LEGAL ETHICS FOR THE REAL WORLD: A MODEL FOR ENGAGING FIRST YEAR LAW STUDENTS

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The counsel and solicitors acting in the interests of the rescuees in this case have evidently done so pro bono. They have acted according to the highest ideals of the law. They have sought to give voices to those who are perforce voiceless and, on their behalf, to hold the Executive accountable for the lawfulness of its actions. In so doing, even if ultimately unsuccessful in the litigation they have served the rule of law and so the whole community.[1]

I INTRODUCTION

Although once respected as a learned profession, today the legal profession is frequently derided by the public as lacking in ethics.[2] This is despite the fact that instruction in legal ethics is now a common feature of many undergraduate law programs. Many within the profession are calling on law schools to provide better ethical training.[3] However, the answer to the question of how universities can effectively equip students to deal with the ethical dimensions of legal practice has proved elusive.[4] The tendency in the majority of programs to include legal ethics as a final year subject reinforces the view that it is an addendum to the LLB – a last minute check of the rights and wrongs of practitioner rules.[5] Further, the content of many legal ethics programs reflects a very traditional view of legal ethics which privileges a philosophical perspective that may

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1   *Ruddock v Vadarlis (The Tampa Case)* (2001) 183 ALR 1, 58 (French J).

2   F D Armer, 'The Teaching of Ethics in Australian Law Schools' (1998) 16 *Journal of Professional Legal Education* 247, 247, 249.

3   Lord Woolf, 'The Education the Justice System Requires Today' (Speech delivered as the 29th Lord Upjohn Lecture, Inns of Court School of Law, 14 June 2000); Armer, above n 2, 249; M Kirby, 'Legal Professional Ethics in Times of Change' (1997) 3 *The Judicial Review* 73, 73; M Castles, 'Challenges to the Academy: Reflections on the Teaching of Legal Ethics in Australia' (2001) 12 *Legal Education Review* 81, 84.

4   Castles, above n 3, 88; A Goldsmith, 'Heroes or Technicians? The Moral Capacities of Tomorrow's Lawyers' (1996) 14 *Journal of Professional Legal Education* 1, 2.

5   J Webb, 'Ethics for Lawyers or Ethics for Citizens? New Directions for Legal Education' (1998) 25 *Journal of Law and Society* 134, 145; D Henriss-Anderssen, 'Teaching legal Ethics to First Year Law Students' (2002) 13 *Legal Education Review* 45, 51.

seem to students to have little relevance to legal practice.[6] Consequently, students often fail to engage with legal ethics courses and enter practice without a strongly developed ethical sense and with little appreciation of the importance of ethics.[7]

By moving away from the traditional conception of applied ethics as a philosophical response to the question 'what ought I do?' and instead embracing a truly applied conception of ethics which is grounded in legal practice, students may be persuaded that ethics is intrinsically important to their lives and work. The challenge to legal educators is to engage first year students in a process which can be sustained throughout the undergraduate degree. In an attempt to give practical effect to this goal, this paper also outlines the design process for a proposed online program in applied legal ethics which could be used as a learning tool within a first year introductory subject. The program design incorporates both an alternative theoretical understanding of applied ethics and constructivist learning principles[8] to produce an interactive, visually focused and interesting program for first year students.

II   A Brief History of Legal Ethics Education in Australia

Education in ethics and professional responsibility in Australian law schools has a relatively short history.[9] To date approximately 75 per cent of Australian law schools have a compulsory ethics and professional responsibility program, with the majority of these having been developed in the past 10 years.[10] Therefore, although many are looking to legal ethics courses to provide a panacea that will restore public confidence, the majority of ethics courses are in their relative infancy in comparison with established core curriculum courses. An additional feature of these courses is that while some universities are clearly attempting to implement innovative approaches to curriculum design, the majority appear to have embraced a relatively uniform approach to teaching legal ethics.[11] Ethics and professional responsibility are generally conceived of as instruction in the duties owed to the court and clients which are made explicit in regulatory codes, statutes and in some instances case law.[12] Courses therefore tend to focus on difficult dilemmas that practitioners may face and provide guidance in the resolution of these problems with reference to the regulatory framework of codes which govern legal practitioners.[13]

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[6]   Castles, above n 3, 93.

[7]   Y Ross and P MacFarlane, *Lawyers' Responsibility and Accountability: Cases, Problems and Commentary* (LexisNexis Butterworths, 2nd ed, 2002) 4; Y Ross, *Ethics in Law: Lawyers' Responsibility and Accountability in Australia* (Butterworths, 3rd ed, 2001) 24-25.

[8]   These principles are based on the idea that knowledge and meaning are constructed by the learner rather than being passively received by them.

[9]   Ross, above n 7, 4.

[10]   Based on the author's survey at 29 September 2003. It must also be noted that some universities include ethical components within their substantive law units rather than offering discrete courses: J Dickson, 'Teaching about Justice as Well as Law' (2003) 28 *Alternative Law Journal* 18, 19.

[11]   Goldsmith, above n 4, 9.

[12]   Ibid 2.

[13]   Castles, above n 3, 90.

III   THE TRADITIONAL VIEW OF LEGAL ETHICS

While it is conceded that practitioners must have knowledge of the raft of legislation that regulates their practice, it is argued that by allowing this material to dominate the legal ethics curriculum, it effectively defines legal ethics in a particularly narrow way.[14] Legal ethics, on this conception, is seen primarily as a philosophical exercise undertaken by individual practitioners in solving difficult practice dilemmas by choosing among competing moral theories.[15] The unstated assumptions implicit in this conception of applied ethics are firstly that the participants in the moral discourse are atomistic de-contextualised individuals and secondly that moral engagement is concerned almost exclusively with solving 'novel fact' moral dilemmas by appeal to philosophical reasoning.[16]

This picture of the dimensions of moral life has developed out of modernist epistemology.[17] That is, the way that moral discourse has been constructed reflects a view point which privileges rationality, systematic processes, certainty and the notion that there is a neutral starting point from which the reasoning process can be built.[18] The foundations of this perspective derive from the Enlightenment period.[19] Because the 'clean slate' or the neutral starting point is fundamental to modernist epistemology, it follows that any embedded or contextualised view point will be redundant.[20] In this way, quite different ways of engaging with and understanding moral discourse, which were described initially by Aristotle and later expanded upon by the humanists during the Renaissance have, until relatively recently, been largely lost from view.[21] Though a full discussion of this phenomenon is beyond the scope of this paper, it is noted that one of the consequences of this turn of events is that applied ethics, and therefore legal ethics, has developed as a philosophical discipline and further, that the principal model of legal ethics is a decisional model.[22]

This has significant ramifications both in terms of the scope of the content of legal ethics; and in determining whose perspective is authoritative in respect of legal ethics. If legal ethics is essentially a philosophical exercise which involves choices between competing moral theories, then people who are extensively trained in moral theories

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[14] Goldsmith, above n 4, 2.

[15] M Urban Walker, *Moral Understanding: A Feminist Study in Ethics* (Routledge, 1998) 37.

[16] P Isaacs, 'Social Practices, Medicine and the Nature of Medical Ethics' (Paper presented at the Society for Health and Human Values Spring Regional Meeting, Youngston State University, Youngston, Ohio, 17-19 April 1998) 7.

[17] P Isaacs, 'Ways of Seeing in Applied Ethics: Reassessing the Philosophical Paradigm' (Paper presented at the Symposium 'Applied Ethics: Challenges and Explorations' Carseldine Campus, QUT, 1-2 June 2001) 2.

[18] S Toulman, *Cosmopolis: The Hidden Agenda of Modernity* (The University of Chicago Press, 1990) 175-179; John Locke's notion of the *tabula rasa*: N P Wolterstorff, 'John Locke' in R Audi (ed) *The Cambridge Dictionary of Philosophy* (Cambridge University Press, 1st ed, 1995) 437, 439.

[19] Isaacs, above n 17, 3.

[20] C Taylor, 'Two Theories of Modernity' (1995) 25 *Hastings Centre Report* 24, 26; C Taylor, 'The Moral Topography of the Self' in S B Messer, L A Sass and R L Woolfolk (eds) *Hermeneutics and Psychological Theory: Interpretive Perspectives on Personality, Psychotherapy, and Psychopathology* (Rutgers University Press, 1988) 298, 305.

[21] Toulman, above n 18, 30-38; Taylor, above n 20, 26.

[22] Urban Walker, above n 15, 37.

(philosophers) can legitimately claim expertise as being best equipped to provide advice and guidance to professions.[23] This guidance is often employed in the development of professional Codes of Conduct and Model Rules. In recent years, Codes and Conduct Rules have been actively embraced by the legal profession.[24]

This is not altogether surprising as codes offer a number of advantages for regulating professions. Firstly, they provide a public statement of the professions' expectations of conduct.[25] Secondly, they are relatively easy to administer as they consist of either admonitions,[26] (breaches of which are easily identified); or aspirations, which aren't enforceable.[27] Thirdly, although they can be revised, codes provide a response to ethical imperatives which is self contained.[28] **Table 1** illustrates the decisional model of ethics.

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[23]   C Sampford, 'Educating Lawyers to be Ethical Advisors' (1999) 19(11) *Proctor* 19, 21; M Urban Walker, 'Keeping Moral Space Open: New Images of Ethics Consulting' (1993) 23 *Hastings Center Report* 33, 34.

[24]   Ross, above n 7, 4-5.

[25]   J Lightenberg, 'What are Codes of Ethics for?' in M Coady and S Bloch (eds) *Codes of Ethics and the Professions* (Melbourne University Press, 1996) 13, 19.
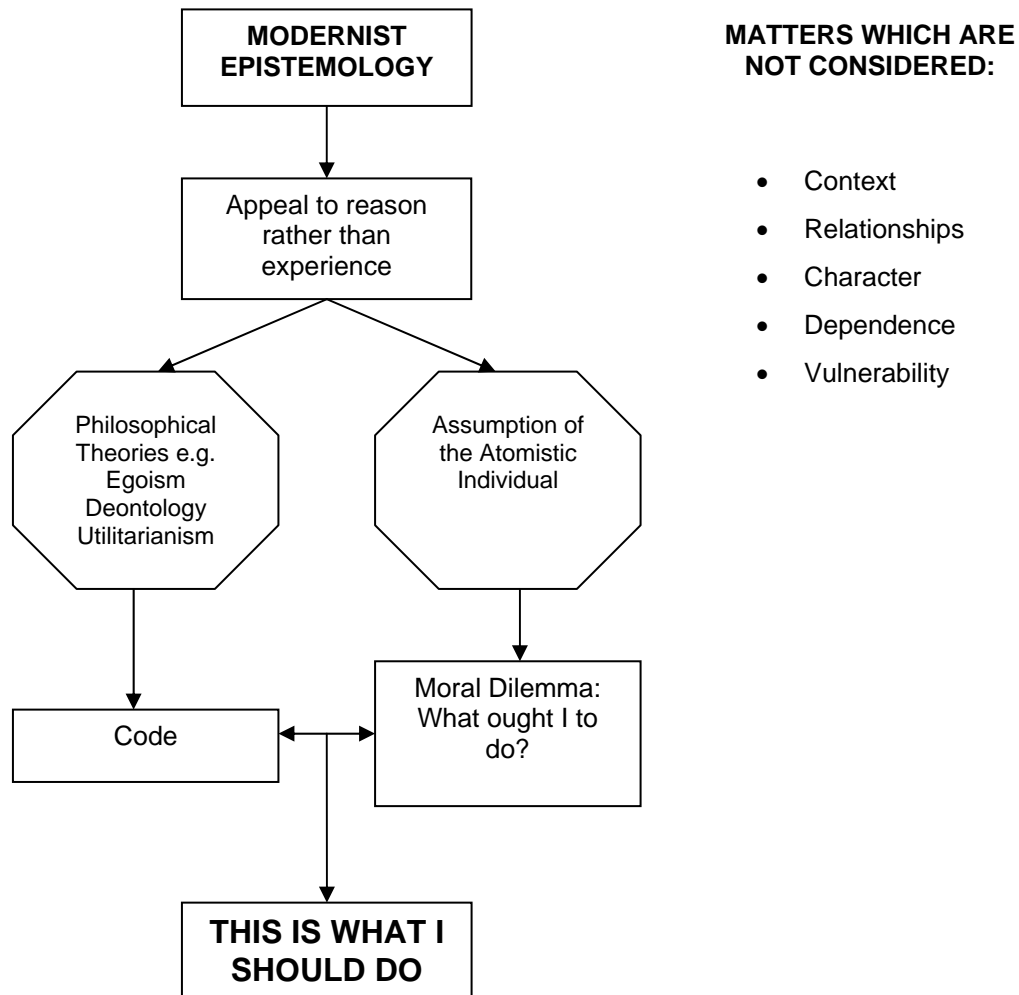
[26]   Ross and MacFarlane, above n 7, 4.

[27]   L Skene, 'A Legal Perspective on Codes of Ethics' in M Coady and S Bloch (eds) *Codes of Ethics and the Professions* (Melbourne University Press, 1996) 111, 111; Lightenberg, above n 25, 25-27.

[28]   N Preston, *Understanding Ethics* (Federation Press, 1st ed, 1996) 198-199.

TABLE 1
The Decisional Model of Legal Ethics

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        ┌──────────────────┐                    MATTERS WHICH ARE
        │    MODERNIST      │                    NOT CONSIDERED:
        │   EPISTEMOLOGY    │
        └────────┬─────────┘
                 │                                 •  Context
                 ▼
        ┌──────────────────┐                      •  Relationships
        │  Appeal to reason │
        │    rather than    │                      •  Character
        │    experience     │
        └────┬────────┬─────┘                      •  Dependence
             │        │
             ▼        ▼                            •  Vulnerability

   ┌─────────────┐   ┌─────────────┐
   │Philosophical│   │Assumption of│
   │Theories e.g.│   │the Atomistic│
   │   Egoism    │   │ Individual  │
   │ Deontology  │   └──────┬──────┘
   │Utilitarianism│         │
   └──────┬──────┘          ▼
          │          ┌─────────────┐
          ▼          │Moral Dilemma:│
   ┌─────────────┐   │What ought I to│
   │    Code     │◄─►│     do?     │
   └──────┬──────┘   └─────────────┘
          │
          ▼
   ┌──────────────────┐
   │ THIS IS WHAT I   │
   │  SHOULD DO       │
   └──────────────────┘
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IV   CRITIQUE OF THE DECISIONAL MODEL OF LEGAL ETHICS

This conception of legal ethics is a 'top down model'. It privileges expert philosophical knowledge. Further, it confines the parameters and content of moral discourse to discrete problem scenarios whose solutions are determined through appeal to reasoned principle.[29] Reason, on this construction, equates with equality, autonomy, uniformity and impartiality. Yet it discounts responsibilities, vulnerabilities, particularity, care and relationships.[30] This narrow conception of ethics is particularly evident when codes are used to embody the ethical response.

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[29]   Urban Walker, above n 15, 32.

[30]   M Urban Walker, 'Feminism, Ethics, and the Question of Theory' (1992) 7 *Hypatia* 23, 24-25; C Gilligan, *In a Different Voice: Psychological Theory and Women's Development* (Harvard University Press, 2nd ed, 1993) 31-32.

Codes suffer a number of limitations. These include the following. Firstly, codes assume that ethical behaviour can be achieved through a mechanism of external control.[31] Though a reasonable degree of compliance with rules is realistically attainable, simply because most people are law abiding, codes cannot address the notion that 'being ethical' is fundamentally an internal process.[32] In other words, codes do not motivate people to be ethical. Secondly, codes generally regulate only vertical relationships, that is, practitioner-client relationships and this ignores the importance of a broader grid of relationships including those between peer colleagues, relationships in work places, and hierarchical relationships between more experienced practitioners and newer practitioners.[33] Thirdly, positing a response to ethics in a code tends to then take attention away from any broader ethical issues which are not amenable to codification.[34] These broader issues might include: access to justice; human rights; the impact of law on vulnerable groups in the community and issues of character and professional identity.[35]

V   THE RESPONSE MUST ADDRESS THE REAL PROBLEM

It is the contention of this paper that the traditional approach to legal ethics has failed to deliver a satisfactory outcome for the public, the profession and individual practitioners. In part this may be attributed to a failure to adequately formulate the basis of the public's dissatisfaction. Explanations for public criticism include: the 'few bad apples' theory, that is, that the poor behaviour of a few diminishes the reputation of all; that the role of lawyers is poorly understood; and that there is considerable misinformation concerning remuneration and issues of practice.[36] Although each of these factors probably contributes to the problem, it is argued that a more substantive explanation may be found if the problem is considered from a slightly different vantage point.

As traditionally conceived, the professions, including law, provide a degree of public status in recognition of their members' specialised knowledge, commitment to public service and submission to the requirements of a professional association.[37] From its etymological source, the word 'profession' means to 'testify on behalf of' or 'to stand for something'.[38] In recent times however, the public appears to resent the status accorded to lawyers and has reacted with both overt and covert criticism.[39] Overtly, in Queensland for example, complaints about both lawyers and the Law Society have led to the disciplinary role of the Queensland Law Society being transferred to an independent body.[40] Less explicit, though no less powerful, has been the promulgation

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[31]   Castles, above n 3, 89.

[32]   Taylor, above n 20, 32.

[33]   Isaacs, above n 16, 13-14.

[34]   Castles, above n 3, 90; Preston, above n 28, 199.

[35]   B Hamilton, 'Getting Them Early: Teaching a Critical Perspective on Legal Ethics and Adversarialism in an Introductory LLB Unit at the Queensland University of Technology' (2001) 12 *Legal Education Review* 105, 117-118; Lord Woolf, above n 3.

[36]   Ross, above n 7, 12; Armer, above n 2, 250.

[37]   W May, 'Vocation, Career and Profession' (1989) 1 *Australian of Ethics and the Professions Monograph Series* 5-6.

[38]   Ibid 4.

[39]   Armer, above n 2, 247, 249; Kirby, above n 3, 73; *Legal Profession Act 2004* (Qld).

[40]   *Legal Profession Act 2004* (Qld).

of derogatory jokes and negative media images of lawyers as cheats, liars and manipulators – that is, possessing qualities which are generally abhorred in our society.[41] That the public appears to hold the legal profession in such poor esteem has been of grave concern for many within the legal profession, who in turn, point to legal education institutions to provide the solution.[42]

Though it is often unstated, it is suggested that the public depends on lawyers – as a group – as a social institution[43] – to ensure that the integrity of the rule of law is protected. The rule of law is a fundamental pillar of democratic life. Therefore, a perceived lack of integrity in the legal profession can threaten the fragile balance of public trust on which the status accorded to the profession rests.[44] Some areas of public dissatisfaction that have been identified include: the priority accorded to fiscal reward; lack of access to legal services; the use of legal jargon and failure to attend to client needs promptly.[45] It is argued here that public confidence may be restored if the legal ethics agenda is effectively reconceptualised to take account of, and be responsive to, the justice needs of the community.

VI   THE STARTING POINT – A DIFFERENT CONCEPTION OF ETHICS

Engaging students in legal ethics programs is challenging because students typically report that they find ethics programs irrelevant to their current experience and to their perceived professional needs.[46] It is suggested that by constructing a 'bottom up' model, in contrast to contemporary models that are more 'top down', legal ethics can not only be made more interesting, relevant and engaging to students, but it can also be more responsive to the community's needs. A 'bottom up' model requires an alternative conception of legal ethics, resting on assumptions which include the following:

(i)   law is a social practice, not an isolated activity;[47]
(ii)   the individual is not atomistic but is instead inherently social, existing within a complex context of relationships, history, culture and language;[48]
(iii)   ethics should derive from practice not philosophy;[49]
(iv)   the social practice of law is inherently ethical because the common purpose of its members is the protection of the rule of law - the rule of law being fundamental to the well being of our community;[50] and

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[41]   A single search for 'lawyer jokes' in Google returned 380,000 hits. A number of books of lawyer jokes have also been published.

[42]   Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System*, Report No 89 (1999) Recommendation 2; Kirby, above n 3, 84; Dickson, above n 10, 19.

[43]   R N Bellah et al, *The Good Society* (Vintage Books, 1st ed, 1992) 124-125.

[44]   D Koehn, *The Ground of Professional Ethics* (Routledge, 1994) 153-155.

[45]   Law Society of NSW, 'Complaints Against Solicitors Continue to Decline' (2001) 39(2) *Law Society Journal* 49, 49.

[46]   Ross and MacFarlane, above n 7, 4; Castles, above n 3, 93; C Parker, 'What do Students Learn When They Learn Legal Ethics' (2001) 12 *Legal Education Review* 175, 175-176.

[47]   G Langford, 'Teaching and the Idea of a Social Practice' in W Carr (ed) *Quality in Teaching* (Falmer Press, 1989) 21.

[48]   Urban Walker, above n 30, 24; Gilligan, above n 30.

[49]   Castles, above n 3, 92.

(v)   moral discourse in law should be primarily concerned with how we can nurture and support this social practice (the practice of law) in a way that instils and cultivates values such as integrity, commitment, honesty and courage so that public confidence can be restored.[51]
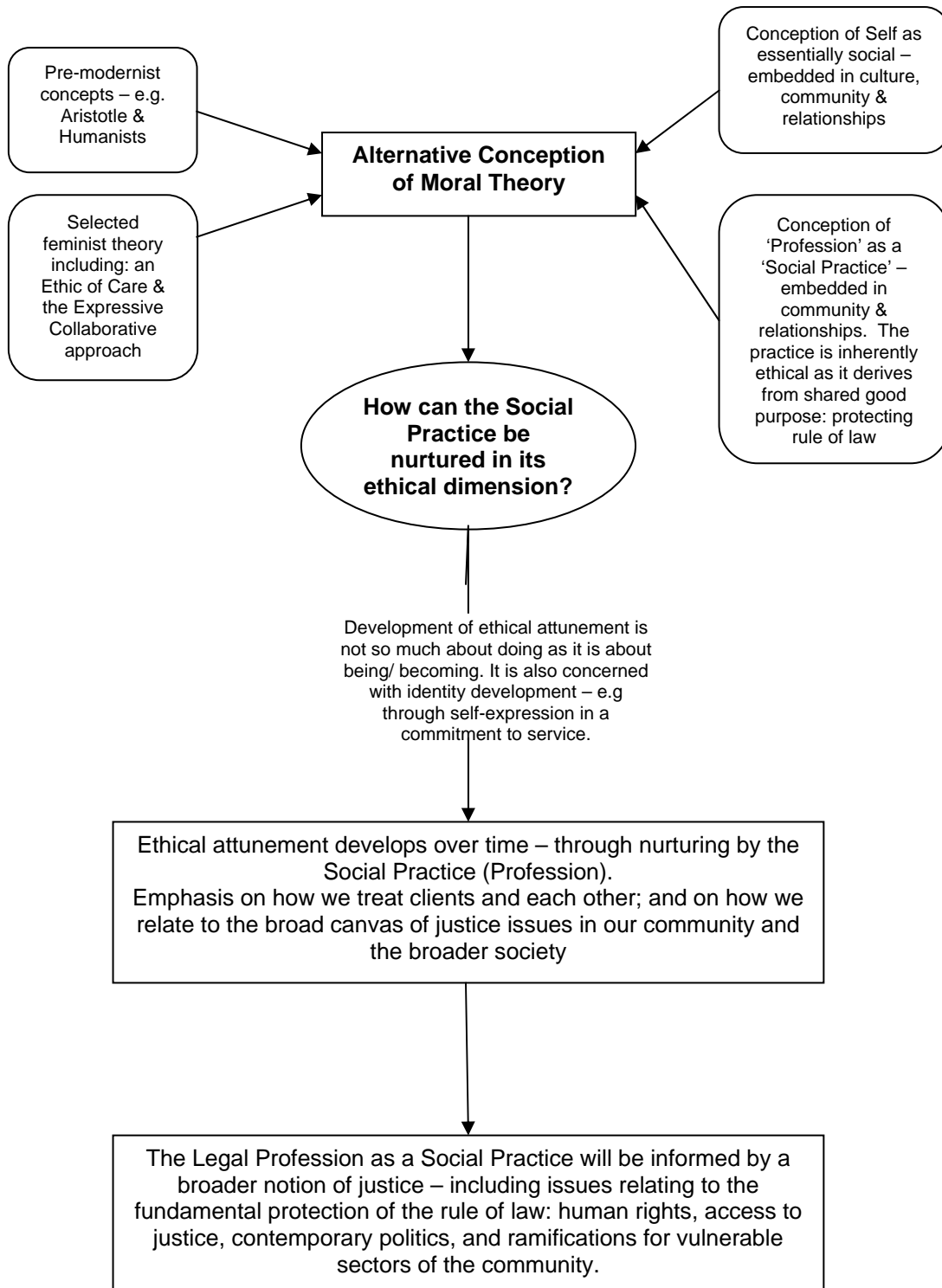
Each of these propositions will be considered in turn.

This alternative conception of legal ethics is illustrated in **Table 2**.

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[50]   Isaacs, above n 16, 13-14.

[51]   A Evans, 'Lawyers' Perceptions of Their Values: An Empirical Assessment of Monash University Graduates in Law, 1980-1998' (2001) 12 *Legal Education Review* 209, 265.

TABLE 2
AN ALTERNATIVE CONCEPTION OF LEGAL ETHICS

Pre-modernist concepts – e.g. Aristotle & Humanists

Selected feminist theory including: an Ethic of Care & the Expressive Collaborative approach

Alternative Conception of Moral Theory

Conception of Self as essentially social – embedded in culture, community & relationships

Conception of 'Profession' as a 'Social Practice' – embedded in community & relationships. The practice is inherently ethical as it derives from shared good purpose: protecting rule of law

How can the Social Practice be nurtured in its ethical dimension?

Development of ethical attunement is not so much about doing as it is about being/ becoming. It is also concerned with identity development – e.g through self-expression in a commitment to service.

Ethical attunement develops over time – through nurturing by the Social Practice (Profession).
Emphasis on how we treat clients and each other; and on how we relate to the broad canvas of justice issues in our community and the broader society

The Legal Profession as a Social Practice will be informed by a broader notion of justice – including issues relating to the fundamental protection of the rule of law: human rights, access to justice, contemporary politics, and ramifications for vulnerable sectors of the community.

VII   LAW IS A SOCIAL PRACTICE

A social practice can be defined as a social grouping or social institution[52] whose members are committed to a common or overall purpose.[53]   They give effect to this common purpose through a shared set of beliefs and actions which have developed out of the traditions of the practice.[54] New practice members are inducted into the practice and socialised in the culture and shared understandings of the practice by other members.[55] The social practice is both legitimised by and subject to the authority of an organisational structure.[56]

The practice of law clearly meets the criteria of a social practice. The legal profession is a social institution comprised of members committed to a common purpose – the practice of law. The practice is steeped in traditions and a culture which has grown out of an apprenticeship system. Members are required to attain the requisite academic standards as well as the required levels of supervised practice before admission into the practice.[57] The practice is also subject to a form of institutional authority through the various law societies.[58] It can be further argued that an important overall purpose of the social practice of law is upholding the rule of law in the community. As lawyers hold a monopoly on legal services, arguably only lawyers are well placed to ensure the integrity of the system – and indeed the public expects them to do so in return for the trust they place in the profession.[59]

Isaacs has noted three additional features of social practices.[60] These are that:

(i)   social practices are socially embedded;
(ii)   that they may be tools of good or evil; and
(iii)   that they are inherently fragile social structures.

The perceived inaccessibility of lawyers – both in terms of the technical language they often use and the cost of accessing their advice, conveys a false notion that they are not an ordinary part of the community. In a similar vein, much public criticism centres on perceptions of greed, self interest and 'ends justifying means' philosophies of practice - outward manifestations of evil. It should be acknowledged that there are significant and frightening examples from our recent history of law being used as a tool of evil. Nazi Germany and South Africa under the Apartheid system are two well known examples.[61] Finally, social practices are sustained by the commitment and good-will of their

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[52]   This concept is of an enabling institution rather than the more common negative notion of an institution: see Bellah et al, above n 43, 6.

[53]   Isaacs, above n 16, 7; Langford, above n 47, 28.

[54]   Langford, above n 47, 28.

[55]   Isaacs, above n 16, 6.

[56]   Ibid 7-8.

[57]   See for example *Legal Profession Act 2004* (Qld) s 48.

[58]   Ross, above n 7, 95-103.

[59]   Koehn, above n 44, 153-155.

[60]   Isaacs, above n 16, 7-8.

[61]   Armer, above n 2, 256; G Dickler, *Man on Trial: History Making Trials from Socrates to Oppenheimer* (Doubleday, 1962) 323-374.

practitioners.   If the practice members fail to find satisfaction or meaning in their vocation, (and this is very likely to happen where they are subject to constant criticism), then the practice as a whole may falter. Presently, significant numbers of lawyers are reporting that they feel disenchanted with their professional life.[62]

VIII   THE INDIVIDUAL IS EMBEDDED, EMBODIED AND SOCIAL

The ideas that there is a neutral starting point from which pure reasoning can originate and that the decision maker is unencumbered by their context have been significantly challenged in recent years.[63] It has been strongly argued that this conception of ethical decision making, resting as it does on the construct of the individualised self, is gender biased and further, that it renders invisible alternative epistemologies, or ways of seeing and interpreting the world.[64] It is argued that what is excluded from view is the idea that the self is always embedded in relationships, history, culture, language and dependencies.[65] If the moral domain is enlarged by these otherwise excluded factors then moral decision making becomes far less linear and may be described instead as a complex negotiated conversation which takes account of many dependent issues.[66] Incorporating this broader notion of the scope of the moral domain into an alternative model of legal ethics means that an understanding of an integral concept such as justice must take account of history, politics, rights, vulnerabilities, commitments, culture and dependencies.

IX   LEGAL ETHICS DERIVES FROM PRACTICE NOT PHILOSOPHY

The general acceptance that legal ethics derives from philosophy reflects the privileged position accorded to reason with the advent of Modernity. Prior to the Modernist era[67] and as far back as Classical Greece in the work of Aristotle, practice and every day activities informed moral discourse.[68] At this time ethics was concerned with 'being and with becoming' good more so than with the later pre-occupation of the modernists of 'doing' good. For example, the development of good character was recognised as involving a process of striving toward better character.[69] Moreover, practice and daily life provided the substantive content of moral discourse because they constituted the focus of community concerns.

It is argued that legal ethics does not need a neutral starting point.   Ethical responsiveness can be grounded in everyday life experience.[70] Actualising this view of

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[62]   Armer, above n 2, 250.

[63]   R Tong 'Teaching Bioethics in the New Millennium: Holding Theories Accountable to Actual Practices and Real People' (2002) 27 *Journal of Medicine and Philosophy* 417, 423.

[64]   Gilligan, above n 30; S Benhabib, 'The Generalized and the Concrete Other' in S Benhabib (ed), *Situating the Self: Gender, Community and Postmodernism in Contemporary Ethics* (Polity Press, 1992) 148, 170.

[65]   Urban Walker, above n 15, 61.

[66]   Ibid.

[67]   Commencing in approximately the 17th century.

[68]   Toulman, above n 18, 37.

[69]   M V Wedin, 'Aristotle' in R Audi (ed), *The Cambridge Dictionary of Philosophy* (Cambridge University Press, 1995) 38, 44.

[70]   Urban Walker, above n 15, 38.

legal ethics broadens the domain of moral inquiry.   Rather than focusing only on difficult and unusual dilemmas, it would necessitate consideration of the wider justice issues which are a part of many practitioners' daily lives.

To illustrate, it is anecdotally reported by community-based criminal lawyers that some sectors of the Queensland Police Force bypass the Indigenous Police Liaison system and instead often charge indigenous people with minor offences such as drunkenness. These offences take up court time and cause distress and inconvenience to those charged.[71]   The same solicitors have suggested that there is a need for a co-ordinating officer to ensure that reformist protocols are complied with.[72] Legal officers working at the coal face often possess not only a good understanding of the issues facing various stakeholders in community justice issues, but also a realistic idea of possible solutions. However, what they lack is a moral space that actively encourages them to pursue reform or to enlist the support of others in developing a reform agenda. An alternative conception of ethics could make moral space for such conversations to be developed.

X   THE SOCIAL PRACTICE OF LAW IS INHERENTLY ETHICAL

Where the orientation of a practice is of itself fundamentally good, then it can be argued that the practice is inherently ethical.[73]   That is not to say that the actions of all members are always ethical, but rather, the practice as a whole exists for a worthwhile purpose. Ensuring the integrity of the legal system is maintained and protecting the rule of law is a *telos* (or purpose) which is inherently ethical. Ensuring that a significant number of members of a practice are motivated to contribute to the practice in a way that sustains and fosters the practice raises two important matters.

The first relates to public service.   A commitment to public service provides a substantial basis for the trust the public places in the legal profession.[74] To the extent that the profession earns and retains this trust, both their practice and the public good are enhanced.   However, that professions merit trust is conditional on their 'not minimising the difficulties associated with cultivating it'.[75] A significant commitment to public service is fundamental to a reconceptualisation of legal ethics.

The second matter relates to practitioner identity.   Although identity is a relatively neglected area of moral discourse, it can be considered central to fostering an internal motivation to be ethical.[76] It is argued that identity does not develop in a vacuum; instead, it is negotiated in relationship with others,[77] and further, that identity is perhaps less a matter of 'who we are' than 'who we might be'.[78] The quality of the relationships

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[71]   Author's discussions with community lawyers.

[72]   In this instance that a Police Liaison Officer or Murri Watch is contacted.

[73]   Isaacs, above n 16, 13.

[74]   Koehn, above n 44, 175.

[75]   Ibid.

[76]   C Taylor, 'The Politics of Recognition' in A Gutmann (ed), *Multiculturalism: Examining the Politics of Recognition* (Princeton University Press, 1994) 25, 25.

[77]   Ibid 34.

[78]   D Massey, 'Vulnerability, Identity and Applied Ethics' (Paper presented at the Fifth National Conference of the Australian Bioethics Association, Melbourne, Australia, 3-6 April 1997) 7-10.

that are encountered within the social practice of law may therefore have a substantial impact on the way that newer members of the practice come to see themselves, either as ethical practitioners or otherwise. Although it is generally considered that a graduate's entry into practice marks their induction into the profession, it is argued that the law school constitutes the student/lawyer's first experience of the social practice of law. Therefore, the law school's approach to ethics may have significant ramifications in terms of the type of induction students receive.

XI   HOW CAN WE NURTURE AND SUPPORT THE PRACTICE

On this alternative conception of ethics, the central question is not 'what ought I to do'? It is instead: 'how can we nurture and support the social practice of law' so that its orientation toward justice is clear and so that practitioners find their membership of the practice meaningful and fulfilling? The practice of law has deep roots in the apprenticeship system. This makes it particularly suitable to ensuring that newer practitioners are mentored by experienced practitioners in what it means to be ethical in the practice of law. Although the experience of senior practitioners is highly valued in relation to legal matters, their knowledge of ethical matters which has evolved with their experience, needs to be valued and imparted to junior practitioners.

In addition, the process of 'becoming good' needs to be recognised, encouraged and supported. This requires attention to the development of the virtues which are necessary to be an ethical legal practitioner. These virtues include integrity, honesty, trustworthiness and caring.[79] Ensuring that the profession has a public presence in relation to a breadth of justice issues is important and this is an area in which junior practitioners can make a significant contribution.[80] Although much of the preceding discussion is anchored in practice, it is argued that universities can play a significant role in both establishing a moral space where ethical issues can be discussed, explored and considered; and in providing the students' first experience of the ethical practitioner.[81]

XII   MORALS ARE CAUGHT NOT TAUGHT – A RATIONALE FOR TEACHING ETHICS TO FIRST YEAR STUDENTS

At first blush the aphorism that 'morals are caught not taught' seems to negate the possibility of effectively 'teaching' morality. This is probably a justified criticism of any course which sets out to simply transmit information about morals and moral theories to students. Many of the courses which adhere to a traditional ethical framework appear to adopt this approach and students typically report that they do not value these courses because they do not seem relevant to their prospective practice.[82] However, it is argued that by marrying together sound pedagogical practice, appropriate technology and a conceptualisation of legal ethics which has relevance for law students,

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[79]   Webb, above n 5, 134, 143.

[80]   D McQuoid-Mason, 'Incorporating Justice and Ethical Issues into First Year Undergraduate Law Courses: A South African Experience' (2002) 1 *Journal of Commonwealth Law and Legal Education* 107.

[81]   C Menkel-Meadow, 'Can a Law Teacher Avoid Teaching Legal Ethics' (1991) 41 *Journal of Legal Education* 1, 3 quoted in Kirby, above n 3, 84.

[82]   Ross and MacFarlane, above n 7, 4.

universities are ideally placed to play a pre-eminent role in developing and supporting ethical attunement in their law students and future legal practitioners.

<p style="text-align:center">XIII   WHY THIS EDUCATION SHOULD BEGIN IN FIRST YEAR</p>

This paper has argued that becoming ethical is a process. Although essentially an internal process, ethical attunement is fostered and developed by one's relational environment.[83] Therefore, the law school environment may potentially play a critical role in developing students' ethical attunement.[84] While some concern has been expressed that a students' moral orientation is fixed before entering university, studies now suggest that 'important changes can occur for young adults in dealing with ethical issues'.[85]

There is currently considerable debate about the ideal time to introduce ethical education.[86] Although there is considerable support for the notion that ethics should infuse the entire course, there is also general agreement that this must be anchored by a sound introduction to ethics in first year.[87]

It is argued here that it is imperative that an introduction to legal ethics commences in first year. This is because the teaching-learning model that is necessary to impart an appreciation of ethics is unlike the traditional transmission of information models. Consistent with the ethic of care approach, an analogy for teaching legal ethics can be drawn from the manner in which parents impart values to their children. Parents employ a multi-faceted approach. For example, learning to share is an important skill which is a part of a wider value of caring for others. To teach a child to share, a parent may:

(i)   model sharing;
(ii)   encourage sharing;
(iii) read stories/watch videos about sharing;
(iv)   point to examples of others who share; and
(v)   acknowledge steps toward sharing.

Thus parents typically employ a wide range of skills to impart a value. They persist and they also reinforce learning. Though a child's capacity to share develops slowly, over time, the virtue of generosity may become a part of the child/adult's character.

Similarly, in developing a model to teach legal ethics it may be necessary to introduce information in a variety of formats, to model ethical behaviour, encourage discussion, challenge existing viewpoints, acknowledge achievements and reinforce this process over time. The three to five year time span of undergraduate legal studies provides a

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[83]   Taylor, above n 76, 34.

[84]   Hamilton, above n 35, 107.

[85]   D Rhode, *Professional Responsibility: Ethics by the Pervasive Method* (Aspen Publishers, 2nd ed, 1998) 6-7 quoted in Ross, above n 7, 24; Armer, above n 2, 253.

[86]   Henriss-Anderssen, above n 5, 45; Webb, above n 5; Armer, above n 2, 247.

[87]   Henriss-Anderssen, above n 5 54; Webb, above n 5, 146; Hamilton, above n 35, 110; A Zariski, 'Teaching Legal Ethics Online: Pervasive or Evasive?' (2001) 12 *Legal Education Review* 131, 134-136.

perfect window of opportunity to model and encourage the values which underpin principled practice.[88] It also provides a sufficient time span in which to demonstrate that ethics is not static, that it is instead constantly informed by the changing socio-political circumstances in the wider community.

According to anecdotal reports, educators seem to despair at the lack of critical thinking skills evidenced by law students. This is perhaps not a surprising outcome given that much of the undergraduate course is directed toward the unquestioning absorption and regurgitation (at exams) of a large quantity of information in a short space of time. However, if students are introduced to a more critical perspective at the outset of their program, they have the opportunity to consider the whole program through this lens. Furthermore, although the demands of undergraduate study are rigorous, the years of undergraduate study provide an ideal opportunity for reflection on and discussion of ethical issues within a potentially supportive environment.

XIV   HOW CAN IT BE DONE?

The model proposed here for an ethics education program could be used as a learning tool or a resource in existing introductory first year subjects.[89] Although the model is presented as a discrete online learning tool, it is not intended to be taught simply as an isolated component of a unit. It could be described instead as a 'milieu', that is, a medium or an environment[90] which supports an ongoing flow of information and discussion. The milieu is not static; it changes with a constant ebb and flow of information, interaction and collaboration. Although it is anticipated that students might wish to access the site regularly as they progress through their course, in introducing first year students to the site, assessment activities would provide a structured medium to encourage engagement with the material.

In addition, the site could provide a touchstone for an institutional approach to ethics. A criticism of attempts to infuse ethics education throughout the undergraduate law degree is that it equates to 'sprinkl[ing] moral and political comment over the top of ["legal" facts] like so much icing sugar'.[91] Reasons for this phenomenon include a lack of co-ordination of ethical education, reluctance by teachers to incorporate the material in a way that indicates its significance and further that teachers often feel they lack expertise in ethics.[92] This site has the potential to serve as a statement of an institutional approach to ethics, a resource for both teachers and students and as a source of ideas and challenges that may prompt students and teachers to question facets of black letter law subjects.

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[88]   Henriss-Anderssen, above n 5, 55.

[89]   At Queensland University of Technology there are four introductory subjects in the undergraduate LLB Program: Law, Society and Justice, Legal Institutions and Methods, Legal Research and Writing and Law and Global Perspectives.

[90]   A Delbridge et al (eds), *Macquarie Dictionary* (Macquarie Library, 2nd ed, 1991).

[91]   S Toddington, 'The Emperor's New Skills: The Academy, The Profession and the Idea of Legal Education' in P Birks (ed), *What are Law Schools For?* (Oxford University Press, 1996) 74, quoted in Webb, above n 5, 137.

[92]   Henriss-Anderssen, above n 5, 55.

XV   SO WHY USE AN ONLINE SITE?

Although significant academic debate continues as to the relative merit of online versus face to face teaching,[93] there is considerable evidence that online sites that incorporate good learning principles are valuable learning tools.[94] In evaluating merit, these sites must be distinguished from the multitude of poor quality sites which provide a disembodied replica of transmission learning models.[95] This is because the technology is so relatively new that oftentimes what is defined as online delivery ranges from simple text delivery to highly innovative and interactive models, and therefore the outcomes are somewhat variable.[96]   Nonetheless, it appears that courses that are grounded in good pedagogical principles and innovative design are able to offer substantive learning outcomes.[97]   Technology also offers the opportunity to design learning tasks which are interesting, engaging and flexible.

XVI   A NEW PARADIGM MEETS A NEW TECHNOLOGY

Given our familiarity with and often reliance on the World Wide Web, it is easy to overlook that it was invented only 12 years ago and that the first large scale online education courses were trialled as recently as 1996.[98] A vast amount of literature is rapidly accumulating on the design, implementation and evaluation of online courses in higher education, yet online delivery is clearly in its infancy. Perhaps it is not surprising then that to date a significant number of online courses are seeking to simply replicate face to face teaching through technology.[99] These courses rely on text transmission models — where the expert teacher imparts information to the student while the student passively listens or reads. The outcome is flexible delivery — but this

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[93]   M Cartwright and S Migdal, *Electronic Delivery in Law What Difference Does it Make to Results?* (2000) 56-57 Web Journal of Current Legal Issues <http://webjcli.ncl.ac.uk/2000/issue4/migdal4.html> at 12 August 2003; R Oliver, 'Exploring Strategies for Online Teaching and Learning' (1999) 20 *Distance Education* 240, 241; R Hassan, 'Net Results: Knowledge, Information and Learning on the Internet' (2001) 2 *Journal of Educational Enquiry* 44.

[94]   S Colbran, 'Multimedia Teaching and the Law-Perspective and Future Applications in Law Schools' (1995) 6 *Journal of Law and Information Science* 164, 164-165; R Oliver, A Omari and J Ring, *Connecting and Engaging Learners with the WWW* (1998) Teaching and Learning in Changing Times: Proceedings of the 7th Annual Teaching and Learning Forum <http://lsn.curtin.edu.au/tlf/tlf1998/oliver.html> at 16 August 2003; M McElhone, 'A Methodological Approach to Educational Innovation: A Case Study Involving Web-based Learning' (Paper presented at the British Educational Research Association Conference, Cardiff University, 7-10 September 2000) 1, 1.

[95]   R Oliver, 'When Teaching Meets Learning: Design Principles and Strategies for Web-based Learning Environments that Support Knowledge Construction' (Paper presented at the ASCILITE Conference, Coffs Harbour, 9-13 December 2000) 1-2.

[96]   Oliver, above n 93, 241.

[97]   K Jona, 'Rethinking the Design of Online Courses' (Paper presented at ASCILITE Conference, Coffs Harbour, 9-13 December 2000) 1, 11.

[98]   L Harasim, 'Shift Happens: Online Education as a New Paradigm in Learning' (2000) 3 *Internet and Higher Education* 41, 43.

[99]   Oliver, above n 95, 2; D Laurillard, 'Rethinking University Teaching in a Digital Age' (Paper presented at the Forum for the Future of Universities, Aspen, Colorado, September 2001) 2; Jona, above n 97.

begs the question of whether universities need to be so limited in their goals for online delivery.[100]

Providing an online course will not guarantee learning outcomes any more than the presence of a campus library guarantees them.[101] In other words, new technology, no matter how innovative will not substitute for poor pedagogy.[102] Making the most of technology requires attention to student needs and careful program design based in sound pedagogical principles.[103] Although text transmission models provide a poor theoretical basis for the development of online programs, this is not to imply that all learning theories that have been designed to support face to face modes of delivery should be discarded.[104] In fact the reverse is true – existing theory can be an invaluable tool in developing online programs. This is provided that it is responsive to student learning needs and is used to drive the program design in a way that it is anticipated will achieve the desired learning outcomes.[105] This is particularly true of constructivist and collaborative learning theories and these are used as the theoretical basis for designing this site.

The design process for this site is outlined in **Table 3**.

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[100]   T Booth, 'Learning Environments, Economic Rationalism and Criminal Law: Towards Quality Teaching and Learning Outcomes' (2001) 3 *University of Technology Sydney Law Review* 17, 17.

[101]   T C Reeves, *A Model of the Effective Dimensions of Interactive Learning on the World Wide Web* <http://it.coe.uga.edu/~treeves/WebPaper.pdf > at 1 September 2003.
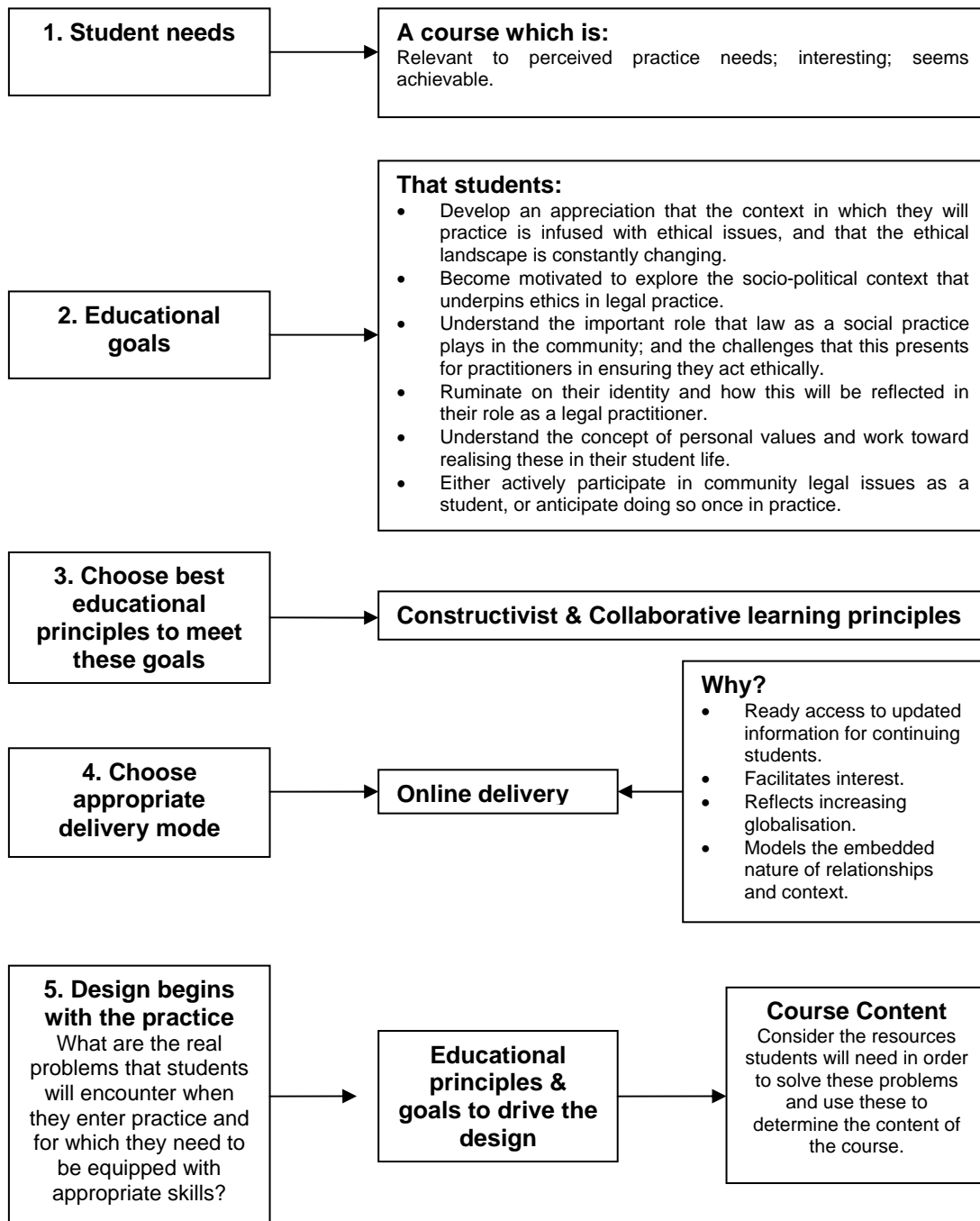
[102]   T Govindasamy, 'Successful Implementation of e-Learning Pedagogical Consideration' (2000) 4 *Internet and Higher Education* 287, 288.

[103]   R Geer, 'Social Interdependence in Collaborative Interactivity in an Internet Based Learning Environment' in *Distance Education: An Open Question* (University of South Australia, 2000) [CD ROM]1, 2; R L Hannah, 'Merging the Intellectual and Technical Infrastructures in Higher Education: The Internet Example' (1998) 1 *The Internet and Higher Education* 7, 12-13; G Hughes and D Hay, 'Use of Concept Mapping to Integrate the Different Perspectives of Designers and Other Stakeholders in the Development of E-learning Materials' (2001) 32 *British Journal of Educational Technology* 557, 559; D Laurillard, *Rethinking University Teaching: A Framework for the Effective Use of Educational Technology* (Routledge, 1993); S Edmonds, 'On-Line Subject – "Enter at Own Risk (Teacher Bound and Gagged)"' (Paper presented at AARE Conference, Melbourne, 1999) 1.

[104]   D Crean, 'Quicktime Streaming: A Gateway to Multi-modal Social Analyses' in N Smythe (ed), *Proceedings of the Apple University Consortium Conference* (James Cook University, 2001) 3-1 - 3-10, 3-3.

[105]   C McLoughlin and J Luca, *Cognitive Engagement and Higher Order Thinking Through Computer Conferencing: We Know Why But Do We Know How?* (2000) Teaching and Learning Forum Curtin University <http://lsn.curtin.edu.au/tlf/tlf2000/mcloughlin.html> at 1 September 2003.

TABLE 3
Program Design

| 1. Student needs | → | **A course which is:**
Relevant to perceived practice needs; interesting; seems achievable. |

| 2. Educational goals | → | **That students:**
• Develop an appreciation that the context in which they will practice is infused with ethical issues, and that the ethical landscape is constantly changing.
• Become motivated to explore the socio-political context that underpins ethics in legal practice.
• Understand the important role that law as a social practice plays in the community; and the challenges that this presents for practitioners in ensuring they act ethically.
• Ruminate on their identity and how this will be reflected in their role as a legal practitioner.
• Understand the concept of personal values and work toward realising these in their student life.
• Either actively participate in community legal issues as a student, or anticipate doing so once in practice. |

| 3. Choose best educational principles to meet these goals | → | **Constructivist & Collaborative learning principles** |

| 4. Choose appropriate delivery mode | → | **Online delivery** | ← | **Why?**
• Ready access to updated information for continuing students.
• Facilitates interest.
• Reflects increasing globalisation.
• Models the embedded nature of relationships and context. |

| **5. Design begins with the practice**
What are the real problems that students will encounter when they enter practice and for which they need to be equipped with appropriate skills? | → | **Educational principles & goals to drive the design** | → | **Course Content**
Consider the resources students will need in order to solve these problems and use these to determine the content of the course. |

XVII   THE DESIGN PROCESS

As detailed in **Table 3**, the course design involves a five step process. Each of these steps will be considered in turn.

A   *Student Needs*

Firstly, student needs reflect a generic desire of students that course content be interesting. Also, because the reading load in law courses is already very high, students need to be able to engage with the course without unduly adding to their reading load. The emphasis on visual resources is also responsive to student needs because many learners process information more effectively through a visual medium or through a combination of text and graphics.[106] In addition, younger learners today have much higher levels of visual literacy because of their exposure to film and computers than preceding generations. This is arguably an intelligent response to modern culture which is becoming increasingly visual and should therefore be encouraged and developed.[107] The adoption of an online delivery mode is also responsive to the increased technical ability of younger students who may prefer computer mediated delivery over face to face learning.[108]

B   *Educational Goals*

The educational goals derive from the alternative conception of applied legal ethics discussed above. The aims of the program represent both a macro and micro approach.[109] Macro issues relate to increasing student knowledge of the broader social and political context which impact on law and legal ethics; and to the role of law and lawyers in the community. Micro issues are concerned with issues of personal values, identity, developing virtues and involvement with community legal services. The emphasis is not simply on skill and competence, but on guiding students in embarking on a process which may lead them in time to become practitioners who are 'thoughtful, wise and contemplative'.[110]

C   *Educational Principles*

Constructivist and collaborative theories have been chosen because they are widely recognised as being superior to instructional systems design (text transmission models).[111] The underlying premise of both approaches is also consistent with the alternative conception of applied ethics. Constructivist and social constructivist

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[106]   C McLoughlin and K Krakowski, 'Technological Tools for Visual Thinking: What Does the Research Tell Us?' in N Smythe (ed), *Proceedings of the Apple University Consortium Conference* (James Cook University, 2001) 13-1 – 13-12, 13-2.

[107]   M D Sankey, 'Considering Visual Literacy When Designing Instruction' (2002) 5 *Journal of Instructional Science and Technology* 1, 1-5.

[108]   Hannah, above n 103, 10.

[109]   Webb, above n 5, 136.

[110]   D Schön, *The Reflective Practitioner: How Professionals Think in Action* (Basic Books, 1st ed, 1983).

[111]   Oliver, above n 95, 2; T Greening, 'WWW Support of Student Leaning: A Case Study' (1998) 14 *Journal of Educational Technology* 49, 49-50.

principles suggest that learning occurs through a process of knowledge construction, meaning making and interpretation in response to realistic contexts.[112] Further, these theories recognise that students are encumbered by their experiences and needs and that the social dimensions of the learning environment are critical to success.[113]

This suggests that successful online programs should present practice based realistic problems to students and then provide sufficient support to assist students in working through the learning task. Students in effect, learn by doing, by making mistakes and by reflecting on the process.[114] Ideally, the task would be set at a level just beyond the cognitive reach of the student and scaffolding (assistance or guidance) provided to assist the student in completing the learning task successfully.[115] Effective scaffolds include relevant resources, timely academic interventions and collaborative learning environments.[116] This type of scaffolding supports the conversational model of learning described by Laurillard[117] because it encourages both dialogue and reflection.[118] In particular, the use of collaborative learning environments can significantly increase student understanding and enhance learning outcomes.[119] Above all, students must be situated as active participants in the learning process because the more control they have of the learning process, the more they are likely to engage with it.[120]

D   *Delivery Mode*

The fourth step in the design process is choosing an effective mode of delivery. An online medium was chosen because it offers a number of advantages. Firstly, students who have completed the course requirements in first year will still be able to access the online site in later years so that their knowledge can remain current and the site can easily be updated by academic staff.[121] Secondly, online sites are potentially highly

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[112]   Oliver, above n 93, 242.

[113]   Oliver, above n 95, 3.

[114]   Laurillard, above n 99, 2.

[115]   Jona, above n 97, 6; R Oliver, A Omari and J Herrington, 'Investigating Implementation Strategies for WWW-based Learning Environments' (1998) 25 *International Journal of Instructional Media* 121, 125.

[116]   J Luca et al, 'Designing an Online Learning Environment to Support the Development of Generic Skills: A Case Study' in N Smythe (ed), *Proceedings of the Apple University Consortium Conference* (James Cook University, 2001) 11-1 – 11-8, 11-2.

[117]   D Laurillard, *Rethinking University Teaching* (Routledge/Farmer, 2nd ed, 2002) 77-78.

[118]   McLoughlin and Krakowski, above n 106, 13-9.

[119]   S Ho, *Encouraging Online Participation?* (2002) 1 Teaching and Learning Forum 2002, Curtin University <http://www.ecu.edu.au/conferences/tlf/2002/pub/docs/Ho.pdf> at 11 January 2005; R Johnson, *Teaching in an Electronic Environment: (E)Research, (E)Learning, (E)Teaching in (E)ntrapment* <http://www.aare.edu.au/01pap/joh01197.htm> at 25 September 2003.

[120]   Jona, above n 97, 10; Sir R Dearing, *Report of the National Committee of Inquiry into Higher Education, London, HMSO* (1997) [8.3] <http://www.leeds.ac.uk/educol/ncihe/> at 20 October 2003; A Paliwala, *Learning in Cyberspace* (2001) Journal of Information, Law and Technology <http://elj.warwick.ac.uk/jilt/01-1/paliwala.html> at 1 September 2003; J Herrington and R Oliver, 'An Instructional Design Framework for Authentic Learning Environments' (2000) 48 *Educational Technology, Research and Development* 23, 25-27.

[121]   Marlene Le Brun referred to this as an expandable web-site. See M J Le Brun, 'Maximise Modelling, Minimise Drudgery, Enhance Learning: Developing and Customising an Expandable Web Site that Teaches Law Students How to Interview and Counsel Clients' (2002) 3 *Journal of Information, Law & Technology* 1; A Paliwala, 'Leila's Working Day: One of the Futures for

interactive and this can make the study process more interesting. Thirdly, the ethos of the course is directed toward demonstrating the interconnected nature of relationships and enhancing student knowledge of global justice issues. The internet provides an ideal tool for accessing information and relevant organisations and also for illustrating the constantly changing landscape of politics, human rights and justice issues. Although a feeling of isolation is often identified as a negative by-product of online learning, some evidence is emerging that online collaborative discussions can provide an even higher level of connection than face to face courses providing they are effectively supported by academic staff.[122] Fourthly, asynchronous learning allows maximum flexibility for students who often have commitments outside of their university life. Fifthly, some developers believe that online technology has the potential to be an effective tool in developing students' higher order and critical thinking skills.[123] Finally, online sites allow considerable design control and provide scope for multiple innovations.[124]

E   *Practice Based Design*

The final step in the design process is the creation of authentic learning tasks which replicate 'real world' situations.[125] The learning support necessary to problem solve or consider or evaluate the learning task must then be designed. A particular advantage of online technology is that it is not difficult to produce learning resources that appeal to different types of sensory learning. Learning materials can be visual, animated,[126] auditory, digested text and hyper-linked to other sites – all of which tend to increase interest and relevance and may be more engaging than standard texts.[127] Stories/narratives and case studies could also be included as learning tools as there is evidence that students remember stories better than abstract principles.[128]

Inherent in the design of the online program is the same 'bottom up' rather than 'top down' approach as that embodied in the alternative conception of applied ethics. Both reflect a strong anchoring in practice and this is an ethos that should therefore infuse the online site.   Although it is beyond the scope of this paper to provide a truly

Legal Education' in A J Kinahan (ed), *Opening Pandora's Box? A Review of Now and Then: A Celebration of Sweet & Maxwell's Bicentenary 1999* (Sweet & Maxwell, 1999) 9.

[122]   P Taylor et al, 'Can Teaching in a Virtual Classroom Enhance Real Learning?' (2000) 1 *FID Review* 121, 127.

[123]   McLoughlin and Luca, above n 105; C McLoughlin and J Luca, 'An E-learning Solution to Creating Work-related Skills and Competencies for the Knowledge-based Economy' in N Smythe (ed), *Proceedings of the Apple University Consortium Conference* (James Cook University, 2001) 14-1 — 14-13, 14-3; Oliver, Omari and Herrington, above n 115, 121-122; Colbran, above n 94, 170; D R Geeland and P C Taylor, 'Embodying our Values in Our Teaching Practices: Building Open and Critical Discourse through Computer Mediated Communication' (2001) 12 *Journal of Interactive Learning Research* 375, 375-376.

[124]   Oliver, Omari and Herrington, above n 115, 121-122.

[125]   Oliver, above n 94, 5; Luca et al, above n 116, 11-4.

[126]   R Lowe, 'Beyond "eye candy": improving Learning with Animations' in N Smythe (ed), *Proceedings of the Apple University Consortium Conference* (James Cook University, 2001) 10-1, 10-1 — 10-9.

[127]   S J Bell, 'Discovering Cyber Lectures' (2002) (Spring) *Netconnect* 16, 16.

[128]   Jona, above n 97.

comprehensive consideration of the pedagogical issues relevant to this program, four significant issues are identified and discussed below.

XVIII   THE THREE 'R'S': RELEVANT, RESPONSIVE, RESOURCED

Ensuring that the course is based in practice and draws on the contextual issues of students' lives will assist in ensuring the course remains relevant. Therefore, learning tasks must be based around 'real world' issues and be somewhat open-ended to allow students to explore the resources provided.[129]

Responsiveness is a higher order value that develops from ethical attunement and empathy. It is also a fundamental character trait for ethical lawyers implying both awareness of ethical issues and an ability to respond appropriately. Therefore this trait should be actively modelled by staff involved with the program. Promptly responding to any concerns students have in using the site or the course materials and conveying an attitude of care and concern for their needs is important.[130] Further, online discussions are a particular area where responsiveness can be modelled and encouraged by staff. This means that staff would encourage and acknowledge participation, validate the ideas of contributors and facilitate positive interaction between participants.

Another important task for staff is maintaining a well resourced site. The study of law is heavily text based and the reading requirements placed on students are often onerous. Requiring additional extensive reading is unlikely to assist in engaging students in this process.[131] It is therefore proposed that although online resources should be plentiful and varied, the majority of this material should be presented in a digested format.[132]

XIX   ISOLATED OR EMBEDDED

A frequent criticism of online courses is that students feel isolated from their instructors and other students.[133] Not only does isolation have a negative impact on learning outcomes, active collaboration around learning has been demonstrated to achieve positive outcomes.[134] Although the example of students discussing issues in the coffee shop after lectures is often cited as a traditional medium for collaborative learning, this can be overstated because shy students and those with work and family commitments may not interact in this way.[135] Nonetheless, if learning is an essentially social process,

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[129]   Oliver, above n 95, 6; B Finch and D Stewart, 'The Future in Online Legal Education' (Paper presented at the Strait to the Future: Conference Proceedings: the 8th Asia-Pacific Specials, Health and Law Librarians Conference, Hobart, 22-26 August 1999) 4.

[130]   J Clark, 'Stimulating Collaboration and Discussion in Online Learning Environments' (2001) 4 *Internet and Higher Education* 119, 122.

[131]   Booth, above n 100, 24.

[132]   Oliver, above n 94, 7.

[133]   A Zariski and I Styles, *Enhancing Student Strategies for Online Learning* (2000) 3 Teaching and Learning Forum Curtin University <http://lsn.curtin.edu.au/tlf/tlf2000/zariski.html> at 1 September 2003; N Blake, 'Tutors and Students Without Faces or Places' (2000) 34 *Journal of Philosophy of Education* 183, 183-184.

[134]   McLoughlin and Luca, above n 105, 3; Oliver, Omari and Herrington, above n 115, 123.

[135]   Geer, above n 103, 6; A G Picciano, 'Beyond Student Perceptions: Issues of Interaction, Presence, and Performance in an Online Course' (2002) 6 *Journal of Asynchronous Learning Networks* 1, 3.

then strategies must be developed to implement collaborative learning which go beyond simply placing students in groups, but instead encourage authentic interaction.[136]   In light of this, there is considerable concern about the lack of student participation in dedicated online discussion forums – blame for which is easily attributed to the medium.[137]   However, there is equally substantial evidence that online discussion forums can be employed to good effect where academics thoughtfully and actively facilitate the discussion.[138]   Some commentators have noted that far from being de-humanising, online education can provide real connection on many levels – with the global community, the community of learners and with the teacher.[139]   At the same time, the commitment involved in this task cannot be underestimated, but there is considerable guidance in the current literature on effective online facilitation.[140]

Further, students tend to collaborate in working toward mutual goals when they feel supported, encouraged and validated.   However, they eschew collaboration in competitive environments where they feel under pressure to perform but are uncertain what is expected of them.   Because the ethos in law schools is generally very competitive, particular attention must be paid to this aspect of the program.   It is suggested that the issue could be raised directly with students, but importantly should be reinforced through the employment of a pass/fail grading for assessments that require collaboration.   It is an unreasonable pressure on students to expect them to collaborate and compete at the same time.[141]

A further advantage of online discussion is that it allows considerable scope for tutors to reflect on their own comments before posting them and also to enliven the discussion with new resources.[142]   For example: to further the objective of mentoring, guest contributors could be invited into the online dialogue.   This would add considerably to the course without being a major inconvenience to the guest contributor – they could

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[136]   T Fuller and S Soderlund, 'Academic Practices of Virtual Learning by Interaction' (2002) 34 *Futures* 745, 753-754; K Kreijns, P A Kirschner and W Jochems, 'Identifying the Pitfalls for Social Interation in Computer-Supported Collaborative Learning Environments: A Review of the Research' (2003) 19 *Computers in Human Behaviour* 335, 338.

[137]   Kreijns, Kirschner and Jochems, above n 136, 335-336.

[138]   A Brown, 'Designing for Learning: What are the Essential Features of an Effective Online Course?' (1997) 13 *Australian Journal of Educational Technology* 115, 125.

[139]   Hannah, above n 103, 13; Geer, above n 103, 3; L Hewson and C Hughes, 'Templates for Online Teaching' (Paper presented at ASCILITE Conference, Wollongong, 14-16 December 1998) 329, 331.

[140]   Johnson, above n 119, 5-6; Fuller and Soderlund, above n 136, 751; S Edelstein and J Edwards, *If You Build it, They Will Come: Building Learning Communities Through Threaded Discussions* (2002) 5 Online Journal of Distance Learning Administration <http://www.westga.edu/%7Edistance/ojdla/spring51/edelstein51.html> at 1 September 2003; D E Hailey Jr, K Grant-Davie and C A Hult, Online Education Horror Stories Worthy of Halloween: A Short List of Problems and Solutions in Online Instruction (2001) 18 *Computers and Composition* 387; Dr W R Klemm, Eight Ways to Get Students More Engaged in Online Conferences <http://www.thejournal.com/magazine/vault/A1997.cfm> at 23 August 2003.

[141]   It can be noted that the University of Queensland Medical Program employs a similar model. Students work collaboratively in groups to solve practice related problems and are afforded a Pass/Fail mark. See also McLoughlin and Luca, above n 105, 3; S Bennett, B Harper and J Hedberg, 'Designing Real-life Cases to Support Authentic Design Activities' (Paper presented at ASCILITE Conference, Melbourne, 9-12 December 2001) 73, 76.

[142]   Fuller and Soderlund, above n 136, 751.

simply log on to the system to make their contributions. One other factor that should not be overlooked is that there is evidence that effective collaborative learning is built on a foundation of sufficient informal social exchanges, so opportunity for this should be built into the program.[143] Finally, the online medium has a particular advantage in that otherwise shy students may be encouraged to contribute to discussion with this medium.[144]

XX THE HABITUS OF THE SITE

A concept which may usefully be employed in developing an online site is the idea of 'habitus'. Habitus[145] refers to an 'embodied understanding'.[146] This describes the way in which an agreed culture or approach or value set can be reflected or created in the physical spaces that we inhabit.[147] Attention to habitus is a simple yet powerful learning tool. In the context of this online site, this means that the values, learning goals and ethical orientation that teachers seek to convey to students could be given concrete expression in the way the site is arranged, the fonts, the colours, the vibrancy and the tone of information delivery.

> We learn, I believe, not from texts or other resources, but from someone. The best online resources take account of this: you have the feeling that there is someone there, that the writers have taken care to put themselves in to the production process at the level of some detail … this has been produced by people who have a deep love for knowledge which is expressed not just intellectually but aesthetically. The choice of font, the layout of the pages, the use of graphics are all a consequence of a deep sense of purpose[148]

The habitus of the site could also reflect the evolving and non-static nature of ethical issues by regularly transforming its visual appearance and content. Regular updates on law reform, human rights and major political events could be posted. Photos used in the screen interfaces could change each time the site is accessed by a user. Topics for discussion could be changed at regular intervals. Discussion groups could provide a major point of interaction. As noted above, collaborative discussion presents an opportunity for discussion facilitators to model responsiveness, inclusion and care.[149] Tutors can also demonstrate the inter-disciplinary nature of legal ethics by introducing ideas and concepts from other disciplines so as to encourage critical thinking. Overall, the aim of this site would be to ensure that upon entering it, students feel that they and their ideas are acknowledged, and that they are encouraged to deeply explore issues that capture their interest. Above all, that taking the time to be informed, to reflect on issues and to consider these issues within the broader context of professional and personal development are important aspects of the ethical life.

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[143] Geer, above n 103, 3, 6.

[144] Fuller and Soderlund, above n 136, 751; J Wardrop, *Layering Learning: Using the Web to Build Flexible Learning Environments* (2001) 7 Teaching and Learning Forum Curtin University <http://lsn.curtin.edu.au/tlf/tlf2001/wardrop.html> at 11 January 2005; Booth, above n 100, 17.

[145] This idea was originally developed by Foucault and later expanded upon by Bourdieu.

[146] Taylor, above n 20, 29.

[147] Ibid.

[148] Johnson, above n 119.

[149] Geeland and Taylor, above n 123, 375-376.

XXI   THEMES OF CONTENT

The table below outlines the type of content that may be included in the site, together with a suggested format. The design of appropriate screen interfaces and linking pages is a substantial development step that is beyond the scope of this paper.[150] However, a pilot program based on this outline is currently under development by the Queensland University of Technology Law Faculty.[151]

Themes of Content	*Format*	*Interaction*	*Currency*
Current legal issues	Digests of topical issues relating to legal ethics and social justice	• Links to leading news and legal sites • Moderated online discussion of topical issues relating core legal units to current affairs • Digests of relevant articles from professional organisations	Weekly updates
Human Rights	• World map linked to 'human rights hotspots' that provide digested information on issues in those areas • Interviews with lawyers currently volunteering with human rights organisations • Mini tutorials on central concepts[152]	• Links to relevant websites • Links to relevant video streaming	Bi-annual updates
Law Reform	• Digested information on current law reform issues • Interviews with Senior legal professionals on the relevance of law reform	Links to law reform sites	Monthly updates

Vulnerable groups within the community	• Interactive quizzes testing knowledge and presenting information about vulnerable groups including:
	  • Homeless people
	  • Indigenous Australians; and
	  • Refugees
		• Links to relevant websites
		• Interviews with lawyers currently volunteering in these areas of the community
			Bi-annual updates

Ethical Perspectives	Interactive exercises that encourage students to consider ethical dilemmas from different perspectives[153]	• Core exercises on confidentiality, cheating and stealing • Support data to include links to relevant university rules, summaries of law	Annual review

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[150]   J Kirk and G Kennedy, 'Adding Value to Educational Multimedia: the Role of Graphic Design' (Paper presented at ASCILITE Conference, Melbourne, 9-12 December 2001) 93, 94.

[151]   Associate Professor Sally Kift (Assistant Dean, Teaching and Learning) is overseeing this project.

[152]   W R Foshay, 'Distance Learning: Is that all there is My Friend?' (2002) 3 *The Quarterly Review of Distance Education* 65, 70.

[153]   A Goldsmith, above n 4, 13-15.

		society disciplinary cases, and video links to relevant material	
Character (courage; dedication; reliability; honesty; integrity)	• Interviews with senior legal professionals discussing legal ethics and social justice • Interviews with junior legal professionals focussing on voluntary legal work in the community • Biographies of inspirational lawyers	Biographies and interviews change each week	Annual review
Community legal services	Interviews with community lawyers	• Links to community law web pages • Liaison with Law Students Association to develop avenues for students to pursue voluntary work if they choose to	Bi-annual update
Women and the Law	Quotes from women lawyers across time	Online discussion of current issues Guest contributors to the discussion	Annual update Monthly discussion group
Conflicts of Interest	Conflict of interest quiz	Links to digests of real life law society cases dealing with conflicts of interest	Annual update

XXII   CONCLUSION

Legal educators attempting to inculcate an ethical attitude in law students are placed in a difficult position. On the one hand they are subject to enormous pressure from both the public and the profession to produce ethical graduates; on the other hand, students seem to find legal ethics courses uninteresting and irrelevant. This paper has outlined a model for reconceptualising legal ethics in a way that anchors it in practice and is more responsive to the 'real life' experience of students. The design presented in this paper for an online site that supports a different approach to legal ethics education may offer a way forward for engaging first year students in legal ethics.