy: An Outline of Modern Historiography of the Common Law' (2001) 21 Legal Stud 251

Solicitors Regulation Authority, 'Approach to regulation and its reform (undated) <https://www.sra.org.uk/sra/policy/regulation-reform/>

Solicitors Regulation Authority, 'I want to be a solicitor' (undated) <https://www.sra.org.uk/sra/policy/sqe/solicitor-persona/>

Solicitors Regulation Authority, 'Joint statement on the academic stage of training' (undated) <https://www.sra.org.uk/students/academic-stage/academic-stage-joint-statement-bsb-law-society/>

Solicitors Regulation Authority, 'SQE1 Functioning Legal Knowledge Assessment Specification (undated) <https://www.sra.org.uk/sra/policy/sqe/sqe1-functioning-legal-knowledge-assessment-specification/>

Solicitors Regulation Authority, 'Student Information pack' (undated) <https://www.sra.org.uk/students/resources/student-information/>

Solicitors Regulation Authority, 'SRA Handbook' (undated) <https://www.sra.org.uk/solicitors/handbook/code/>

Sommerlad H, 'Managerialism and the legal profession: a new professional paradigm' [1995] International Journal of the Legal Profession, 2(2–3) 159

Sommerlad H, 'The implementation of quality initiatives and the New Public Management in the legal aid sector in England and Wales: bureaucratisation, stratification and surveillance [1999] International Journal of the Legal Profession, 6 311

Sommerlad H, 'Researching and Theorizing the Processes of Professional Identity Formation' [2007] 34 JL & Soc'y 190

Sommerlad H, 'Reflections on the reconfiguration of access to justice' [2008] International Journal of the Legal Profession 15 (3) 179

Sommerlad H, 'The commercialisation of law and the enterprising legal practitioner: continuity and change' [2011] International Journal of the Legal Profession, 18 (1-2) 73

Sommerlad H, '"A pit to put women in": professionalism, work intensification, sexualisation and work–life balance in the legal profession in England and Wales (2016) International Journal of the Legal Profession, 23:1, 61 65. DOI: 10.1080/09695958.2016.1140945

Sommerlad H, Harris-Short S, Vaughan S and Young R (Eds), *The Futures of Legal Education and the Legal Profession* (Oxford: Hart 2015)

Sommerlad H & Sanderson P, 'Social justice on the margins: the future of the not for profit sector as providers of legal advice in England and Wales' [2013] Journal of Social Welfare and Family Law 35 (3) 305. DOI: 10.1080/09649069.2013.802108

Sommerlad H & Sanderson P, 'Summary: Training and regulating providers of publicly funded legal advice' (Ministry of Justice, 2009)

Spradley J P, *The Ethnographic Interview* (Holt, Rinehart and Winston 1979)

Stead N K & Rogers S L, 'Do law students stand apart from other university students in their quest for mental health: A comparative study on wellbeing and associated behaviours in law and psychology students' [2015] International Journal of Law and Psychiatry 42

Stein R M, 'The Path of Legal Education from Edward I to Langdell: A History of Insular Reaction' (1981) 57 Chi.-Kent L. Rev. 429

Stevens R, *Law School: Legal Education in America from the 1850s to the 1980s* (Univ. of North Carolina Press 1983)

Stevenson J, Demack S, Stiell B, Abdi M, Clarkson L, Ghaffar F & Hassan S, *Challenges Faced by Young Muslims* (Social Mobility Commission, 2017) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/642220/Young_Muslims_SMC.pdf>

Stipanowich T J, 'ADR and the Vanishing Trial: The Growth and Impact of Alternative Dispute Resolution' [2004] 1 J Empirical Legal Stud 843

Stolle D & Rochon T R, 'The Myth of American Exceptionalism' in in van Deth J, Maraffi M, Newton K & Whiteley P F (Eds), *Social Capital and European Democracy* (London and New York: Routledge 1999)

Stuckey R *et al.*, *Best Practices for Legal Education: A Vision and a Roadmap* (Denver: Clinical Legal Education Association 2007)

Sturges J E & Hanrahan K J, 'Comparing Telephone and Face-to-Face Qualitative interviewing: A Research Note' [2004] Qualitative Research 4 (1)

Sturm S & Guinier L, 'The Law School Matrix: Reforming Legal Education in a Culture of Competition and Conformity' [2007] 60 V and. L. Rev. 515

Sugarman D, 'Bourgeois Collectivism, Professional Power and the Boundaries of the State – The Private and Public Life of the Law Society, 1825 to 1914'[1996] The International Journal of the Legal Profession 81

Sullivan A & Heath A, 'Elite Higher Education Admissions in the Arts and Sciences' [2009] 43(4) 648. DOI: 10.1177/0038038509105413

Sullivan W M, *et al.*, *Educating Lawyers: Preparation for the Profession of law* (Jossey-Bass 2007)

Sullivan W *et al*. (2007) 'Educating Lawyers, Preparation for the Profession of Law Summary, (The Carnegie Foundation for the Advancement of Teaching 2007) http://archive.carnegiefoundation.org/pdfs/elibrary/elibrary_pdf_632.pdf>

Susskind R, *The End of Lawyers? Rethinking the nature of legal services* (Oxford University Press 2010)

Susskind R & Susskind D, *The Future of the Professions, How Technology will transform the Work of Human Experts* (Oxford University Press 2015)

The Lawyer, 'What's the deal with… Alternative Dispute Resolution' (2017) <https://www.thelawyer.com/alternative-dispute-resolution-adr/>

Thornton M, (1996) *Dissonance and Distrust: Women in the Legal Profession* (Melbourne: Oxford University Press)

Thornton M, 'Technocentrism in the Law School: Why the Gender and Colour of Law Remain the Same' [1998] Osgoode Hall Law Journal 36 (2) 370

Thornton M, 'The idea of the University and the Contemporary Legal Academy' [2004] 26 Sydney Law Review 481

Thornton M, 'Gothic Horror in the Legal Academy' [2005] Social & Legal Studies 14 (2) 267. DOI: 10.1177/0964663905051223

Thornton M, *Privatising the Public University. The Case of Law* (Routledge, 2012)

Titmuss R M, *The Gift Relationship: From Human Blood to Social Policy* (Policy Press 2019)

Tokarz K, Lopez A S, Maisel P and Seibel R F, 'Legal Education at a Crossroads: Innovation, Integration and Pluralism Required' [2013] 43 Washington University Journal of Law & Policy 1

Tremblay P R, 'Rebellious Lawyering, Regnant Lawyering, and Street-Bureaucracy' (1992) Hastings Law Journal 43 947

Trubek D, 'Where the Action Is: Critical Legal Studies and Empiricism' [1984] Stanford Law Review 36 (1) 575

Tseng W C, 'An intervention using LEGO® SERIOUS PLAY® on fostering narrative identity among economically disadvantaged college students in Taiwan' [2017] Journal of College Student Development, 58(2) 264. DOI:10.1353/csd.2017.0019

Turnbull C M, *The Mountain People* (London: Cape 1973)

Twining W, 'Rethinking legal education' [2018] The Law Teacher 52 (3) 241

Twining W, *Globalisation and Legal Theory* (London: Butterworth 2000)

Unger R, *Social Theory: Its Situation and Its Task* (Cambridge University Press 1988)

Van Deth J, Maraffi M, Newton K & Whiteley P F (Eds), *Social Capital and European Democracy* (London and New York: Routledge 1999)

Vygotsky L S, *The Collected Works of L. S. Vygotsky,* R W Reiber and A S Carton (Eds) (New York: Plenum Press 1986)

Vygotsky L S, *The History of development of higher mental functions* (New York: Plenum Press 1997)

Vygotsky L S and Cole M, *Mind in Society: The Development of Higher Psychological Processes* (Cambridge, MA: Harvard University Press, 1978)

Walsh D, 'Sociology and the Social World' in Filmer P, Phillipson M, Silverman D & Walsh D, *New Directions in Sociological Theory* (London: Collier-Macmillan 1972)

Webb J, 'The "ambitious modesty" of Harold Arthur's humane professionalism' [2006] Osgoode Hall Law Journal 44 119

Webb J, Ching J, Maharg P & Sherr A, *Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales* (London, Legal Education and Training Review 2013)

Webb J, 'The LETRs (Still) in the Post: The Legal Education and Training Review and the Reform of Legal Services Education and Training – A Personal (Re)view' in Sommerlad H, Harris-Short S, Vaughan S and Young R (Eds), *The Futures of Legal Education and the Legal Profession* (Oxford: Hart 2015)

Weber M, *The Theory of Social and Economic Organization*. A M Henderson and T Parsons (trans) (New York: Free Press 1964)

Weber M, *Max Weber on Law in Economy and Society*. Rheinstein M (Ed) & Shils E (trans) (Harvard University Press 1966).

Weber M, *Economy and Society: An Outline of Interpretive Sociology* (University of California Press 1978)

Weinstein J, Morton L, Taras H and Reznik V, 'Teaching Teamwork to Law Students' [2013] 63 Journal of Legal Education 36

Wengel Y, McIntosh A & Cockburn-Wootten C, 'A critical consideration of LEGO® SERIOUS PLAY® methodology for tourism studies' [2019] Tourism Geographies 3. DOI: 10.1080/14616688.2019.1611910

Westaby C, 'Feeling Like a Sponge: The Emotional Labour produced by Solicitors in Their Interactions with Clients Seeking Asylum' [2010] International Journal of the Legal Profession 17 (2) 153.

Westaby C, 'A qualitative study of the impact of law clinics on students' perceptions of emotional labour expectations' [2014] The Law Teacher 48 (3) 248

White J B, *Justice as Translation: An Essay in Cultural and Legal Criticism* (Chicago: University of Chicago Press 1990)

P Whiteley, (1999), 'The Origins of Social Capital' in van Deth J, Maraffi M, Newton K & Whiteley P F (Eds), *Social Capital and European Democracy* (London and New York: Routledge 1999)

Williams B R, Woodby L L,Bailey A F, Burgio K L, 'Identifying and Responding to Ethical and Methodological Issues in After-Death Interviews with Next-of-Kin' [2008] Death Studies 32 (3) 197. DOI: 10.1080/07481180701881297

Williams P, *The Alchemy of Race and Rights* (Harvard University Press 1991)

Willig C & Stainton-Rogers W (Eds), *The SAGE Handbook of Qualitative Research in Psychology* (SAGE Publications Limited 2013)

Winter R, (1982) '"Dilemma Analysis": A contribution to methodology for action research' [1982] Cambridge Journal of Education, 12 (3), 161. DOI: 10.1080/0305764820120303

Wolff L & Chan J, *Flipped Classrooms for Legal Education*, (Springer 2016)

Woolley A & Bradley Wendel W, 'Legal Ethics and Moral Character' [2010] 23 Geo. J. Legal Ethics 1065

Youdell D, Queer outings: uncomfortable stories about the subjects of post-structural school ethnography, *International Journal of Qualitative Studies in Education*, (2010) 23:1, 87-100, DOI: 10.1080/09518390903447168

Young Legal Aid Lawyers, 'Social Mobility: New Report' (undated) <http://www.younglegalaidlawyers.org/onestepforwardtwostepsback>

Appendix 1: Dilemma Analysis Document

STUDENTS

DILEMMAS/AMBIGUITIES

Personal and Professional Development

On the one hand, the student advisor role is to help clients solve their legal problem;

On the other hand, the legal advice clinic can help students to grow both personally and professionally.

On the one hand, the student advisor role is difficult and scary, particularly for anxious students;

On the other hand, the Legal Advice Clinic is a supportive environment where students can come out from behind their metaphorical defence mechanisms, take control and build their confidence, through putting themselves outside of their comfort zone.

Sense of Belonging

On the one hand, the Legal Advice Clinic is just a building where students work to help clients;

On the other hand, the Legal Advice Clinic is symbolic to the students of somewhere that they care about, are passionate about and belong to;

Supervisor Support

On the one hand, supervisors will assist students in considering how to make clients feel at ease in the client meeting and what questions to ask;

On the other hand, supervisors will expect students to lead the client meeting, think for themselves and ask the right questions.

Clients

On the one hand, it is important to respect and trust your client and act in their best interests;

On the other hand, clients can be confused, you cannot always take your client's word for it and it is important to obtain documents to get a full picture of what has happened.

On the one hand, clients can show emotions to the students, such as confusion, anger and despair;

On the other hand, student advisors can show sympathy and empathy to the client but cannot show emotions such as confusion, anger and despair to the clients, as it will impact upon the client and her confidence in the student advisors.

On the one hand, clients may come into the Legal Advice Clinic wanting help and a solution to their problem;

On the other hand, student advisors may not be able to provide a solution to the problem but can bring knowledge and understanding to the client and help provide closure.

JUDGEMENTS

Working together

On the one hand, the Legal Advice Clinic is like a little family where students and supervisors are involved in different pro bono projects, socialise together, attend meetings together, care for and help others who struggling and learn from each other;

On the other hand, the participants in the Legal Advice Clinic are intolerant of those who merely wish to improve and progress themselves, do not work as a team, do not care about the client and are purely participating for their own benefit and to build their CV.

Clients

On the one hand, the legal advice clinic assists clients that are unable to get any help elsewhere;

On the other hand, it is difficult to identify someone who is unable to afford the services of a solicitor and the LAC turns away people who may struggle to pay high legal fees.

On the one hand, it is important to be non-judgemental for equality, collegiality and charity reasons;

On the other hand, reflective practice and recognising and displaying subjective emotions may reduce objectivity and encourage judgement, particularly of reprehensible individuals.

On the one hand, a desire to achieve justice for the client is good;

On the other hand, this cannot always be achieved and it is more important to be able to provide the appropriate documentation and evidence to prove the legal case and achieve procedural justice.

The Law Degree and the Legal Advice Clinic

On the one hand, the legal advice clinic involves real life, teamwork, peer learning, helping each other, understanding other people's emotions and feelings and professional responsibility;

On the other hand, the law degree has high status and is preparation for a student's future career, through learning about the law and getting knowledge of the law in order to progress with a good mark;

Solicitors

On the one hand, the student advisor's outlook may be primarily concerned with helping clients;

On the other hand, the students may be preparing for a future role whose primary concern is making money as a business.

PROBLEMS

Aspiration and Achievement

Procuring a career in legal practice will represent helping people, increased confidence and a significant achievement for the students.

BUT

Legal practice can be a stressful, high pressure environment, primarily concerned with making money and where confidence can be diminished;

What the client thought was happening and what they intended to do are important to understanding the legal position;

BUT

What actually happened is most important to the client.

Clients representing similar cultural and class backgrounds to the student advisors can invoke a desire to help;

BUT

Being able to personally relate to the client's circumstances can detrimentally impact upon the student advisor's own emotions and wellbeing.

Understanding the client's emotions and displaying own emotions such as empathy and sympathy and an altruistic desire are important;

BUT

Protecting the self is important and it is necessary to find the right balance and sometimes be objective, in order to not let things impact emotionally.

It is important to take account of the client's feelings in the client meeting and try to bridge the gap and establish a relationship that will bring down any barriers. Emotions are needed such as sympathy and empathy, together with interpersonal skills, being sincere, not being judgemental and not asking abrupt questions to ensure the client opens up in the meeting and the experience for the client is not negative;

BUT

It is important to obtain the information relevant to the legal case and that the client does not open up too much where less information is relevant. It is therefore necessary to keep the client on track through asking the client the right questions, in the right order, to obtain all the necessary legal information, in order to identify the key legal issues.

ALUMNI

DILEMMAS/AMBIGUITIES

Competitiveness

On the one hand, the legal environment can be very competitive;

On the other hand, more can be achieved through working collaboratively with and helping colleagues.

Careers

On the one hand, some student advisors go on to work for large firms in less personal areas of commercial law;

On the other hand, the students remember the unexpected and emotive nature of the cases that they worked on in the Legal Advice Clinic and how these were so personal and important to the clients.

JUDGEMENTS

General Aspiration and Achievement

On the one hand, students in post 1992 universities can qualify as lawyers for big firms and achieve good careers;

On the other hand, students in post 1992 universities may be provided with limited aspiration and expectation levels.

Careers

On the one hand, working in a 'big' law firm can represent success and achievement;

On the other hand, it can be a thankless environment where high quality work is expected, rather than rewarded and where those with resilience and self-confidence find it easier to prosper than those without.

On the one hand, working in a small/medium law firm might not be as glamorous or as high status as working in a 'big' firm;

On the other hand, it can be a more rewarding and more appreciative environment.

On the one hand, in non-contentious cases it is good to be helpful with other lawyers who make mistakes;

On the other hand, in contentious cases, lawyers 'smash' their opposing lawyers for making mistakes.

Money and Time

On the one hand, it is important to take care when handling a client's case in practice and avoid negligence;

On the other hand, with fixed fees it is important to work as quickly as you can to earn money.

On the one hand, in some areas of law you become de-sensitised and more judgemental in legal practice;

On the other hand, in other areas of law, legal practice teaches you not to judge and to empathise with clients.

PROBLEMS

Transitioning in outlook

Students go into the law because they want to help people;

BUT

The law degree and legal practice changes people to a less altruistic identity.

Inequality and Unfairness

Disproportionate finance structures allow rich and powerful defendants to be treated favourably in the courts and engage in iniquitous activities such as starving small claimant law firms of cash flow, taking cases to trial that should be settled and late disclosure of documents;

BUT

The law relates its foundations as equality of arms.

Retaining valued dispositions

The student experience in the Legal Advice Clinic does not allow alumni to forget how the law might affect the client and encourages alumni to develop ethical strategies to cope with unethical practices;

BUT

Legal practice is all about costs, meeting targets and bringing in money, creating ethical dilemmas which former student advisors recognise more readily than lawyers with a non legal advice clinic background.

The alumni retain a reflective approach to mistakes from their experience in the Legal Advice Clinic. Rather than treating mistakes as a negative to be hidden, they treat them as a positive to learn from and improve;

BUT

Admitting mistakes in legal practice is not encouraged and can result in punitive action.

SUPERVISORS

DILEMMAS/AMBIGUITIES

Clients

On the one hand, clients may be vulnerable, disadvantaged, dealing with adversity and finding it difficult to understand the law;

On the other hand, some clients can be resourceful and be on the ball.

On the one hand, clients should be respected and valued;

On the other hand, clients cannot be trusted to relay the correct information.

On the one hand, it is important to write advice letters to a client in a clear and professional manner;

On the other hand, it is also important to write with a bit of warmth.

Differences with Practice

On the one hand, solicitors provide advice when they meet with clients;

On the other hand, student advisors cannot provide advice when they meet with clients.

JUDGEMENTS

Purpose of the Legal Advice Clinic

On the one hand, the client must satisfy the LAC that they do not have an income or capital sum that may exclude them from the LAC's help;

On the other hand, the purpose of the Legal Advice Clinic is to help vulnerable people who cannot otherwise get legal advice and not to create further obstacles.

Appreciating Client Knowledge and Understanding

On the one hand, the client often has no background legal knowledge or understanding and has difficulty identifying what is and is not important to the legal case;

On the other hand, students have background legal knowledge and understanding to navigate the law and this may be taken for granted by the students;

Emotions and Feelings

On the one hand, it is important to connect with client's emotions and feelings in the Legal Advice Clinic and for student advisors to have empathy and sympathy for the clients;

On the other hand, legal professionals have to ask for payment for services even when it may be unjust.

On the one hand, dealing with client's sensitivity and feelings of self-worth in the Legal Advice Clinic is challenging but needs to be dealt with;

On the other hand, such challenges cannot be factored into academic learning on a law degree.

On the one hand, a neutral disinterested approach requires the lawyer's emotions and feelings to be put aside;

On the other hand, emotions and feelings are relevant in order to get the client to open up in order to extract the relevant information.

Importance of Evidence, Documents and Money

On the one hand, it is important to want justice for a client;

On the other hand, this is meaningless unless you line all your ducks in a row through obtaining all the relevant evidence and documentation.

On the one hand, clients may want to challenge legal applications and decisions;

On the other hand, it is difficult to challenge legal applications and decisions without the means to fund court fees and solicitors costs.

Assumptions

On the one hand, it is important not to speculate or make assumptions about relevant facts to the legal case;

On the other hand, it is okay to speculate about client's emotions and matters personal to the client, such as thoughts.

PROBLEMS

Identifying Key Issues and Recognising Emotions

It is important to identify the key issues and relevant information, through asking the right questions for the legal sphere and getting the information from the client as quickly as possible;

BUT

It is important to be able to take account of the client's emotions and feelings, in order for the client to open up and provide the relevant information. The client's feelings and emotions are important to her experience of the legal advice clinic service and it is important to listen to and acknowledge the client and not discard her narrative.

A student advisor can be a counsellor and a bit of a social worker and has the time to listen to the client;

BUT

This is not currently the role of a lawyer and many lawyers and advisors do not have the time premium to sit and listen to clients on matters irrelevant to the legal problem.

Letting the client offload their emotions and empathising with the client's emotional circumstances can detrimentally impact upon own emotions and wellbeing;

BUT

Empathising with the client's emotional circumstances can positively impact upon own emotions and wellbeing and remaining neutral can detrimentally impact upon both the clients and students own emotions and wellbeing.

Time

Time is a scarce premium in legal practice to listen to the client on issues not relevant to the legal case;

BUT

Time is available to listen to the client in the Legal Advice Clinic on non-legally relevant issues, as well as gathering relevant legal information.

Critique

Volunteering in a legal advice clinic is good preparation for the law and legal practice;

BUT

Volunteering in a legal advice clinic is good preparation to question the law and legal practice.

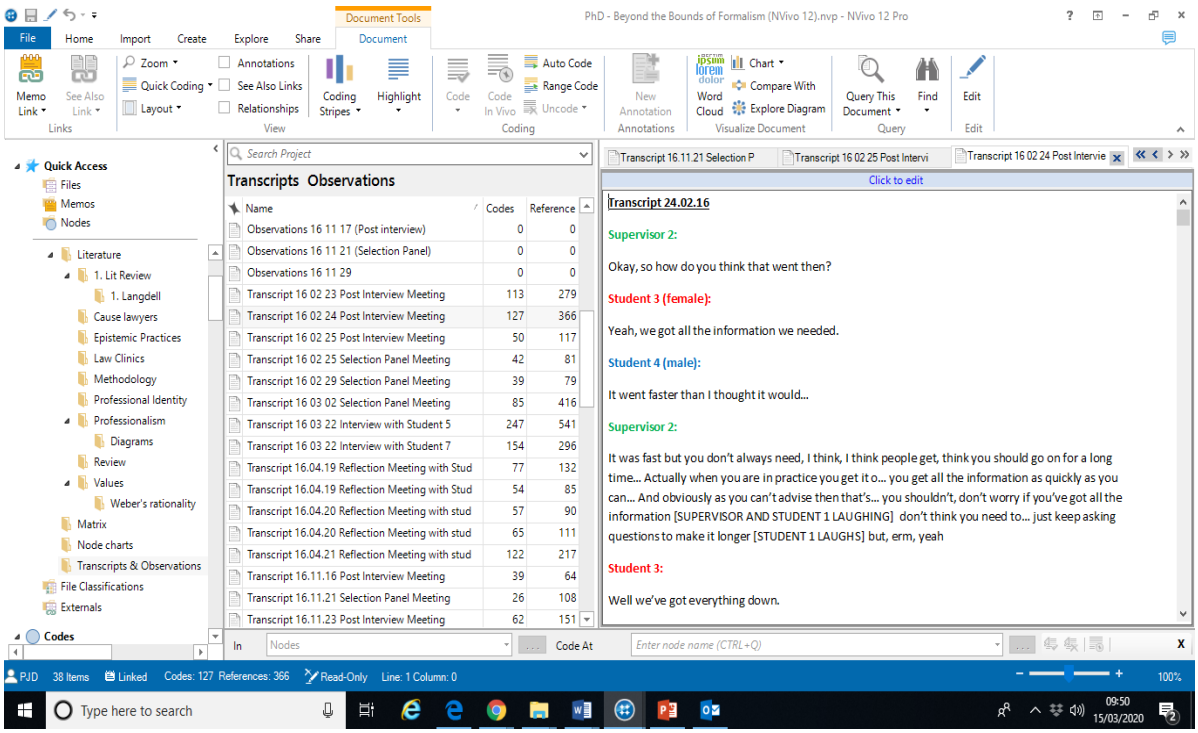
Recognising Injustice

The law is represented as fair and just;

BUT

The law is unfair creating financial power imbalances and injustice, where some people have access to the law and others do not.

Appendix 2: Example of Saved Files and Transcripts



Appendix 3: Example Coding using Spradley's Semantic Relationships

PhD - Beyond the Bounds of Formalism (NVivo 12).nvp - NVivo 12 Pro

1. Reasons to...

Name	Files	References	Created On	Created By	Modified On	Modified By
Family experiences are a reason to help	5	10	15/12/2017 11:50	PJD	09/02/2018 10:39	PJD
Being high need is a reason to help	5	10	15/12/2017 11:50	PJD	16/12/2019 12:43	PJD
Having no money is a reason to help	4	8	15/12/2017 11:50	PJD	09/02/2018 14:58	PJD
Injustice is a reason to help	6	7	15/12/2017 11:50	PJD	02/01/2020 18:18	PJD
Making a difference is a reason to help	4	7	15/12/2017 11:50	PJD	13/01/2020 16:13	PJD
Vulnerability is a reason to help	5	7	15/12/2017 11:50	PJD	03/01/2020 09:10	PJD
Developing others is a reason to help	2	6	15/12/2017 11:50	PJD	01/12/2017 14:36	PJD
Being unable to help is hard	2	4	15/12/2017 11:50	PJD	16/12/2019 11:55	PJD
Enhancing the community is a reason to help	3	4	15/12/2017 11:50	PJD	03/01/2020 14:42	PJD
Impact on client is a reason to help	4	4	15/12/2017 11:50	PJD	13/01/2020 16:13	PJD
Being the last resort is a reason to help	3	4	15/12/2017 11:50	PJD	16/12/2019 12:43	PJD
Developing skills is a reason to help	2	2	15/12/2017 11:50	PJD	03/01/2020 14:42	PJD
Practice is a reason not to help	1	2	15/12/2017 11:50	PJD	03/01/2020 09:10	PJD
Needing help is a reason not to judge	2	2	15/12/2017 11:50	PJD	03/01/2020 09:10	PJD
Enhancing experience is a reason to help	1	1	15/12/2017 11:50	PJD	09/02/2018 09:40	PJD
Being sympathetic is a reason to help	1	1	15/12/2017 11:50	PJD	09/02/2018 14:58	PJD
Having expertise is a reason to help	1	1	15/12/2017 11:50	PJD	01/12/2017 12:06	PJD
Having experience is a reason to help	1	1	15/12/2017 11:50	PJD	01/12/2017 13:39	PJD
Not cheating is a reason to help	1	1	15/12/2017 11:50	PJD	01/12/2017 13:40	PJD
Being a volunteer is a reason to help	1	1	15/12/2017 11:50	PJD	01/12/2017 13:47	PJD
Friends experiences are a reason to help	1	1	15/12/2017 11:50	PJD	01/12/2017 13:56	PJD
Town's reputation is a reason to help	1	1	15/12/2017 11:50	PJD	01/12/2017 14:20	PJD

PJD 26 Items

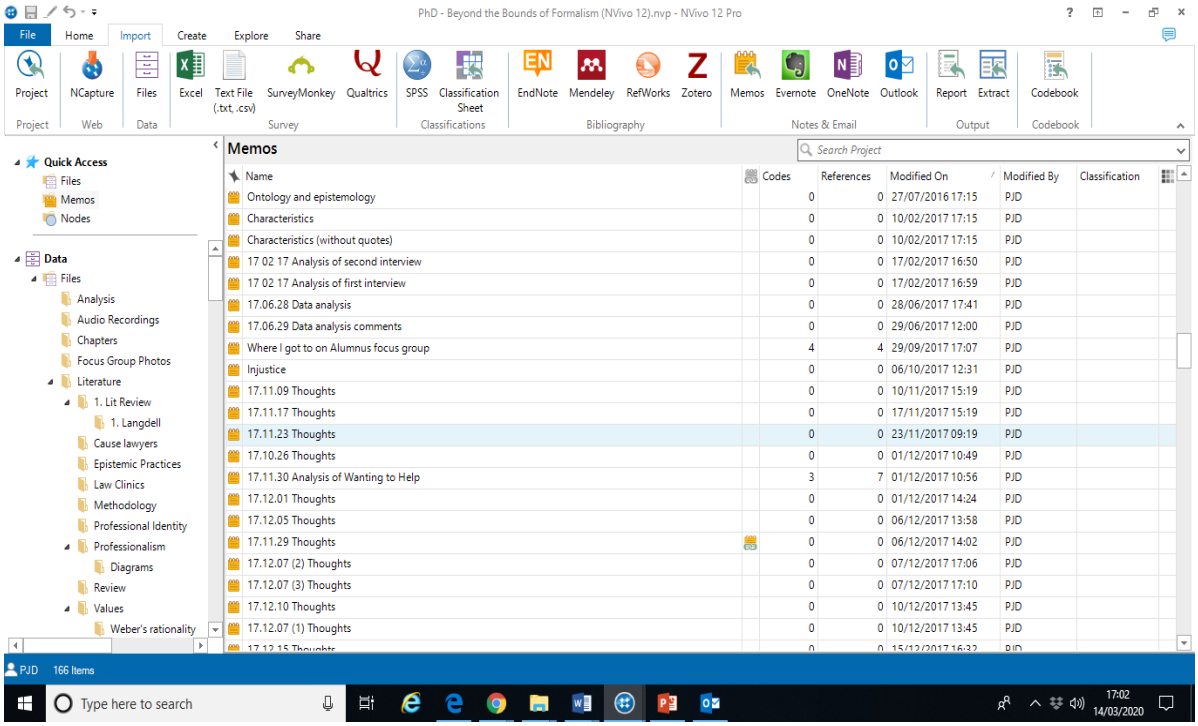
PhD - Beyond the Bounds of Formalism (NVivo 12).nvp - NVivo 12 Pro

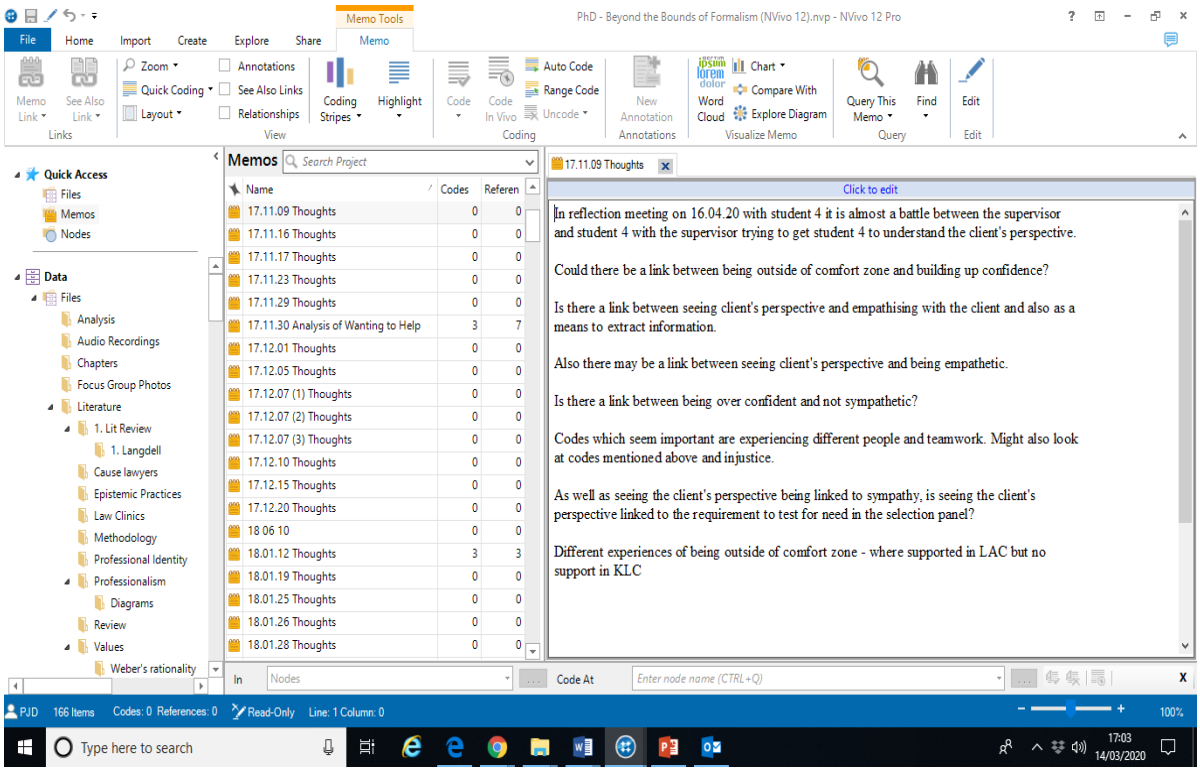
1. Reasons to...

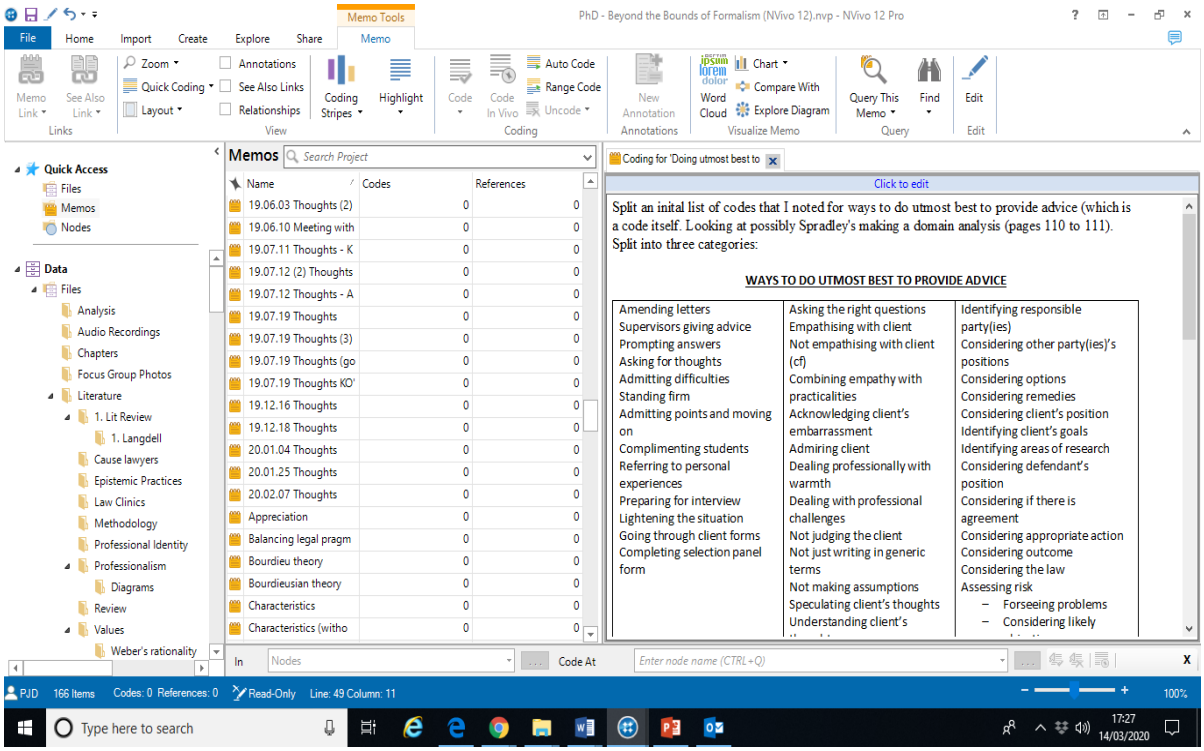
Name	Files	References	Created On	Created By	Modified On	Modified By
Friends experiences are a reason to help	1	1	15/12/2017 11:50	PJD	01/12/2017 13:56	PJD
Town's reputation is a reason to help	1	1	15/12/2017 11:50	PJD	01/12/2017 14:20	PJD
Being remembered for doing is a reason to help	1	1	15/12/2017 11:50	PJD	01/12/2017 15:26	PJD
Being friendly is a reason to help	1	1	15/12/2017 11:50	PJD	01/12/2017 14:37	PJD
Praise is a reason to help	1	1	15/12/2017 11:50	PJD	16/12/2019 11:55	PJD
Religion is a reason to help	1	1	15/12/2017 11:50	PJD	01/12/2017 14:00	PJD

PJD 26 Items

Appendix 4: Memo Writing







Coding for 'Doing utmost best to provide advice' 30/4/16

Split an inital list of codes that I noted for ways to do utmost best to provide advice (which is a code itself. Looking at possibly Spradley's making a domain analysis (pages 110 to 111).
Split into three categories:

WAYS TO DO UTMOST BEST TO PROVIDE ADVICE

Amending letters Supervisors giving advice Prompting answers Asking for thoughts Admitting difficulties Standing firm Admitting points and moving on Complimenting students Referring to personal experiences Preparing for interview Lightening the situation Going through client forms Completing selection panel form	Asking the right questions Empathising with client Not empathising with client (cf) Combining empathy with practicalities Acknowledging client's embarrassment Admiring client Dealing professionally with warmth Dealing with professional challenges Not judging the client Not just writing in generic terms Not making assumptions Speculating client's thoughts	Identifying responsible party(ies) Considering other party(ies)'s positions Considering options Considering remedies Considering client's position Identifying client's goals Identifying areas of research Considering defendant's position Considering if there is agreement Considering appropriate action Considering outcome Considering the law Assessing risk – Forseeing problems

	Understanding client's thoughts Wanting to help Trying to be positive Working together Giving hope Being confident Being organised, sympathetic and a good communicator Doing best for client Reflecting on experience Being unreflective (cf) Dragging information out of client Considering client's hopes Not giving advice in interviews Having spirit Being conscious of implications Not putting other things in front Being in it to help the client Comparing with practice	– Considering likely objections – Advising client of risk – Advising client not to pursue Identifying the unknown Evaluating facts Getting client closure

Looking at Means-end domain. X is a way to do Y.
Also noted that I need to look into the following domain: Getting through the selection panel is a reason for considering need and risk (Rationale).

Not sure how I have seperated these into the three categories. My initial thoughts are that category 1 are things that the student advisors and supervisor do on a communicative level. BASIC OFFICE BASED PROCEDURES THAT ARE TAUGHT

The second category is more about the characteristics for doing the utmost best. TUNING INTO CLIENT'S NEEDS / VALIDATING THAT ISN'T AS TAUGHT OR LED. EXPERIENCE?

The final category is more about problem solving and ways to problem solve in order to give the best advice. REFLECTING ON INFORMATION AND COMING OUT WITH SOLUTION

Possibly look how the rules of the field (particularly the selection panel procedure impact upon the habitus of the participants on focusing upon both need and risk.

Appendix 5: Examples of Data Analysis

PhD - Beyond the Bounds of Formalism (NVivo 12).nvp - NVivo 12 Pro

7. Documentation legitimises

Name	Files	References	Created On	Created By	Modified On	Modified By
Documentation legitimises	19	152	20/04/2018 08:30	PJD	13/01/2020 16:13	PJD
Evidence	13	62	20/04/2018 08:32	PJD	16/12/2019 11:55	PJD
LAC forms	8	32	20/04/2018 08:36	PJD	13/01/2020 16:13	PJD
Legal	7	30	20/04/2018 10:34	PJD	16/12/2019 11:55	PJD
Organised client	3	18	20/04/2018 10:39	PJD	20/04/2018 10:55	PJD
Confused client	4	6	20/04/2018 10:39	PJD	20/04/2018 10:48	PJD
Assessment	1	5	20/04/2018 10:53	PJD	20/04/2018 10:56	PJD
Lots of documents	2	4	20/04/2018 10:45	PJD	20/04/2018 10:52	PJD
Interview	2	2	20/04/2018 10:47	PJD	20/04/2018 10:50	PJD
Threatening	1	1	20/04/2018 10:46	PJD	20/04/2018 10:46	PJD
Docs speaking	1	1	20/04/2018 10:46	PJD	20/04/2018 10:46	PJD
Court order	10	55	20/04/2018 08:34	PJD	16/12/2019 12:43	PJD
Order made	6	32	20/04/2018 10:21	PJD	03/07/2018 14:09	PJD
Order needed	5	23	20/04/2018 10:19	PJD	16/12/2019 12:43	PJD
Court application	7	9	20/04/2018 08:35	PJD	16/12/2019 12:43	PJD
Lawyer's files	2	5	20/04/2018 08:38	PJD	20/04/2018 09:54	PJD
Assumptions	1	1	20/04/2018 08:32	PJD	20/04/2018 08:32	PJD
LAC File	1	1	20/04/2018 10:11	PJD	20/04/2018 10:11	PJD

PhD - Beyond the Bounds of Formalism (NVivo 12).nvp - NVivo 12 Pro

Year 2 Students

Name	Files	References	Created On	Created By	Modified On	Modified By
Learner	1	6	20/12/2019 10:22	PJD	20/12/2019 16:06	PJD
Skills	1	4	20/12/2019 10:31	PJD	20/12/2019 16:06	PJD
Objectivity & balancing emotion	1	1	20/12/2019 10:35	PJD	20/12/2019 16:06	PJD
Outside of comfort zone	1	2	20/12/2019 11:50	PJD	20/12/2019 11:53	PJD
Building confidence	1	4	20/12/2019 10:30	PJD	20/12/2019 10:40	PJD
Shield	1	4	20/12/2019 11:54	PJD	20/12/2019 11:56	PJD
Taking control	1	2	20/12/2019 10:39	PJD	20/12/2019 11:55	PJD
Objectivity & balancing own emotion	1	1	20/12/2019 10:31	PJD	20/12/2019 16:06	PJD
Balancing clients emotions	1	1	20/12/2019 10:34	PJD	20/12/2019 10:34	PJD
Dealing with client like a solicitor	1	1	20/12/2019 10:23	PJD	20/12/2019 10:23	PJD
Striding towards dream	1	2	20/12/2019 11:52	PJD	20/12/2019 11:56	PJD

PhD - Beyond the Bounds of Formalism (NVivo 12).nvp - NVivo 12 Pro

File | Home | Import | Create | Explore | Share

Quick Access
- Files
- Memos
- Nodes
- 2. Opposition to L
  - 1. Identity
  - 2. Role
- 3. Apposition to S
  - 1. Identity
  - 2. Role
- 4. Opposition to S
  - 1. Emotions
  - 2. Client Resp
  - 3. Not like pra
  - 4. Extrinsic Re
  - 5. Gaining adv
  - 6. Teamwork
  - 7. Difficult and
  - 8. Identity
  - 9. Role
  - Wanting to he
- 5. Apposition to c
  - 1. Identity

8. Identity

Name	Files	References	Created On	Created By	Modified On	Modified By
Outside of comfort zone	13	49	17/07/2018 11:44	PJD	03/01/2020 09:10	PJD
Extrinsic reward	4	12	17/07/2018 11:58	PJD	16/03/2018 15:35	PJD
Getting a good degree	3	8	17/07/2018 11:58	PJD	16/03/2018 16:20	PJD
No point	1	1	17/07/2018 11:58	PJD	16/03/2018 16:21	PJD
Making people proud	1	4	17/07/2018 11:58	PJD	16/03/2018 16:21	PJD
Gaining advantage	3	10	17/07/2018 12:00	PJD	16/03/2018 14:54	PJD
Skills	3	8	17/07/2018 12:00	PJD	03/01/2020 09:10	PJD
Student Apathy	1	7	17/07/2018 12:00	PJD	23/03/2018 10:36	PJD
Practical Experience	2	5	17/07/2018 12:00	PJD	23/03/2018 10:38	PJD
Fun	1	2	17/07/2018 12:00	PJD	23/03/2018 10:34	PJD
Professional	2	2	17/07/2018 12:00	PJD	23/03/2018 10:39	PJD
Fear	2	2	17/07/2018 12:00	PJD	23/03/2018 11:27	PJD
Socialising	1	1	17/07/2018 12:00	PJD	23/03/2018 10:33	PJD
Understanding	1	1	17/07/2018 12:00	PJD	16/03/2018 14:22	PJD
Professional responsibility	4	9	17/07/2018 11:32	PJD	17/07/2018 11:38	PJD
Not Teamwork	4	6	17/07/2018 12:00	PJD	20/12/2019 16:06	PJD
Being alone	1	3	17/07/2018 12:00	PJD	16/03/2018 14:35	PJD
Not an assessment	2	2	17/07/2018 12:00	PJD	23/03/2018 10:46	PJD
Helping others	1	2	17/07/2018 12:00	PJD	23/03/2018 10:49	PJD
Trust	1	1	17/07/2018 12:00	PJD	23/03/2018 10:49	PJD

PJD 26 Items

Type here to search 16:46 14/03/2020

PhD - Beyond the Bounds of Formalism (NVivo 12).nvp - NVivo 12 Pro

File | Home | Import | Create | Explore | Share

Quick Access
- Files
- Memos
- Nodes
- 2. Opposition to L
  - 1. Identity
  - 2. Role
- 3. Apposition to S
  - 1. Identity
  - 2. Role
- 4. Opposition to S
  - 1. Emotions
  - 2. Client Resp
  - 3. Not like pra
  - 4. Extrinsic Re
  - 5. Gaining adv
  - 6. Teamwork
  - 7. Difficult and
  - 8. Identity
  - 9. Role
  - Wanting to he
- 5. Apposition to c
  - 1. Identity

8. Identity

Name	Files	References	Created On	Created By	Modified On	Modified By
Not Teamwork	4	6	17/07/2018 12:00	PJD	20/12/2019 16:06	PJD
Being alone	1	3	17/07/2018 12:00	PJD	16/03/2018 14:35	PJD
Not an assessment	2	2	17/07/2018 12:00	PJD	23/03/2018 10:46	PJD
Helping others	1	2	17/07/2018 12:00	PJD	23/03/2018 10:49	PJD
Trust	1	1	17/07/2018 12:00	PJD	23/03/2018 10:49	PJD
Resilience	1	5	17/07/2018 11:41	PJD	17/07/2018 11:53	PJD
Spending time with people	2	4	17/07/2018 11:38	PJD	30/12/2019 12:17	PJD
Recognising client's emotions	3	3	17/07/2018 10:57	PJD	16/12/2019 11:55	PJD
Forming a bond	1	3	17/07/2018 10:59	PJD	17/07/2018 10:59	PJD
Awareness of capital	1	3	17/07/2018 11:49	PJD	30/12/2019 13:34	PJD
Not realistic	1	3	17/07/2018 11:54	PJD	17/07/2018 11:54	PJD

PJD 26 Items

Type here to search 16:47 14/03/2020

PhD - Beyond the Bounds of Formalism (NVivo 12).nvp - NVivo 12 Pro

File | Home | Import | Create | Explore | Share

Formal

Name	Files	References	Created On	Created By	Modified On	Modified By
Speculating client's thoughts	2	9	12/01/2018 13:38	PJD	12/01/2018 15:23	PJD
Identifying responsible party	1	4	12/01/2018 13:45	PJD	12/01/2018 14:18	PJD
Identifying other party's thoughts	1	4	12/01/2018 14:32	PJD	16/12/2019 12:43	PJD
Identifying need	1	4	12/01/2018 15:33	PJD	16/12/2019 12:43	PJD
Considering other parties	1	4	12/01/2018 15:44	PJD	16/12/2019 12:43	PJD
Importance of thoroughness	1	4	12/01/2018 15:46	PJD	16/12/2019 12:43	PJD
Understanding feelings	1	3	12/01/2018 14:27	PJD	16/12/2019 11:55	PJD
Identifying options	1	3	12/01/2018 14:33	PJD	16/12/2019 12:43	PJD
Relaying defendants discussion	2	2	12/01/2018 13:53	PJD	12/01/2018 14:12	PJD
Praising thoroughness	2	2	12/01/2018 14:11	PJD	16/12/2019 12:43	PJD
Establishing no evidence	1	2	12/01/2018 14:13	PJD	12/01/2018 14:21	PJD
Considering previous advice from others	2	2	12/01/2018 14:16	PJD	16/12/2019 12:43	PJD
Considering impact on client	1	2	12/01/2018 14:53	PJD	12/01/2018 14:54	PJD
Identifying clients goals	1	2	12/01/2018 15:26	PJD	16/12/2019 12:43	PJD
Identifying the legal position	1	2	12/01/2018 15:29	PJD	16/12/2019 12:43	PJD
Considering interview performance	1	2	12/01/2018 15:40	PJD	16/12/2019 12:43	PJD
Considering contractual terms	1	1	12/01/2018 13:47	PJD	12/01/2018 13:47	PJD
Considering clients expectations	1	1	12/01/2018 14:11	PJD	12/01/2018 14:11	PJD
Identifying intention	1	1	12/01/2018 14:14	PJD	12/01/2018 14:14	PJD
Assumptions are dangerous	1	1	12/01/2018 14:15	PJD	12/01/2018 14:15	PJD
Identifying evidence	1	1	12/01/2018 14:20	PJD	12/01/2018 14:20	PJD

PJD 32 Items

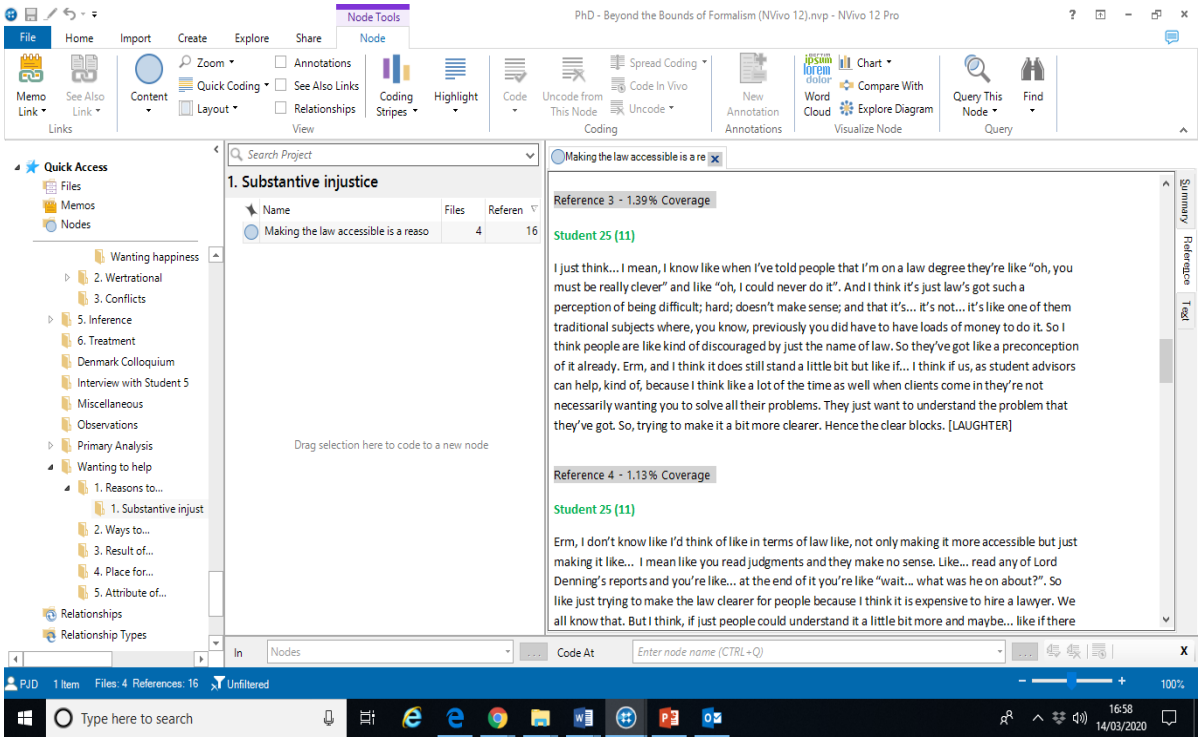
PhD - Beyond the Bounds of Formalism (NVivo 12).nvp - NVivo 12 Pro

File | Home | Import | Create | Explore | Share

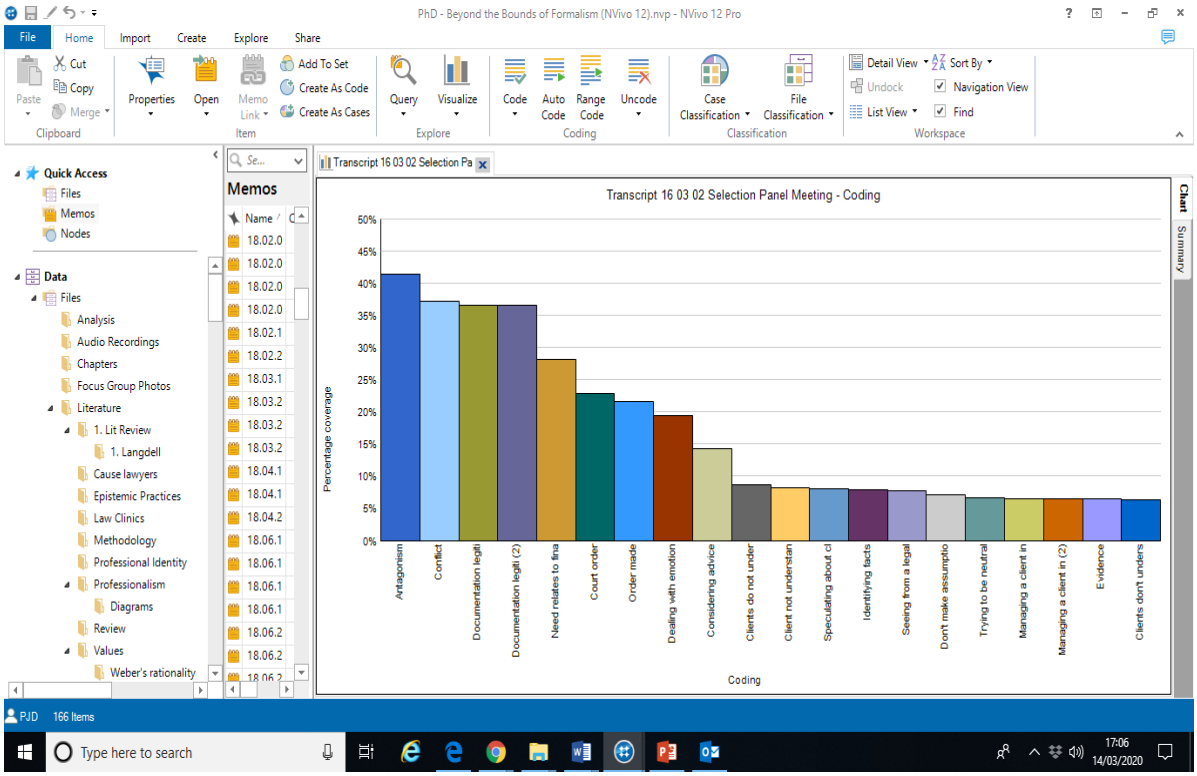
Formal

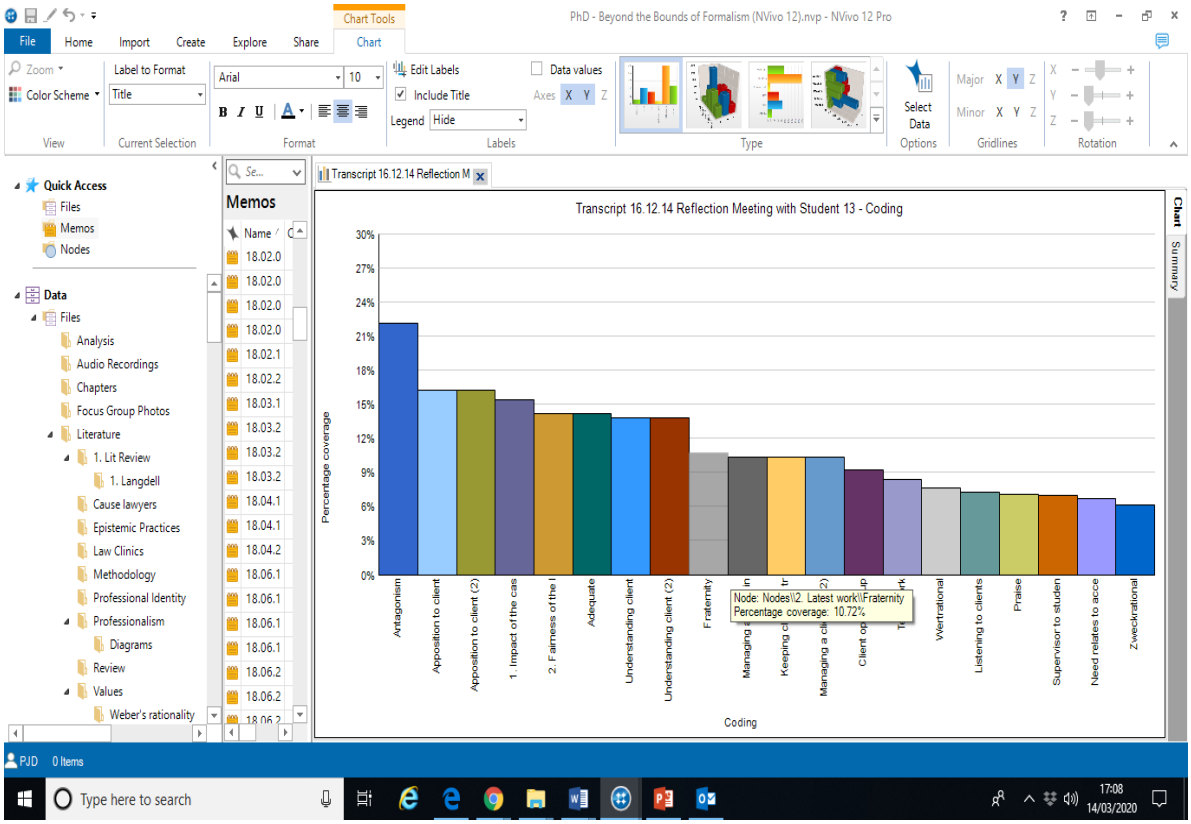
Name	Files	References	Created On	Created By	Modified On	Modified By
Identifying evidence	1	1	12/01/2018 14:20	PJD	12/01/2018 14:20	PJD
Identifying what you don't know	1	1	12/01/2018 14:21	PJD	12/01/2018 14:21	PJD
Considering discussions after the event	1	1	12/01/2018 14:23	PJD	12/01/2018 14:23	PJD
Important not to judge	1	1	12/01/2018 14:27	PJD	16/12/2019 11:55	PJD
Relaying time important in practice	1	1	12/01/2018 14:31	PJD	12/01/2018 14:31	PJD
Identifying individuals	1	1	12/01/2018 14:47	PJD	12/01/2018 14:47	PJD
Identifying future position for individuals	1	1	12/01/2018 14:47	PJD	12/01/2018 14:47	PJD
Disregarding irrelevant individuals	1	1	12/01/2018 14:51	PJD	12/01/2018 14:51	PJD
Considering clients income	1	1	12/01/2018 15:27	PJD	16/12/2019 12:43	PJD
Identifying crucial point	1	1	12/01/2018 15:29	PJD	16/12/2019 12:43	PJD
Introducing humour	1	1	12/01/2018 15:30	PJD	16/12/2019 12:43	PJD
Considering individuals	1	1	12/01/2018 15:47	PJD	16/12/2019 12:43	PJD

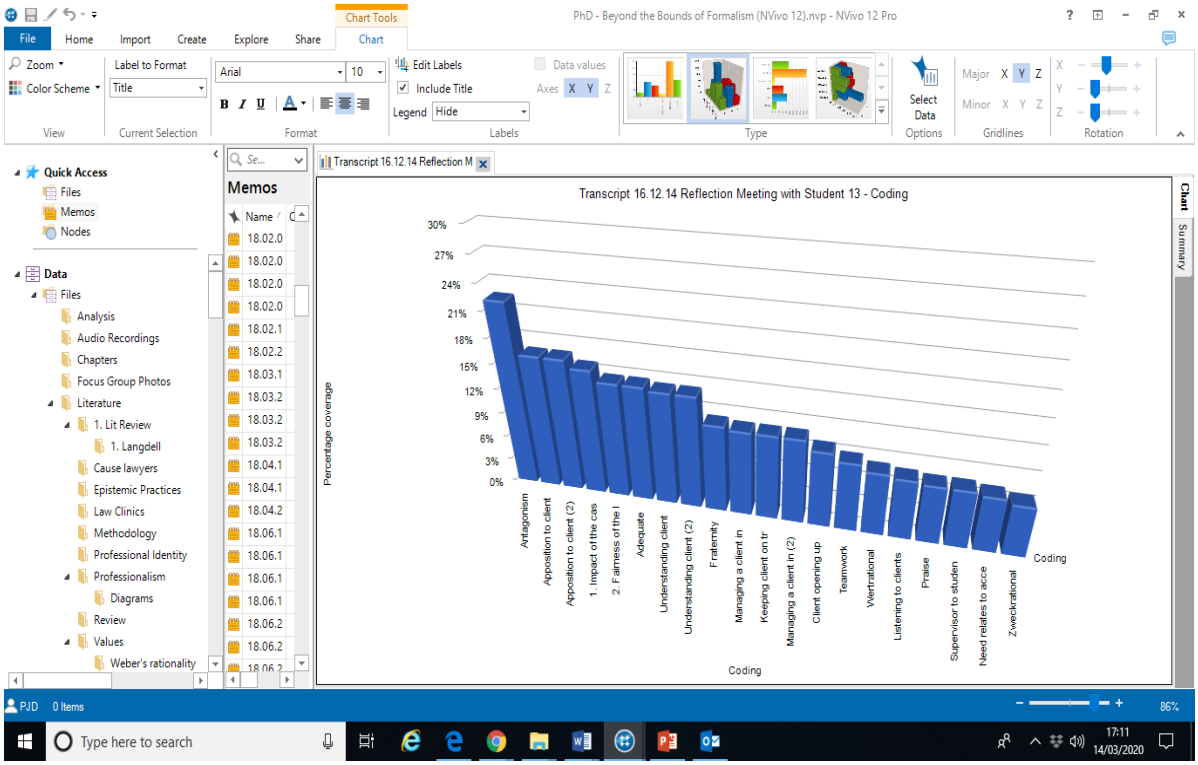
PJD 32 Items


PhD - Beyond the Bounds of Formalism (NVivo 12).nvp - NVivo 12 Pro
Node Tools
File
Home
Import
Create
Explore
Share
Node
Memo Link
See Also Link
Links
Content
Zoom
Quick Coding
Layout
Annotations
See Also Links
Relationships
View
Coding Stripes
Highlight
Code
Uncode from This Node
Spread Coding
Code In Vivo
Uncode
Coding
New Annotation
Annotations
Word Cloud
Chart
Compare With
Explore Diagram
Visualize Node
Query This Node
Find
Query
Quick Access
Files
Memos
Nodes
Wanting happiness
2. Wertrational
3. Conflicts
5. Inference
6. Treatment
Denmark Colloquium
Interview with Student 5
Miscellaneous
Observations
Primary Analysis
Wanting to help
1. Reasons to...
1. Substantive injust
2. Ways to...
3. Result of...
4. Place for...
5. Attribute of...
Relationships
Relationship Types
Search Project
1. Substantive injustice
Name
Files
Referen
Making the law accessible is a reaso
4
16
Drag selection here to code to a new node
Making the law accessible is a re
Reference 3 - 1.39% Coverage
Student 25 (11)
I just think... I mean, I know like when I've told people that I'm on a law degree they're like "oh, you must be really clever" and like "oh, I could never do it". And I think it's just law's got such a perception of being difficult; hard; doesn't make sense; and that it's... it's not... it's like one of them traditional subjects where, you know, previously you did have to have loads of money to do it. So I think people are like kind of discouraged by just the name of law. So they've got like a preconception of it already. Erm, and I think it does still stand a little bit but like if... I think if us, as student advisors can help, kind of, because I think like a lot of the time as well when clients come in they're not necessarily wanting you to solve all their problems. They just want to understand the problem that they've got. So, trying to make it a bit more clearer. Hence the clear blocks. [LAUGHTER]
Reference 4 - 1.13% Coverage
Student 25 (11)
Erm, I don't know like I'd think of like in terms of law like, not only making it more accessible but just making it like... I mean like you read judgments and they make no sense. Like... read any of Lord Denning's reports and you're like... at the end of it you're like "wait... what was he on about?". So like just trying to make the law clearer for people because I think it is expensive to hire a lawyer. We all know that. But I think, if just people could understand it a little bit more and maybe... like if there
Summary
Reference
Text
In
Nodes
Code At
Enter node name (CTRL+Q)
PJD
1 Item
Files: 4 References: 16
Unfiltered
100%
Type here to search
16:58
14/03/2020

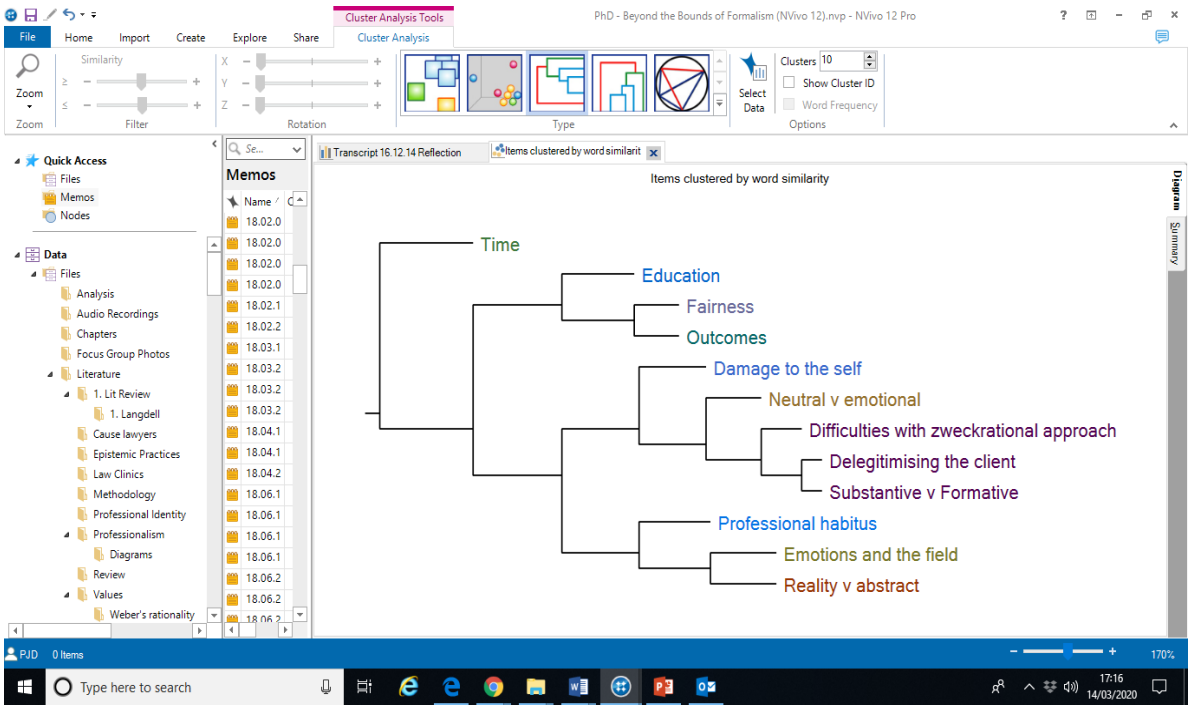
Appendix 6: Examples of Coding Charts



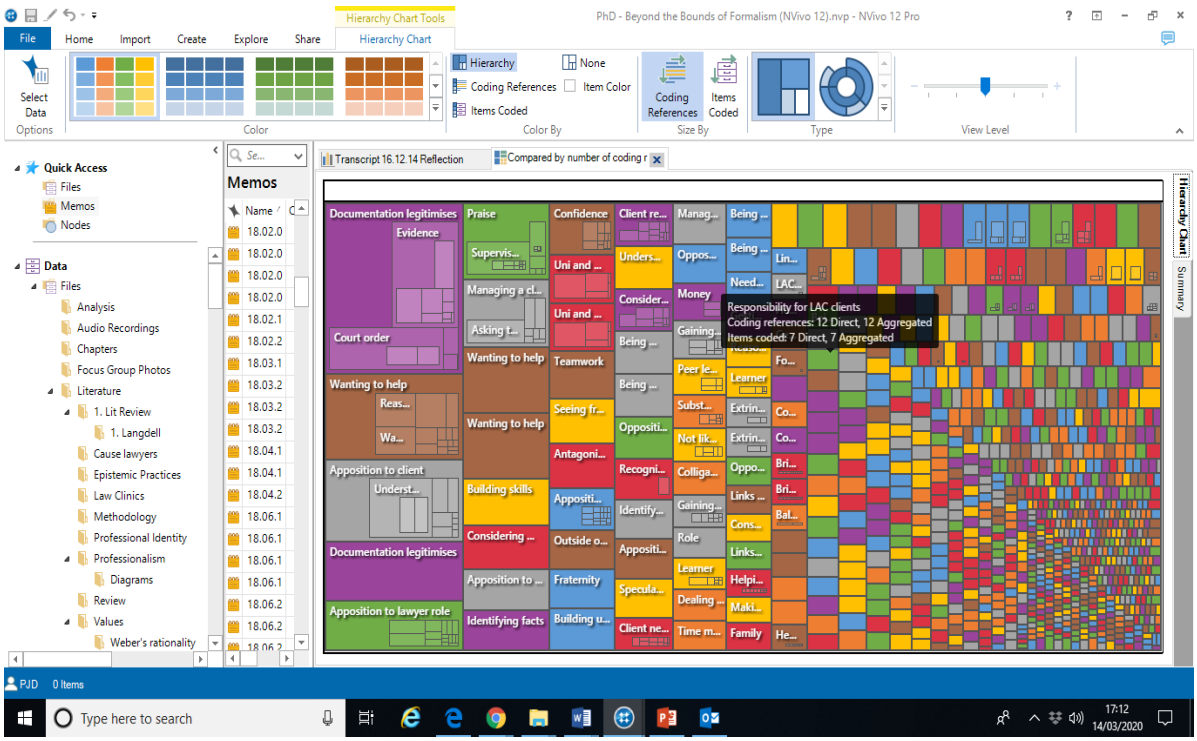



PhD - Beyond the Bounds of Formalism (NVivo 12).nvp - NVivo 12 Pro
Transcript 16.12.14 Reflection Meeting with Student 13 - Coding
Percentage coverage
30%
27%
24%
21%
18%
15%
12%
9%
6%
3%
0%
Antagonism
Apposition to client
Apposition to client (2)
1. Impact of the cas
2. Fairness of the l
Adequate
Understanding client
Understanding client (2)
Fraternity
Managing a client in
Keeping client on tr
Managing a client in (2)
Client opening up
Teamwork
Wertrational
Listening to clients
Praise
Supervisor to studen
Need relates to acce
Zweckrational
Coding
Memos
Quick Access
Data
Analysis
Audio Recordings
Chapters
Focus Group Photos
Literature
1. Lit Review
1. Langdell
Cause lawyers
Epistemic Practices
Law Clinics
Methodology
Professional Identity
Professionalism
Diagrams
Review
Values
Weber's rationality

Appendix 7: Example of a Cluster Map



Appendix 8: Example of Hierarchy of Codes



Appendix 9: Table of Supervisors and Students involved in the research

Student Name	Age	Gender	Ethnicity & Religious Symbols	Live at family home
Supervisor 1:	50-60	F	White British	Y
Supervisor 2:	40-50	F	White British	Y
Supervisor 3:	50-60	F	White British	Y
Supervisor 4:	40-50	M	White British	Y
Student 1:	18-25	F	White British	Y
Student 2:	18-25	F	British Asian	Y
Student 3:	18-25	F	British Asian (Hijab)	Y
Student 4:	18-25	M	Asian	Y
Student 5:	18-25	M	British Afro-Carribean	Y
Student 6:	18-25	M	British Asian (Turban)	Y
Student 7:	18-25	F	British Asian (Hijab)	Y
Student 8:	25+	M	Afro-Carribean	N
Student 9:	18-25	F	British Asian (Hijab)	Y
Student 10:	18-25	F	British Asian (Hijab)	Y
Student 11:	18-25	F	British Asian	Y
Student 12:	18-25	F	British Asian	Y
Student 13:	18-25	M	White British	Y
Student 14:	18-25	F	British Asian	Y
Student 15:	18-25	F	British Asian (Hijab)	Y
Student 16:	18-25	F	White British	N
Student 17:	18-25	M	British Asian	Y
Student 18:	18-25	M	Afro-carribean	N
Student 19:	18-25	F	British Asian	Y
Student 20:	18-25	F	British Asian	Y
Student 21:	18-25	F	British Asian (Hijab)	Y
Student 22:	18-25	F	British Asian	Y
Student 23:	18-25	M	British Asian / White British	N
Student 24:	18-25	F	British Asian (Hijab)	Y
Student 25:	18-25	F	White British	Y
Student 26:	18-25	F	British Asian	Y
Student 27:	18-25	F	White British	N
Alumnus 1:	18-25	F	White British	N
Alumnus 2:	25-30	M	White British	N
Alumnus 3:	18-25	F	White British	N
Alumnus 4:	25-30	F	White British	Y
Alumnus 5:	18-25	M	British Afro-Carribean	Y
Alumnus 6	18-25	F	British Asian (Hijab)	Y

Appendix 10: Uncomfortable Reflexivity – The Pilot Study

Similar to Youdell, as a full participant of the LAC and notably as a director and supervisor, as well as researching the students, I was also aware of my involvement in their constitution[689]. I did not like to see myself in a relationship of power with either the students or the tutors and liked to think that we all worked as a team. However, by undertaking this research, I had to question how the participants saw me. I liked to believe that I was accessible to the students and easy to get along with, but I had to reflect on times when I had to 'beat the drum' and send emails to the students to remind them that they were professionals, to put in the required work and to focus on the clients and the impact that their case was having upon them. I considered if this might impact upon the data that I was collecting. When discussing the values of the law clinic I was happy to hear how student 5's thoughts matched my own but reflected upon whether he was just relaying my own thoughts back to me? One of the recognised qualities of student 5 was how astute and observant he was of others, such as his identification of the values of solicitors. Was the information and opinion he relayed back to me just what he knew to be my own opinions and values? I would like to think not. However, could I be sure? One of the benefits that I had as a participant as well as researcher was having been able to observe the student over the three years he had been involved with the LAC. Certainly, through his actions he had demonstrated commitment and hard work. Other students and staff members had also recognised this student's abilities and attitude towards helping clients. Therefore, whilst I was concerned that I may have been an influence on the student's thoughts it would have been more surprising if over three years I had not been of any influence. This was again,

[689] Deborah Youdell, 'Sex-gender-sexuality: How sex, gender and sexuality constellations are constituted in secondary schools' [2005] Gender and Education 17 (3) 149-170; Deborah Youdell *Impossible bodies, impossible selves: Exclusions and student subjectivities* (Dordrecht: Springer 2006); Youdell (n 2) 90.

where the dual nature of my role potentially came into conflict. As a participant observer, I did not want to be of any influence. However, as the director I was naturally involved in everything that went on in the LAC. Reflecting upon this therefore, some of what the student said to me might have been my own ideas, but importantly they may have well been shared ideas or even my ideas that the student had taken on. The real benefit of being a participant was that I had known these students for years. Rather than an independent researcher who had to take a participant's word on a matter, without often any prior knowledge of the participant, I was aware of the students' character traits through not only my own observations but also the observations of the other participants. I could not disengage completely with my participant role but through my dual identity, I could also consider if the attitudes displayed matched with the actions that I had seen. This recognition did force me to acknowledge that this student was chosen by me for his positive attitudes and behaviours, which might have matched with my own ideas. For these reasons, I chose to future choose students on a completely random basis for focus groups to eliminate any form of bias in selection.

As a non-participant observer, I felt more comfortable sitting out of the way at the back of the room and observing and not having to address issues. Although in my own imagination, I was sitting in the room invisible, in reality my presence was no doubt quite evident to the participants in the meeting I was observing. I did try to sit out of the direct sight of the participants and whilst on occasions they did glance over to look what I was doing, or to see my reaction, the parties did seem to interact as they would normally. The meetings were also led by the supervisors, so there was a presence of power in the meetings and the

meetings were controlled to a certain extent by the supervisor involved. Both supervisors did seem to feel comfortable with my presence and I worked regularly as a team with both the supervisors and students.

In the first meeting, I was asked to contribute my own thoughts and this occurred in other meetings that I had recorded. I decided that if I was asked, and I was able to contribute positively, then I would do. Again, I had not been listening but as the point was explained, it did spring to mind that whilst the client did not have a legal case it would be helpful for the client to understand why. I therefore suggested this, which may have led to student 1 discussing the client's need for closure or she may have thought of this independently. At that stage, student 1 had been considering the client's feelings and I felt initially pleased that she developed this (albeit requested) prompt and went on to consider the client's feelings in more depth and the need for closure. However, I did feel an element of guilt that I may have led the research in a direction that I wanted it to take.

Overall, the meetings and interview were reasonably relaxed with humour and laughter indicating that the participants felt to some degree comfortable in my presence. Student 5 even joked how I was one of the worst supervisors for correcting and amending letters of advice. I found this reflexivity uncomfortable but also surprisingly helpful in considering the information that I was collecting and helping to understand my own perspective and feelings in relation to the participants and the data collected.

Appendix 11: Uncomfortable Reflexivity – Chapter Four

11.1 Anxious Identity and Confidence Building

As the inexperienced year two students' 'anxious identity' theme developed in their focus group, I felt very guilty that my initial thoughts were of disappointment. Having been the LAC Director and a supervisor, and knowing many of the students, I was sure the research would demonstrate how client-centric and committed the students were. However, as this theme unravelled in the focus group, I discovered how these students had become student advisors predominantly to use the LAC as a means to help themselves. I had initially thought that this was selfish and the students should be concentrating on helping their clients from less privileged backgrounds. However, as the discussions developed, it became clear that many of the students were not necessarily more privileged than many of the clients that were being seen and a significant number had faced adversity in the past.

I questioned why I had been so judgemental, when they had simply wanted to help themselves. As a privileged white, middle class, male, being paid to do a job, I should not have been questioning the motives of students from different backgrounds and cultures. Especially as they were giving up their own time to help others. I had always prided myself on treating people equally but I questioned if I had been deluding myself. Sub-consciously my expectations of the students meant that I was imposing a view which was ignorant of the difficulties that many of these students had overcome themselves.

Through wanting to put the client's first because of their vulnerable nature, I had failed to consider the vulnerability of some of the students. This had been replicated in my approach to the research, which I had initially hoped would show how altruistic the LAC students

were. However, I had failed to consider there were other ways in which the students were achieving success, other than in helping clients. Some of these students were achieving success just by being in the LAC and emerging from behind their metaphorical emotional defence barriers. These often introverted students, with little experience of the professional world, had courageously overcome huge obstacles, through putting themselves out of their comfort zone into an environment, which I had taken for granted, but for which the students was daunting and imposing. Through this experience of research and reflexivity, I now saw the newly appointed student advisors in a completely different light. The irony was that I had been initially disappointed that the students were guilty of using the LAC as a means to their own end of improving themselves, however, in the process, I had not realised that I was using the students as a means to the LAC end. There is however, not necessarily a dichotomy between the two. Both building the students' confidence, and especially those who suffer from shyness and anxiety, whilst helping vulnerable clients is surely an acceptable goal for any LAC.

I found the new students' optimism for the future commendable and reassuring but was saddened by their lack of awareness of the future obstacles they would face as a consequence of their backgrounds, limited social networks and deficiency in cultural capital. Whilst student 23 was the most ambitious, in power terms, of expressing his desire to become the Attorney General, he did acknowledge and lament "… they all go to Cambridge". These words struck a chord with me, as in my past I had faced such ignorance, particularly from one large city international firm, as my qualifications had been from 'post 1992' universities. I could therefore relate to student 23's understanding and identification

of such prejudices that I had experienced myself. Out of all the students, he displayed in his speech, conduct and clothes, the closest of all the students to a middle class habitus. He was also the only one of the students to relate being a law clinic advisor to a formal appearance and was the student most aligned to the rationality of the formalistic sphere.

I questioned whether to agree with him or not. I did not disagree with his view but I did not want to accept such a reality and wanted to believe in a true meritocratic society despite my own experience. Eventually, I did disagree with him but upon the basis that I believed hope might sometimes be more important than pessimism. This became particularly pertinent when alumnus 4 relayed how she had encountered low aspiration and expectation levels at the university and whilst she had not become the attorney general, she had been successful and reinforced to me the students' capabilities.

Whilst student 23 represented many of the appropriate formalistic traits for the legal practice field and understood many of the obstacles that might be faced, sadly the students suffering with anxiety and trying to build up their confidence were unaware of the barriers that they would face. They were also oblivious to the financial, time and work pressures that they would face when venturing into the practice. I felt real despondency for a number of the students who saw a career in law as becoming the confident person that they wanted to be and to be finally accepted for whom they were. As mentioned by alumnus 4, the reality of legal practice is that this environment does not breed confidence but can have the opposite effect. I feared for some of the students in such a high-pressured environment and hoped that their work in the LAC would help build their confidence to access the career that

they wanted. Whatever happened, rather than pursuing status, I hoped they would enter into a career where they could thrive, rather than just survive.

11.2 The More Experienced Student Advisors

Having wanted to find evidence of an altruistic identity in the new student advisors but having learned so much from discovering the new students initial 'anxious identity', I felt a strange notion of guilt when the altruistic themes of 'kinship' and 'beneficence' emerged from my analysis of the data. I felt guilt for my initial negative, lack of feeling towards the data that emerged from the new advisors and I also questioned if now, as the data was suggesting the themes that I had originally been interested in, I had made the data fit in with my theory. What might have been elation in seeing data and evidence suggesting the more experienced students were all displaying the qualities that I wanted and inherently valued, turned to scepticism that I might in some way be influencing this. I knew a number of the experienced students and alumni very well, spending time travelling together, socialising and attending award ceremonies. However, this also meant that they knew me very well. Whilst I felt comfortable talking with these students, and I hope they felt comfortable talking with me, I questioned whether they were just providing me with an echo chamber for my own thoughts. In my analysis, I have scrutinised the scripts for discrepancies. Were the students just telling me what they knew or thought I wanted to hear? As outlined in my reflections in the pilot study, I had deliberately picked students 5 and 7 for semi-structured interviews because they would soon be graduating and I wanted to hear what they had to say, because I thought they could make a positive contribution to the research. But, by positive contribution, was I just thinking they would replicate my views and say what I wanted to hear? Thankfully, through my reflections in the pilot study, I had

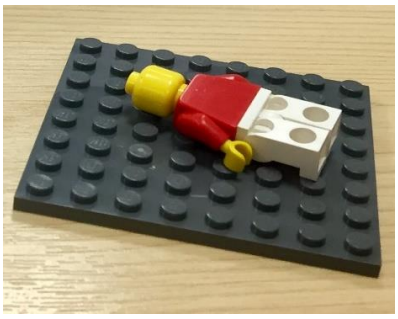
consequently decided to ensure that the focus groups were entirely randomised to try to represent a fairer picture and to avoid my bias influencing the research.

Choosing the focus groups was not however very easy. As I randomly chose the focus groups, I silently rued the non-inclusion of students who I thought would represent the positive outlook of the LAC and rejoiced some of those that were included. However, from my position of reflexivity, and in my analysis, I did see the benefit from this random approach. I learned so much from the new students who I would have maybe not listened to if I had influenced the selection. Without knowing it, they successfully challenged my own views and I consequently discovered an entirely new focus of importance for the LAC. Through a miscellany of feelings of disappointment, guilt and hope from reflecting upon the data from the new student advisors, I unearthed new information to challenge my views and create greater understanding.

I re-visited students' statements and, where possible, contrasted what the students said about themselves in the semi-structured interviews and focus groups, with what they did in their meetings with supervisors. Student 5, for example, consistently depicted the same viewpoints of wanting to help the client, even in uncomfortable scenarios where this outlook was challenged by a supervisor. Instead of looking to find information that supported my theory, I looked to find information where the students views were not consistent with my own outlook. For example, student 7 told me how she did not want to do family work and saw her future in commercial work. She told me this despite knowing I would have been far more impressed if she had suggested the contrary. Instead of seeing

this as a negative, as I might have done at the start of the research, I celebrated this as demonstrating the student's honesty and candidness allowing me to examine her representations with a greater faith in their authenticity. However, this demonstrated trust on the part of the students and with trust came a completely new level of responsibility. I reflected upon the position where I might betray trust if I disagreed with the participants outlook. However, I realised that whilst my views were important to the research, the participants' views were more important to establish the reality of the LAC. In contrast to my initial start in preparation for the thesis, I no longer wanted the research to be about affirming my views but hearing the narratives of all the participants from their perspectives, outlooks and viewpoints. After all, if I were to close down the narratives of the participants, this would rock the whole foundations of my conjecture that solicitors should listen to and not be dismissive of their client's stories.

A number of the students related the importance of family and community. One student in particular, who had contributed particularly candidly, was student 21. Before the focus group, I had known that a very close relative of this student had recently passed away and how upset she had been. The impact upon her had been so great that when asked to build a LEGO® model that represented 'her best learning experience' she provided a LEGO® person, representing herself, lying face down on the floor.



The sheer simplicity and symbolism of the model made the message so powerful. It represented the student's feelings on losing a close relative. I could relate to these feelings as I had similarly lost a close family member as a young teenager, which had a big impact upon me. This person was and and still is hugely influential upon me as a person. We are who we are, as a consequence of our experiences and particularly, those who we are close to and who influence our lives for the better. These experiences impact upon a person, and who they are, more than any LAC or law firm. However, providing a culture of kinship and beneficence in somewhere like a LAC, can allow for and reinforce such positivity.

Looking back, it is this positivity that the students demonstrated in their data. Student 7 described the LAC as like a little family, and I had heard the LAC described in this manner on a number of occasions. This description made me feel happy and I think best suits the kinship and beneficence that emerged from my analysis. But, whilst all participants may not necessarily share the same view, a culture can encourage or reinforce certain views and perspectives. This is important, particularly when surrounding cultures such as the formalistic law degree may discourage such perspectives. Identity and characteristics are neither linear nor binary. They are multi-faceted where different characteristics may be displayed in different situations and different roles.

Whilst student 12's LEGO® model did emphasise 'kinship', it also highlighted a student who did not share with this common collegiate value. I was aware of who this student was and

this came as no surprise. However, this did make me question my own tolerance and whether I should question a student who was externally very confident and just wanted to further her skills and progress her CV without helping others. I did not know her background or her reasons. For all I had known, she may have been displaying an aura of confidence but hiding a less confident person with problems of her own. Further, whilst this student did not take part in the focus groups, she did relay in supervisor/student discussions the desire to help clients. I was left in a quandary over whether I should rely upon the data she relayed or not. Whilst the student did not display the same collegiality as other students, she nevertheless dealt with a number of cases. Further, I would be failing in my responsibility to this student, as a researcher, if I stifled her voice. My knowledge of the background information did however provide me with a more nuanced insight of what the students said and did. It may have been that the student's desire to help stemmed from wanting to improve herself. Alternatively, the student may have just expressed these desires to fit in with what she perceived as the culture of the LAC and what she thought both I, and her supervisors wanted to hear in her discussions. Even in the case of the latter, this provided useful data for the analysis of the objective mechanisms in place, which may have encouraged participants to display particular outlooks.

11.3 Reflections from alumni

I was immensely pleased to see the alumni and welcomed them back. They had visited the university for another reason but agreed to give their time to participate in my research. All of these students had been relatively successful in obtaining training contracts and had either qualified or were in the process of qualifying as solicitors. They had also been at the forefront of establishing the LAC when it was first set up. They had fully engaged with the

LAC and had travelled to, and attended award ceremonies with me in London and conferences across the country. I felt a real affinity towards them and rightly or wrongly, I thought of them, to some degree, as my protégés.

All of their experiences in practice were nuanced and different, depending upon the type of client, the size and culture of the law firm and the type of work they were undertaking. I was interested on how this had impacted upon how they relayed their thoughts and if they had changed their viewpoints as a consequence. I must admit that I was a little disappointed to hear, alumnus 5, who as student 5 in the research had epitomised a client-centric approach, relay that it was easier to be judgemental in practice. This raised a number of issues for me and if he had shared similar attitudes to this as a student but hidden them. Had he only relayed his beneficent character in the LAC, as he perceived this to be a valued practice? Unfortunately, he did not go into further detail but for him and others, the influence of their new places of work was demonstrable to the dispositions they displayed and this did demonstrate that they were being honest and transparent with me in their opinions. I do believe that the views this student relayed as both a student and an alumnus were his honest views at the time. I was also pleased to hear how alumnus 3, who was undertaking the same type of work for a different firm, had become hugely considerate to the clients she helped and the backgrounds they came from.

I was sad to hear how unhappy alumnus 2 had found himself in an environment, where financial inequality resulted in inordinate power structures, creating conflict favouring the rich and most powerful:

> **Alumnus 2:** So it's quite tough [EMPHASIS] in practice. Quite a fight. I go in and I have to have a fight every day. Yeah. I've had standing up rows on the phone with people and… Yeah. I'm sick of arguing all day.

The injustice, inequality and pressure had taken its toll on him. He was doing well in his career and had advanced to the position of an associate but he was clearly unhappy. He had become desensitised to client's situations and had become pre-occupied with the injustice of being devalued in a system and having to struggle against financially crippling strategies, which coerced unethical practices.

I also felt guilt when hearing about the strategies that alumnus 2 had encountered. Whilst a lawyer for a local authority I had initiated similar tactics when dealing with claims made against the council. Before instigating such a strategy the council had been seen as a 'soft touch' settling cases and defending very few cases to a trial hearing, at great cost to the public taxpayer. I brought a strategy where all claims were defended and the court defence not only pleaded the case but also presented the stark facts of the number of claims being brought against the council and the amount of money that this was costing. Whilst it is suggested all is equal in the eyes of the law, a subtle shift in focus from the individual claimant to the impact on the public finances, resulted in the council traversing from very rarely 'winning' a claim, to not losing any. The strategy was an unprecedented success. Clients would ring up to complain to say they had contacted several law firms about an injury they had sustained and no-one was willing to take their case on. Whilst I had been a claimant lawyer myself, I did not think about the consequences on the claimants and

lawyers themselves. Looking back, I thought I had been acting for honourable reasons to save money for the taxpayer, so resources could be allocated to more worthy services. But in my mind, I had not questioned whether the services the money would go to would necessarily be more worthy and why. Perhaps this was naivety or I simply did not want to consider these implications. If I am honest, I was working within an adversarial system and enjoyed the victories. Just as alumnus 2 talked about 'smashing' the opposition, I took great delight in winning these victories, whilst convincing myself it was for the good of the people. Whilst there is no doubt that finance can directly correlate with power in the juridical field, the adversarial process often leads to an unhelpful and often destructive battle between parties and consequently their lawyers.

Reflecting upon this now, it may have been my client-centric focus, which led me into such an adversarial battle. The ethics of care and relational lawyering may therefore represent important buffers from descending from a client-centric focus into an adversarial advocate.

This reflexivity has been useful in my examination of how I fit into the research picture, my influence and how I have dealt with the analysis of discernible contradictory data. Whilst it is never possible, for any researcher of social methods to suggest their approach is entirely without flaws, I believe my reflexive approach has assisted in reducing potential bias, but also helped position me as the researcher and the LAC Director within the research itself. This approach has also allowed me to consider my own beliefs and *doxa* introspectively and reflexively, so as not to prejudice my analysis.

Appendix 12: Uncomfortable Reflexivity – Chapter Five

12.1 Differences in opinion

Out of all the supervisors, the perspective of clinical legal education and the approach taken with the students, I would align my outlook most with the non-solicitor, supervisor 3. I found great pleasure in hearing her relay to the students that their role was as a quasi counsellor/social worker and also discussing with the students the power deferentials in the law, the injustices and a feminist perspective. I agreed with her that students listening to a problem can be therapeutic for a client and that it is important to allow a client's narrative to be heard. Similar to student advisors 1 and 2's case with the embarrassed client, I had been told many times, how clients could enter the LAC visibly tense and abrupt in their manner, with their problem manifesting itself in their whole taut and rigid body language. These clients entered into the meeting in this way but left like different people; relaxed, talkative and affable. But how did this transformation occur? It was certainly not through being provided with advice, as the student advisors could not give advice in the meeting. It was not through even being told that help would be provided, as the student advisors had to tell the client that her case had to go to a selection panel and advice would only be provided subject to the selection panel accepting the case. I firmly believe it is through the power of being heard and someone taking an interest in their story. For many of these clients, they had been passed from pillar to post. However, the meeting with the student advisors and supervisor represented the first time people had sat down and listened to what the client had to say. No advice was given. Maybe a little hope was offered but importantly people had listened and taken an interest. This was an incredible power and often overlooked, especially in legal practice.

Whilst supervisor 3 and I were similar in our views, supervisor 1 and I did not necessarily share the same views. Supervisor 1 did not see the role of the student advisors as a quasi-counselling role. She saw the LAC in clear terms as preparation for legal practice and saw the students as training in the LAC to become lawyers. She preferred to take an objective perspective, believing in the importance of measurability. She had strong views on fairness, however from an objective and often rule based viewpoint. Whilst I also believed in fairness, my approach was far more subjective, flexible and evolving and less confined to set and defined measurable approaches. Thinking about it now, we both probably represented a metaphor for the clash between the formalistic and substantive spheres. However, I was interested to see what I could learn from supervisor 1? I shared similar ideals to supervisor 3, so analysing her, would to a certain extent be providing myself with an echo chamber.

I think I represent an anomaly. Whilst I was a former practising solicitor and should belong to this group of former practitioners, I do not hold similar views to many solicitors and do not feel a strong sense of attachment to this identity. It may be as a consequence of my unorthodox route to qualification and/or as a consequence of my experiences. However, one of my abiding memories of one academic conference was with an academic, who I had held a discussion with at length, expressing her surprise that I had ever practised as a solicitor, given my viewpoints. It was intended as a compliment and I took it as a great compliment. I once suggested this to supervisor 1 as a compliment but she took this as a minor affront. Her professional identity was very still heavily linked to her identity as a former practising solicitor. Our identities also linked to our roles and whilst I considered myself to be an academic, she clearly defined her role as a teacher. However, as

demonstrated in this ethnography, supervisor 1 had an incredible ability to anticipate emotions, be attuned to people and develop strategies to put clients at ease. Student 25, who represented the anomaly in the new student advisors, through her desire to break down barriers and build bridges for clients, attributed developing this skill to guidance provided by supervisor 1 in one of her cases. These are hugely important skills and through being involved in this ethnography, I have learnt a lot about preparing students for the emotional aspect of meetings with clients and developing strategies to make clients feel at ease.

I believe the fundamental difference lies between understanding and helping the client with their emotions and the showing of your own emotions. In my opinion, both are important to a professional approach.

12.2 Conflict in the selection panel meeting

In one selection panel meeting, which lasted disproportionately longer than any of the other meetings I had observed, I witnessed conflict between formalistic and substantive perspectives. Tension had arisen with student 5, who was passionate about wanting to help clients and supervisor 1. I was concentrating on writing notes on my observations but soon realised the discussion had become heated. Student 5 did not necessarily agree with the supervisor's opinion and wanted to help the client because of the injustice of the situation. However, supervisor 1 was focusing upon the legal documents and whether the client was 'entitled' to the help of the LAC. She rebuffed student 5 for a simplistic attitude for wanting to achieve justice without having all the information and documentation. During the

meeting, student 7, who was sitting on the selection panel and a good friend of student 5, glanced over to me to see my reaction. I felt conflicted. If I responded, I would be influencing the field. But, to a large extent I held very similar views to student 5. I felt privileged that student 7 looked to me to help but felt helpless and compromised. I felt helpless, as I had been concentrating on the body language displayed by the participants and not listening to the law being discussed, and if I intervened would therefore be unlikely to be successful. I felt compromised, as my role was to help the client and the students. As I had not been listening, there was nothing I could offer and further, I did not want to undermine the supervisor in front of the students. I did not offer a reaction back to student 7 and put my head back down to write some notes and felt as though I had let the students down. My feelings of guilt were exacerbated further when in a matter, much later after this selection panel, and not forming part of this research, student 5 intervened in a heated discussion between myself and a supervisor to support me and my views.

It is difficult to reconcile the different adopted positions of supervisors when the information that supervisors relayed to the student advisors in their meetings represented their own truth and the core of their professional identity. By disagreeing with their approaches, I could understandably be perceived as attacking them as a professional.

I was delighted to see student 5 return as a trainee solicitor for the focus group. However, I was disappointed to hear that he believed he had become more judgemental in practice. I was not sure how this had happened and I regret that I did not question him more on this. However, whilst the alumni had retained dispositions and outlooks from their work in the

LAC, they had all unsurprisingly changed. In this one meeting, we spoke fervently about our experiences and time together working in the LAC, I felt a real togetherness and camaraderie.

12.3 A lack of reflection?

My one big shock when analysing the reflection meetings was the inability of many students to reflect unaided from the client's perspective and recognise the injustices arising. The experienced students had demonstrated kinship and a beneficent personality but in one of these reflective meeting, an experienced student, had failed to recognise the inaccessibility of the law to the client and distinguish his own knowledge and skills from those of the client. Even more surprising was that the reflection meeting was with supervisor 3, who had entered into in depth considerations of justice with the less experienced newly appointed student advisor. I was not sure how a student could have undertaken so many cases and attended so many reflection meetings but still not recognise that even the most basic of law and procedures were inaccessible for the majority of people. It might have been an anomaly. However, rather than detract from the reflective process, it highlighted to me the importance of the reflective practice and challenging unreflective and traditional viewpoints.