

Good Legal Education

1.1 Introduction: Forget Money

There are a range of reasons for choosing to study law. Some students are unsure what to do while some are really interested in the idea of law as a concept and do not intend to become lawyers, but many are attracted to the possibility of courtroom excitement and have a desire to ‘make a difference’. Advocacy in courts, in negotiation, mediation and in numerous lawyers’ offices has great potential to improve the law and the lives of others. Assuming you have a choice, how will you decide which law school will be best for you?

All law schools in Greater China must cover a specific set of subjects that will develop a base level of legal knowledge and some skills. Many will prepare you for the broad range of lawyers’ roles. Some do it better than others. If you can comfortably make a decision on your own about which law school to go to, then go ahead. But some parents and families also want to get involved with choosing law schools, and while they (of course) want a rewarding and secure career for you, they are sometimes thinking about big incomes too. When that happens, identifying preferences for a particular law school can get more complicated. The important thing is to know what your own motives are for aiming at a particular law school and law degree. Large incomes are available in some types of legal practice, but not as commonly as you may think. A small number of lawyers make a great deal of money, but many do not. If you think your priority is to make a lot of money quickly from business and you don’t really mind how, then this book will not help you greatly. However, if you like reading, problem solving, negotiating, arguing, working independently and as a team; if you want to be a lawyer and make a reasonable income that is less likely to disappear when the economy turns down; if you want to contribute to a stable society and do justice, but not at the cost of your self-respect or your friends and relationships, then keep reading.

Law students and new lawyers will also find much to engage them in this book, because the primary focus is on the moral (ethical¹) challenges of legal practice. There are many publications and short courses that address the technical knowledge and skills of lawyering, but fewer in the area of ethics and morality. Morality remains difficult for many people, including many lawyers, and represents a professional risk that is often left lying around until a problem appears. The main problem areas are in truthfulness and lying, in keeping and divulging secrets, and in conflicts of interest, though these do not exhaust the list.

In Greater China, the number of lawyers relative to total population has increased over the years. However, there are too few of us in the regional and rural areas and in occupations pursuing justice, and probably too many in business, banking and finance. The competition for legal work is increasingly fierce, particularly in commercial and corporate areas. Sometimes, that competition causes problems. Even though many lawyers are vaguely aware of ethical danger, corners are cut, bills are overloaded, reputations are damaged and justice suffers. As a consequence, the wider community can be wary of us and wary of our priorities, even if everyone wants to know and trust their own lawyer. So while many regions are training more lawyers, what our communities actually need are better lawyers.

This book aims to make you a better person and, we hope, a better lawyer. 'Better' does not mean clever or more highly skilled – although that is necessary and should go without saying; better means more socially and morally responsible. That is, a 'good' lawyer. Confucius said that:

Wisdom, compassion, and courage are the three universally recognized moral qualities of men.²

And if this is true for non-lawyers, how much more true must it be for good lawyers?

This focus on the *good Chinese lawyer* should guide you in a decision to study law and help you to decide what type of law practice to aim for and how to be ethical – wise, compassionate and courageous – in whatever area you work.

1.2 Types of Law Degrees

You may think you want to be a lawyer, but don't really know what is involved in studying law or the 'lawyering' that comes afterwards. You

may decide not to practise law at a later date or might think, correctly, that knowledge of law will be useful in some other occupation. Ethical lawyering capacity will be very valuable in a range of occupations, particularly finance, accounting, auditing, estate planning, taxation, sustainable development, management and banking.

What degree options are available? After over thirty years of reform and development, legal education in the People's Republic of China (mainland China) has become a multi-level, multi-type degree system. Figure 1.1 sets out the connections.

In mainland China there are both Bachelors (LLB) and JD degrees as well as various Masters and doctoral combinations, all regulated by the Ministry of Education and the Ministry of Justice.³ The curriculum is

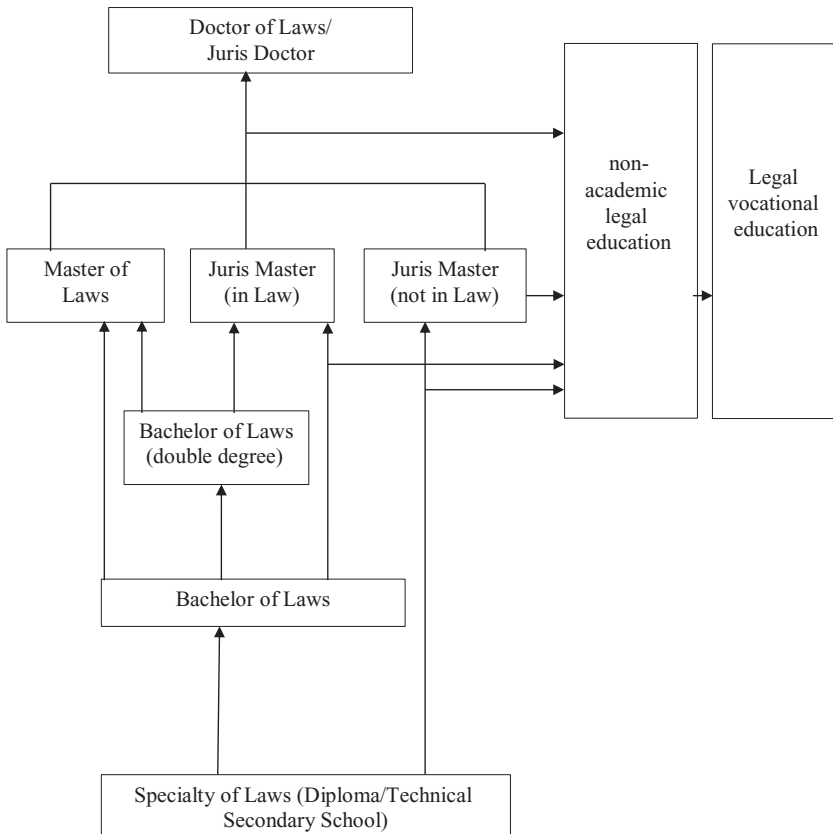


Figure 1.1 Types of law degrees in the People's Republic of China

socialist, typically with compulsory courses in Administrative law, Constitutional law, Criminal law, Criminal Procedure law, Civil law, Civic procedure law, Commercial law, International law, Intellectual property law, Jurisprudence, Legal logic, the Legal history of China and Legal English. Some mainland China law schools have introduced three-year Masters (LLM) degrees (*faxue shuoshi* 法学硕士) as well as two- or three-year JM degrees (*fali zhuanye shuoshi* 法律专业硕士) modelled on the JD degree in the United States.

In Taiwan, there are also LLB and JD degrees, both regulated by the Ministry of Education, the Ministry of Justice and Examination Yuan.⁴ The law school curriculum is one of civil law, and has compulsory courses in Administrative law, Constitution law, Civil law, Criminal law, Commercial law, Family and succession law (身分法), International law, Jurisprudence, Labor law, Legal ethics and Legal English.⁵

Hong Kong has an English common law curriculum with LLB and JD degrees and a Postgraduate Certificate in Laws (PCLL), but the compulsory courses are still quite similar to mainland China and Taiwan: Administrative Law, Constitutional Law, Criminal law, Commercial Law, Equity and trusts, Jurisprudence, Land law, Law of tort, Law of contracts, Legal system of the PRC, Legal theory and Legal ethics.⁶

The problem, however, is that there is no simple way to compare different law schools or an automatic way to work out whether a single law school will provide you with a good legal education, as defined above.

1.3 Being Good Requires More than Expertise

If your ambition is to be a good lawyer and to find the right law degree for this, then knowing what good *is* seems important. Some 40 years ago, US legal ethicist David Luban edited a book entitled *The Good Lawyer: Lawyers' Roles and Lawyers' Ethics*.⁷ Luban's objective was to set out, for that era and culture, what good lawyering was and all the reasons why good lawyering makes more sense than any other approach. Luban defined a good lawyer as a moral (ethical) person, not just someone who knows the law well. His radical – and some said his heretical⁸ – prescription was to turn legal ethics on its head by suggesting a move away from dependence on sets of rules about what to do or not do in difficult or illegal situations, or simply prioritizing their client's wishes no matter what, and look carefully at the idea of goodness. He and his co-authors proposed a difficult question: *who* is the good lawyer? Luban and his colleagues hoped the ground would shift under legal ethics to such an

extent that *who* we are as lawyers, rather than *what* we do, would be the first concern.

Luban's approach followed *virtue ethics*, derived from the Greek thinker Aristotle in the pre-Christian era,⁹ which asserts that goodness depends on character and that good character is shown by the virtues we display in our behaviour. Luban's argument, simply stated, was and is that we lawyers cannot get away from wider moral obligations that impact on the rest of society and claim that we are permitted (almost automatically) to lie and cheat, providing we do it within rules. In China, Confucius and his disciples took a similar path, and referred to the need to recognize that we all have wider responsibilities:

'I slept and dreamt life is beauty, I woke and found life is duty'; or, to put it another way: 'The superior man understands what is right; the inferior man understands what will sell.'¹⁰

You may think that Luban's and Confucius' recipes for goodness are a bit weak or soft or idealistic. You would be right, and even though Luban was not overly successful in his quest,¹¹ the impact of his book was still considerable, as has been Confucius' thinking in Greater China for over 2,000 years. Interest in *who we are* as men and women lawyers – and not just in what we do and what rules apply to us – has never disappeared.

The Good Chinese Lawyer is about being a lawyer, and its thesis is astonishingly simple. Being a lawyer is not unconnected with being a person . . . Further, being a good person does not preclude you from being a good lawyer – if anything, lawyers should be 'more moral' than citizens in general. These assertions are not astonishing because of their simplicity but rather because of the heresies they contain and because of their complexity. They are heretical because they are contrary to over a century of orthodoxy in the thought, writing and institutionalization of professional ethics.¹²

Despite the hundreds of thousands of lawyers in Greater China who struggle conscientiously with ethics, there continue to be both major and minor moral disasters in the practice of law throughout our region (and globally). Notorious cases and headlines have demonstrated a lack of interest in *who we are* as lawyers and a too-common readiness by our fellow lawyers to argue that 'no rules were broken', or that the rules were ambiguous. For example, you may have seen the disciplinary cases of lawyers being suspended from practice and sometimes imprisoned for 'offering bribes by a unit', 'accepting entrustment privately and receiving money' and 'accepting instructions and charging clients illegally'. Some

of the more notable instances, covered later in this book, have resulted in much injustice and millions of lost money by ordinary citizens. There is now not just a moral reason to revisit good lawyering, but a powerful economic incentive as well. To address this need, a variety of topics are covered in this book, as set out in the next section.

1.4 Coverage of This Book

The following sections of this chapter discuss the questions that you should consider asking a law school in order to get an idea of its credentials and capacity for teaching ‘goodness’. There is no website that provides the answers. Not surprisingly, just as law firms tend not to proclaim their attitudes to ethics to prospective clients, law schools slip in behind them and emphasize other things, such as their ‘practicality’, excellence and graduate career destinations. All of these claims are possibly true, but they are not about being a *good* lawyer. So you need to investigate this issue for yourself, using a questionnaire set out at Section 1.6.

Later, the issues involved in selecting so-called elective or optional subjects are also addressed, along with the hot topics of:

- what is involved in ‘thinking like a lawyer’ – benefits and disadvantages
- the essence of how to study law – continuous assessment; on campus or online study
- life-study and part-time paid work – keeping a balance
- why volunteering in the law is healthy – in addition to undertaking part-time work with law firms
- the emotional and physical stress of individual courses
- consciousness of depression risks – keeping talking. . .
- entering legal practice – what it means and what to beware of!

Chapter 2 turns to the moral realities of law practice and government legal work. Recent ‘headline’ cases emphasize the risks and opportunities in different types of ‘lawyering’. The leaders of large firms and global firms tend to consider law as pure business. They have very different attitudes from other lawyers, for instance, criminal and family lawyers. As a generalization, the larger the law firm the more pressure there is for each lawyer to count every minute of their time. There are other particular ethical issues associated with larger legal practices, especially a degree of nervousness among new lawyers about exercising ethical choice in the face of the business and other priorities of the firm.

Chapter 2 also explores a range of economic, structural and technological challenges to lawyering, including so-called legal process outsourcing. There is a major trend all over the world to automate transactional and litigious legal work with the aid of artificial intelligence (AI), to the point where the lawyer's contribution in major transactions – ethical judgment – is not as obvious as it used to be. Over time, this may reduce demand for lower-level commercial lawyers and routine-focused law clerks. The financial challenges to good lawyering are also considerable, because no one can afford to be a good lawyer at the cost of not making a living.

Chapter 3 addresses the core complexities of values, ethics and virtue arising from a choice to be a good lawyer. The major systems of *general morality* (*consequentialism*, *Kantianism*, *virtue ethics* and *Confucian teaching*) are analysed and compared in a large table (Table 3.2) for their potential to simplify debates about what is 'legal' or 'ethical'. In the face of all the 'system' challenges that lawyering throws up to income, well-being and our personal relationships, being a good lawyer is just a smart choice. But that does not mean it is easy to do. Ethical concepts are often difficult to 'see', and if seen, are then avoided because the essence of goodness means work: it involves making a careful judgment. Exercising judgment is hard because it's difficult to reduce any particular situation to a formula or rule.

AI is not yet the answer to improving ethical judgment. We do not yet know how to build an algorithm that is complex enough to balance – without any human lawyers' involvement – *all* the elements of individual values, ethical systems and 'practical wisdom'. Ethical judgment is still too difficult for computers, and this is why we often prefer to work with so-called definite legal rules, because they give the illusion that no judgment is required. Law students are known for saying in legal ethics' classes: 'just tell us the rules'. But rules can hardly be applied without judgment – that is, without ethical awareness and conscious choice. There is judgment involved in acting intentionally in all ethical decision-making, rather than just lazily 'going with the flow' or doing what one is told (that is, following a command or rule, without thought). Here, the major challenge for some commercial lawyers is their appreciation of the difference between something that is legal but unethical, a point eloquently emphasized by former US president Abraham Lincoln¹³ but not so often taken to heart. In our communities, proposals for new economic development projects versus the need for environmental sustainability frequently throw up this difference.

In Chapter 4 we suggest that virtue and character are a stable foundation for modern legal ethics in Greater China, but we resist the temptation to simply adopt virtue ethics as the framework of choice and not bother with consequentialism, Kantianism or Confucian teaching. It may be that virtue alone is sufficient to guide all decisions, but as will be seen, tolerance, judgment and respect for relationships – as well as the views of others – are important virtues in themselves. Our capacity to make the truly good decision is likely to be enhanced if we allow ourselves to compare, in each case, what each of these four approaches – virtue, consequentialism, Kantian methods and Confucian teaching – would suggest is appropriate, and what others think of the merits of each approach in particular circumstances.

Although there are many philosophers who have written about each of these approaches,¹⁴ it is beyond the focus of this book to analyse their separate contributions, and for similar reasons, we have not attempted to discuss and distinguish the many Chinese philosophers who have refined and extended Confucius' teaching.¹⁵ But it is still important to identify the virtues as they are generally understood and attempt a justification of virtue ethics in response to the criticism, often (erroneously) made, that something as apparently amorphous as a virtue can hope to provide a practical guide to action in tough situations.

It is the *active* comparison of these four frameworks or systems that offers us the best chance of making the right judgment in any ethically challenging situation.

In the global environment of legal ethics, there is a traditional way of thinking about legal ethics: zealous advocacy, or role morality. Role morality, also known as the 'dominant' form of legal ethics in Western countries, allows lawyers to say and do things on behalf of a client that they might not be able or willing to say or do in their private lives. Some have described role morality as nothing more than licensed lying and cheating,¹⁶ but a milder description tones this down a bit to merely passionate advocacy and involves the justification (in its simplest form) that lawyers on both sides of a dispute should *properly* put their client's case as strongly as possible. For example, a criminal defence lawyer may – and sometimes must – hassle and accuse prosecution witnesses in an effort to make sure they are not lying to the court. A zealous advocate does this because they are confident in the knowledge that a sensible judge will work out which version of events and which interpretation of the law is most credible. In many Western countries (and some Asian jurisdictions influenced by this tradition), role morality is

accepted for the defence of criminal charges because the prosecution often has greater power to pursue a defendant than he or she has to defend themselves.¹⁷ It is important for lawyers in Greater China to know how role morality operates because it affects things like trade law, anti-money laundering and international criminal law. But it is not appropriate for all lawyers in all situations. This book does not discount the importance of role morality, but suggests it is insufficient for a good lawyer. When zealous advocates subject themselves to the scrutiny of general morality, even better lawyering will result.

Chapter 4 then covers the relatively recent insights of positive psychology, which is not the same as the increasingly discredited notion of 'positive thinking'. Positive psychology provides a respectable method to connect us to our own sense of general morality and allows us to be – and remain – 'positive' about life as a lawyer. Chapter 4 concludes by centring the whole debate about morality and law inside the special case of the large law firm. These are the workplace settings where many law students want to work and where it seems that new lawyers are under the most pressure to conform to a culture that is intrinsically profit-focused.

Chapters 5 to 8 deal sequentially with specific areas of legal ethics that provide you with many opportunities to demonstrate general morality, even though few will see you functioning in this holistic manner. Since good lawyering tends to be less visible to the community than bad lawyering, these chapters must unfortunately make use of examples of bad lawyering in order to get the point across. In each of these chapters, the choices open to us in determining a course of moral action are illustrated with specific cases and analysed according to the four general moral approaches discussed above, in the light of the formal rules for lawyers' behaviour in each of the PRC, Hong Kong and Taiwan. The method used to analyse the illustrations in each of these chapters involves reflection on the contrasting ethical approaches in order to discern the mature decision.

Chapter 5 tackles the painful agendas of truth and deception, often in a criminal law context. It might be said that role morality justifies just enough deceit to ensure a fair criminal law trial, but the concept still fails to satisfy almost every non-lawyer and is not well regarded in mainland China. Perhaps more than in any other area of legal ethics and lawyering, we need to combat the popular idea that as lawyers we are intrinsically crooked or dodgy and are profoundly unable to tell the truth. Key situations where this challenge must be taken up are discussed, including the difference between active and so-called passive

deceit, the disguising of the true purpose of a legal transaction, 'knowing too much' and tax evasion.

Chapter 6 explores the idea of professional secrecy, which can both support and confuse the subtleties of truth and deception by providing a justification for saying as little as possible. Lawyers' secrets now come in two varieties: the fairly bland concept of legal confidentiality, and its altogether sharper sub-category, client privilege, which only exists in Hong Kong and not in mainland China and Taiwan. Confidentiality is said to underpin everything a lawyer does, which is accurate as far as it goes, but in practical terms it is really the narrower idea of *client privilege* that is important in Hong Kong. Privilege is very important in litigation in common law countries like the United States and is therefore relevant to international trade, information security and, for example, mainland China law students who wish to become diplomats in common law countries. It is only privilege that allows a party to litigation to keep something secret from a court in Hong Kong.

Nevertheless confidentiality has its limits, and in defining those limits general morality is useful, particularly where the formal conduct rules in each of mainland China, Hong Kong and Taiwan prove again to be simply a set of rules, albeit rules that are enforceable by regulators. Several examples are explored, where our capacity to keep quiet is linked to the use of social media and covering up for corruption and bribery.

Although truth-telling and secrecy are well understood by the general public, there is an undiscussed underbelly of legal practice that has a more insidious effect on our character – conflicts of interest. Chapter 7 explores these conflicts of loyalty and interest as a recurring and sometimes nightmare challenge to large and small firms. For example, we are constantly conflicted by our desire to do the best for our clients but also to charge them enough for us to earn a living. The rules in many parts of the world say we can charge a 'reasonable amount', but it is difficult to work out what is 'reasonable' without some wider general moral framework to guide you. Conflicts are also a challenge when we find ourselves suddenly acting for two current clients who are in an argument with each other or who could be in such an argument – or a current client finds themselves opposed to a former client. Do we not owe some loyalty to the former client, or at least an obligation to keep their secrets secret from our newer and current client? The temptation for lawyers to earn double fees by acting for all parties at the same time is often seductive, but just as often the seduction leads to tears all round, and then winds up in the public arena.

Chapter 8 addresses professional competence, something that is often taken for granted until you make your first significant mistake as a lawyer and it becomes necessary to admit the mistake. Remember that mistakes are inevitable for us as much as for anyone; they are not a sign of moral failure. As the sixteenth-century idiom goes, 'A fault confessed is half redressed'.¹⁸ Negligent advice may be given by the most respectable lawyers, but at the same time, morality still plays a subtle role. If your attitude to the quality of your work is one of 'close enough is good enough' or you are untroubled that you are habitually late in meeting work-related deadlines, then it's likely that you will make more than your quota of mistakes and you may not care that much.

General morality, and particularly virtue morality and Confucian teaching, all value a conscientious approach, and in this sense, competence requires morality. There are many implications explored in this chapter. In practical terms, we need to be competent because a good reputation is the only way that lawyers can succeed. We are required also to be financially competent by making sure we know how to keep our own money separate from our clients' money. Even if there is no rule requiring such separation, it is best practice. Overcharging and bribery are also challenges to competency, and there are several dimensions to this particular risk. For example, each of us will benefit from continuing legal education (CLE), also known as continuing professional development (CPD), on a regular basis and will adopt risk management procedures so that we recognize an invitation to bribery when we encounter it. If we cannot connect our competence to morality, we may well accept corruption as an opportunity rather than as something to be resisted.

Finally, Chapter 9, 'Practical wisdom', explains how lawyers are regulated and how the regulators deal with those of us who go off the rails, depending upon whether we are anxious, depressed, addicted, mentally unwell, careless or (for a few) criminals. Most of us are not in any of these categories, but many of us will encounter one or another of these issues if we have a long career. And if we fall, we can still get up again. A person can be personally redeemable even after criminality, and we need to remain resilient and positive about legal practice as one of the most important and even noble of human professions.

The book concludes with a review of emerging technological and cultural challenges to lawyering. Appendices set out the features of several bar association or government schemes that can support us and our clients when things go wrong: a type of professional safety net. Such schemes are important to back up the virtue of client care with the

practical wisdom of prevention and client compensation, where necessary. Meantime, we return to the beginning: identifying what makes a good law school.

1.5 Identifying a Good Law School

There are several factors involved in choosing a good law school. The first is concerned with diverse legal education goals of different law schools in Greater China. In Hong Kong, legal education has focused more on the training of practising lawyers, so a law school with a curriculum with more practical law subjects and legal skills training is regarded as a good law school. In mainland China and Taiwan, legal education concentrates more on training of scholars and government officials, so a law school that focuses on academic subjects and generalist training is seen as a good school. However, such divergence is narrowing, with law schools in Hong Kong becoming more 'academic' in orientation while law schools in mainland China and Taiwan are also becoming more 'vocational' in their emphasis.

The second factor in identifying a good law school is the strength of its leaders. Good law school leaders try to be independent and emphasize the public interest in their legal education, while remaining as free as possible from the influence of business and commercial interests. They are also morally upright people and avoid unethical behaviour. Good law schools should not only help in the local development of the rule of law but also support research on strengthening the international rule of law. They should recruit teachers and researchers with similar values. And good law schools should engage in research on legal issues in the real world, for example the prevention of corruption in the financial sector, including the legal supervision of financial products and the banking system.¹⁹ Good law schools should also be concerned with the harmony of wider society and for the intrinsic value of education in bringing progress and peace to society, and not just for wealth creation. As Confucius has said:

Education breeds confidence. Confidence breeds hope. Hope breeds peace.²⁰

Most law schools will appear in rankings of one type or another.²¹ There is no way in which a potential law student can easily compare law schools on any basis except these rankings. However, ranking and reputation do not really matter for law students in terms of getting a good

education because the criteria will often be dominated by research outputs, which can be incomplete measures of excellence. It is what goes on in the law course that really matters. But as a prospective law student you will need to know what you want from a law school and if you want the goal proposed above – to be a ‘good’ lawyer emerging from a ‘good’ law degree. You therefore need some other basis upon which to decide which law schools will take you in this direction. A ‘good’ law school is one that develops your character or professionalism: a mix of values, skills and attitudes that will make you a (morally) good lawyer – and one whose reputation will last.

‘Good’ law schools develop character by providing the cultural and technical power for graduates to ‘grow’ themselves in different ways, to understand the concept of law reform and to desire better access to justice. Among these attributes are:

- the depth of your theoretical knowledge about the way in which the law works and does not work, on a day-to-day basis. This means the capacity of the law school not just to teach the law ‘as it is’ (which is of course essential and is described broadly as a legal positivist approach²²), but to balance that with a critique of what law should be or ought to be (a normative or natural law approach²³), having due regard to legal theory and its attempts to reconcile these two divergent but necessary approaches to understanding law.
- the extent to which your interest in law as a discipline has been excited or ‘dumbed-down’ by the experience of going to law school. ‘Did you learn to love the law?’, as former Australian High Court judge Michael Kirby has asked.²⁴ Conventional law teaching (associated to some extent with positivist approaches) can be satirized as ‘bulimic’ because it asks you to swallow a great deal of information in a short space of time and then disgorge it hurriedly in periodic ‘vomits’ of memory. This approach to the process of learning involves little incentive to understand the connections of the curriculum to justice or to the overall purpose of law: that is, to come to love it. In contrast, progressive law teaching is ‘normative’ and emphasizes more considered reflection on the purposes of law and the development of personal judgment, two virtues that follow on from the central quality of love of the law, which successful lawyers need to have and to demonstrate.
- your own emotional intelligence, client sensitivity, understanding of how the law works in practice, ethical judgment, and, through a *real*

personal experience of social inequality, a sense of compassion for victims of injustice.

- all of these qualities are developed by best practice clinical legal education (CLE) – a form of workplace-integrated learning (WIL, also known as ‘service learning’ or ‘learning by doing’) that puts law students in a position of responsibility for real clients who are facing immediate and demanding legal problems.²⁵
- your capacity for seeing (recognizing) ethical danger and for clearer thinking about law and ethics, leading to inclusive and appropriate ethical judgment – as discussed in Chapters 3 to 7. What is legal is not always ethical, but both legal and ethical thinking require capacity to see the ethical issue despite apparent legality, and then to make intentional decisions about what to advise a client and what to do. This process requires both rationality and emotion. A good lawyer will know how their emotions are affecting them, will take their emotional state into account in all their actions, and will try to decide difficult ethical issues not by simply succumbing to an unexamined ‘gut’ feeling.
- your developing approach to the rule of law debate. In general terms, the rule of law maintains that all of us are primarily subject to the rule of law above and before, when necessary, the rule or dominance of governments or parliaments. For example, a dictator who arbitrarily imprisons or executes political opponents commonly does so after going through the motions of changing ‘the law’ to allow this to happen. But the rule of law denies him/her legitimacy in imprisoning or executing people unless the *proper* processes of law are first followed. Depending on the interpretation of the rule of law issue by a law school, deciding what is ‘proper’ may be a circumstantial and principled matter of ethics, or just a narrow matter of the law ‘as is’, so to speak.²⁶ It is important that both perspectives are covered respectfully in law school. They are normally dealt with in the first year of law study, and the depth of that coverage is significant for the development of your ethical judgment.²⁷
- your capacity to understand if the overall orientation of the law degree is towards socio-legal change or commercialism (or both of these). A law degree with a strong socio-legal orientation and little commercial focus may fail to take due notice of the critical importance of money and financial knowhow in the translation of rights into realities. Similarly, a commercially oriented law degree may not equip you for doing enough justice. A balance between the two is a key objective of a good law school.

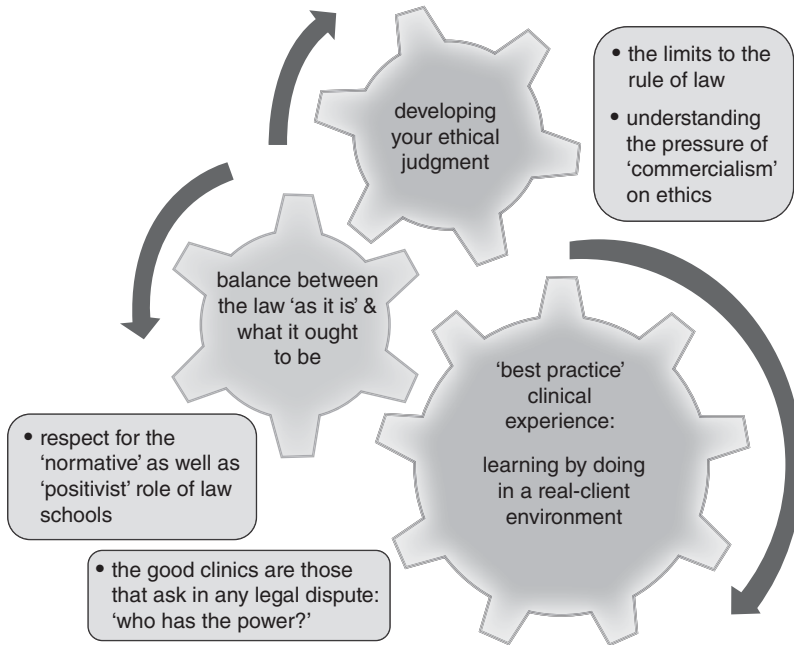


Figure 1.2 What makes a law school good?

- a developed research capacity, since the ability to research effectively (and to know how your own research habits are best accessed and nurtured) is a core skill supporting the depth of your legal knowledge now and in your future legal practice.
- your developed desire to do justice, at the end of the whole experience of law school. This may sound shallow or trivial when stated as simply as this, but the kernel of the issue is important for the good lawyer: will you (or did you?) come out of law school with a desire to make a just difference to the community, or are you content to just have a job?

These attributes are summarized in Figure 1.2.

1.6 Questions to Ask Your Preferred Law School

Most, if not all, law schools are unused to interrogation about what and how they teach. Some will be very surprised that you might want to know something about content, approach and the underlying values represented in their teaching, before you decide whether or not to take up an offer of a place. But as a prospective law student who will pay money

to study law, you are entitled to be an informed consumer. If, after you explain what you are interested in and why you are interested, a law school declines to provide you with any useful information in response to your queries, then that response would be eloquent.

There are a number of key questions that can be put to a law school to ascertain whether or not it is likely to prepare you for good lawyering, that is, whether the law school is 'ethical'.

-
-
- | | |
|---|---|
| 1 | In what year and subject is the rule of law taught? Is that content in the 'must be assessed' category? |
| 2 | Is legal ethics taught as a stand-alone subject or integrated into other subjects, or both? If integrated in whole or part, is the law school able to tell you how the ethics content is divided up between different subjects and year levels? |
| 3 | Does the law school offer a clinical legal education programme? If so, is that programme an optional or a compulsory subject? If it is optional, are there sufficient places available for all those who wish to enrol in the subject? Does the programme provide for you to take responsibility, under supervision, for a real client with a real legal problem? |
| 4 | In what subject(s) are the contrasting emphases of positivist and normative understandings of law taught? Is this subject (or subjects) mandatory? |
| 5 | How does the law school understand the balance between the socio-legal and commercial emphases of the law? What is the view of law school leadership as to the balance between these orientations? Or indeed is there any view at all? |
| 6 | Will there be enough time over the whole legal education period to study basic law principles and professional/vocational law courses, in addition to the mandatory subjects? |
| 7 | Does the law school organize legal volunteering (from the Latin <i>pro bono publico</i>) opportunities for its students? If so, what is the mix of such opportunities, as between law firms and non-government organizations? |
| 8 | In what subjects are the concepts of emotional intelligence, interpersonal skills and well-being |

(cont.)

9	taught? Is a knowledge of this material in the 'must be assessed' category?
Questions for yourself...	Were you referred to people in the law school who were willing and able to take your queries seriously?
	How did the law school respond to your questions? Was it engaged and aware of the significance of your enquiries, or confused and struggling to come to grips with the concepts, or dismissive and unable/unwilling to help?
	Are you clearer about whether your preferred law school will help you to be a good lawyer, or merely a technically competent lawyer?
For detailed information about 'ethical' law schools in the context of ending poverty, see:	Bryan Horrigan and Adrian Evans, 'The role of law schools and clinical programmes in ending poverty', in Norman Clark and Neil Gold (eds.), <i>Eradicating Poverty Through Social Development: A Practical Guide for Lawyers</i> , International Bar Association, 2021. ²⁸

1.7 Managing Your Mental Health

Even 20 years ago, there would not be a section on this topic in a book for law students and new lawyers. Recognition that the legal profession (and law students) are exposed to mental health risks is recent but nonetheless real. It is not entirely clear why this is the case. As societies become more affluent, people may be experiencing more anxiety (in proportion to their increasing wealth) in any event, regardless of any occupational stressors. There may, however, be a particular combination of circumstances that adversely affect law students and lawyers more than other professions and occupations. The causes are not just the emotional and physical stress of managing lectures, tutorials, research and constant assessment. The constancy of these tension-creating deadlines provides the backdrop, but these deadlines are common to many occupations and are unlikely to be the real problem.

Law school and legal practice have a certain 'halo' or exaggerated respect that is both powerful and, for some, unhealthy. As you know only too well, you need high to very high marks to get into law school. So you already have a history of working hard and are known to work hard. Your friends, parents, extended family, spouses and even children will be

proud of you and expect you to do very well. There will be a strong expectation of continued and 'ever upward' success, even if that expectation is only rarely expressed to you. The goal is prestige, and unfortunately, the default way in which law school culture commonly measures prestige is by your prospects of work in a law firm that is known to make a lot of money – not just any law firm. And many other students in the law school are working to the same agenda with the same hopes, even when everyone knows that the number of jobs in such firms is increasingly limited.

The point is: students know they are in a chase and that in the race for an offer from such a firm, many – if not most – of them must lose. But knowing that failure is likely does not lead all students to adjust their expectations, because (and to generalize) there is a small group of students who have never known significant defeat or failure. If you are in this group then you will recognize that you cannot be assured of success, but you will not be prepared to give up. Why should you? Your chances are as good as anyone's, even if large law firm traineeships are few in number. And this is where personality comes in. If you have a resilient personality you will eventually adjust even if you are unhappy about it, but in the process, you may be inclined to anxiety and vulnerable to depression. This is why a good law school will also have access to counsellors or psychologists to help students manage the adjustment from dream to reality and the importance of acceptance of short-term failure when it happens. This transition is a good thing, even if the process can be hurtful and disillusioning. Many law graduates do not find the very large law firm a great place to be, even as they welcome the relatively high income.

So what is different from the pressure exerted on students seeking entry to other sought-after professions? The difference is that law (and to some extent medicine), as professions, have overactive self-esteem. Law students soak up the respect of law and its power even if they do not particularly want high-powered commercial careers. Collectively, law students and lawyers are prideful (not so much a virtue as a vice) to a degree not afflicting other professions. How can you manage the challenge of too much pride?

1.8 A 'Structural' Connection between Legal Education and Student Health: Rationality but Not Emotion

Some law students reflect on the competitive realities of legal education and can become disillusioned. One view is that conventional legal

education, in seeking to help students ‘think like lawyers’, focuses on developing students’ ‘rationality’ to the exclusion of emotion. This view considers that the disregard for emotion among law teachers colours their approach so much that their default position is to teach ‘the law as it is’, with negative consequences for students’ well-being.

It is clear that ‘rationality’, with its focus on ethnocentrism, property and profits, precipitates the seepage of corporatism into law school culture. But it is the degradation of emotion and, correspondingly, students’ human connections with self-worth, which drives them to repudiate their ideals.

However, it is unfair to label all legal education and all law teachers as unwilling to acknowledge the close connections between rationality and emotion in everyday decision-making. But there is a broadly credible argument for you to be justified in asking how your preferred law school’s culture will contribute to or undermine your health and well-being.

We should scrutinize the role of emotion in determining the law. But the rigid version of rationality that is usually taught in law school does not achieve this. As Confucius has suggested, regardless of how influential emotions *should* be, the reality is that they affect the way that humans reason: ‘One joy dispels a hundred cares.’²⁹

The recommended response of those who have studied the issue closely is to change first-year curricula to include sufficient recognition of the value of ‘experiential’ learning, to counter the rationality emphasis.³⁰ But law schools that attend only to improving first-year experience (with another two to four years of teaching taking the older, opposite approach) are unlikely to make sustained progress in turning things around. Students will still graduate with an overdeveloped regard for ‘thinking like a lawyer’ and less capacity to attend to their own emotional health or that of their friends and future clients.

CONSIDER THIS SITUATION:

Your elder sibling, to whom you are close, is also a law student. She drinks a bit too much but tells you that she thinks it’s under control. It doesn’t appear to be affecting her study or part-time work yet, but friends’ reports about her erratic behaviour are becoming hard to ignore. Last week she was found very unwell, half in and half out of her car, after a party. She demands that you keep silent about it while she works it all out. In particular, she insists that your parents must not find out about what’s happening until she is ‘out the other side’.

Is it likely that your law school experience will give you the tools and resources to deal both with your sister and your own reactions to her possible addiction? Will you be more inclined to 'think like a lawyer' and keep her out of a vehicle at all times, or to argue with her about the importance of getting more help, or tell your parents in an effort to get immediate help anyway, or simply be quiet, for the sake of your relationship with her? Above all, will you be able to keep your own anxiety and distress in check so that you remain effective in her interests?

It is possible that a depression situation among law students is pervasive and may not, realistically, be reversed, even in law schools that are aware of the issues. And it is also possible that you may be 'satisfied' with your law course while still being unhappy generally. But the good law schools, to their credit, will attempt to offer students' education and training in emotional resilience and well-being, and the more these caring programmes are available, the stronger will that law school be. Even if these initiatives deal rather more with symptoms than causes, they can still be enormously helpful in their focus on quiet reflection, on the balance in life-study activity and between recreation and part-time paid work, and particularly in their strong encouragement of regular sport.

In the end, though, a good law school is one that not only cares for its students' emotional well-being, but actively teaches goodness, a quality that must pay equal regard to reason and emotion and does not seek to subordinate justice to the myth that law is value-free and is addressed only through rational processes.

1.9 After You Graduate: Practical Legal Training

Although it takes some years to progress through law school, graduation might not be the end if you want to practise law. In Hong Kong, law graduates may undertake a course of practical legal training (PCLL) at the end of the law degree.³¹ This is a final 'pre-admission' stage in which you are exposed to more practice-related activity designed to translate your law school knowledge into practical skills.

After completion of PCLL you can apply to enter practice. There is no PCLL-like course in Taiwan, but in mainland China there are special courses organized for judicial officers and procurators³² in different cities. These courses include political education and general skills training, often with a significant number of training hours. The training is usually conducted by experienced judges and judicial assistants and

aims to help newly recruited judicial officers adapt to their working environment and includes writing judgements, communication skills and mediation techniques.³³

1.10 Entering Legal Practice

Not everyone wants to practise law or can get a job as a lawyer, but most graduates want at least to be able to do so. This final stage of qualification can be a demanding process in some parts of Greater China. There are special examination requirements in mainland China and Taiwan. In mainland China, law graduates need to pass the National Unified Legal Profession Qualification Examination (*Guojia Tongyi Falü Zhiye Zige Kaoshi*), which has strengthened the emphasis on legal ethics in recent years.³⁴ Taiwan also has a separate Bar examination, also with separate questions on legal ethics.³⁵

As you enter legal practice, remember that you will be watched and judged for your personal qualities of character, which are necessary to discharge the important and grave responsibilities of being a lawyer. A legal practitioner, upon being admitted to practice, assumes duties to the country, to courts and to fellow lawyers, as well as to clients. At the heart of all of those duties is a commitment to integrity and, in those circumstances when it is required, to open candour and frankness, irrespective of self-interest or embarrassment. The entire administration of justice in any community that is governed by law depends upon the honest working of legal practitioners who can be relied upon to meet high standards of honesty and ethical behaviour. It is the legal practitioner who is effectively the daily minister and executor in the administration of justice when advising clients, acting for clients, certifying documents, and making presentations to courts, governments, other professionals, and so on. The level and extent of trust placed in what legal practitioners say or do is necessarily high and the need for honesty is self-evident and essential.

If you have in your background a criminal history – which includes any finding by a court of ‘offence proved’, even if no conviction was recorded – it is essential that you disclose that in your application. Disclosure, not deceit, is the best strategy. Failure to disclose can result in either the rejection of your application to enter legal practice or, if the omission is discovered after admission, in your being unable to practise law again.

It is important also to appreciate that being a good law student involves the idea of academic integrity and of the connection between

your private life and your professional life. The fact that entry to legal practice is discretionary ought to make law students cautious in their private lives and in the way they study law and submit assignments. Avoidance of cheating is very important. However, the reality is that very few law students understand the significance of these avoidance and disclosure requirements until they are near the end of the law degree. By that time, it may be too late to change anything, because the past must still be disclosed.

The only conclusion that anyone could reach after thinking about these issues is that regardless of what you may have done in your past, always disclose that past and never seek to argue that something that was morally wrong, was not wrong. And even if you do not intend to enter legal practice, behave as if you will do so at some later point. Good law students far outnumber the not so good, and go on to become the good lawyers who make a difference every day. Chapter 2 discusses how to make that difference, beginning with identifying and choosing a good law firm.

Notes

- 1 Ethics (Greek), meaning the study of morals in human conduct (moral philosophy).
- 2 Confucius, 551–479 BCE. See ‘Wisdom, compassion, and courage are the three universally. . .’ (goodreads.com).
- 3 Ministry of Justice of the People’s Republic of China (moj.gov.cn).
- 4 www.moj.gov.tw.
- 5 Typical courses are as follows: for NTPU – www.ntpu.edu.tw/law/upload/article/101law-ba.pdf; for NTU – http://coursemap.aca.ntu.edu.tw/course_map_all/class.php?code=A011; and for NCCU – www.law.nccu.edu.tw/zh_tw/Courses/depar/%E6%B3%95%E5%BE%8B%E7%B3%BB%E5%AD%B8%E5%A3%AB%E7%8F%AD%E8%AA%B2%E7%A8%8B%E5%9C%B0%E5%9C%96-38598231.
- 6 Typical Hong Kong courses are: for HKU – www.law.hku.hk/syllabuses/LLB_2018-19_0703.pdf; and for CUHK – www.law.cuhk.edu.hk/download/LLB_Brochure.pdf.
- 7 Rowman & Allanheld, Totowa NJ, 1983.
- 8 See Joseph P. Tomain, ‘The legal heresiarchs: Luban’s *The Good Lawyer*’ (1984) 9(3) *American Bar Foundation Review* 693. Tomain admiringly described Luban and his co-authors as heresiarchs (‘arch heretics’) because they were profoundly dissatisfied with conventional approaches to legal ethics.
- 9 Aristotle, *Nicomachean Ethics* (trans. W.D. Ross) (e-book ed.), University of Adelaide, 2012. See ebooks.adelaide.edu.au/a/aristotle/nicomachean.
- 10 See www.quoteambition.com/confucius-quotes/. Similar quotes are: ‘The superior man thinks always of virtue; the common man thinks of comfort’; ‘He who acts with a constant view to his own advantage will be much murmured against.’
- 11 It is easy to find contemporary laments for legal education and US lawyers, showing that not a lot has changed in that country. See, for example, Eli Wald and Russell G. Pearce, ‘Making good lawyers’ (2011) 9 *University of St. Thomas Law Journal* 403.

- 12 Tomain, 'The legal heresiarchs', 694.
- 13 Many have cited Lincoln's famous quote. Here it is: 'One morning, not long before Lincoln's nomination – a year perhaps – I was in your office and heard the following! Mr. Lincoln, seated at the baize-covered table in the center of the office, listened attentively to a man who talked earnestly and in a low tone. After being thus engaged for some time Lincoln at length broke in, and I shall never forget his reply. 'Yes,' he said, 'we can doubtless gain your case for you; we can set a whole neighborhood at loggerheads; we can distress a widowed mother and her six fatherless children and thereby get for you six hundred dollars to which you seem to have a legal claim, but which rightfully belongs, it appears to me, as much to the woman and her children as it does to you. You must remember that some things legally right are not morally right. We shall not take your case, but will give you a little advice for which we will charge you nothing. You seem to be a sprightly, energetic man; we would advise you to try your hand at making six hundred dollars in some other way.' Undated manuscript, about 1866, in William H. Herndon and Jesse W. Weik, *The Project Gutenberg EBook of Abraham Lincoln*, volume 2 at www.gutenberg.org/files/38484/38484.txt.
- 14 See, for example, the numerous references in R. Audi (ed.), *The Cambridge Dictionary of Philosophy*, Cambridge University Press, Cambridge, 2015.
- 15 See generally Chu Chai, Winberg Chai, *The Story of Chinese Philosophy*, Washington Square Press, New York, 1961.
- 16 See, especially, Daniel Markovits, *A Modern Legal Ethics: Adversary Advocacy in a Democratic Age*, Princeton University Press, Princeton NJ, 2008.
- 17 See, generally, Gino Dal Pont, *Lawyers' Professional Responsibility* (5th ed.), Thomson-Reuters, Sydney, 2013, Part 4. For a dramatic and informative television series that charts the key English development of 'innocent until proven guilty' in early criminal trial practice, see *Garrow's Law*, inspired by the life of pioneering eighteenth-century barrister William Garrow: *Garrow's Law*, BBC One at www.bbc.co.uk/programmes/b00w5c2w.
- 18 *WordSense Online Dictionary* (30 September 2021), www.wordsense.eu/a_fault_confessed_is_half_redressed/.
- 19 Wang Zhenmin, 'Dealing with the global crisis: Responsibility of law school', Tsinghua University Law Dean, 2011.
- 20 www.quoteambition.com/confucius-quotes/.
- 21 For an example of law school ranking, see www.topuniversities.com/university-rankings/university-subject-rankings/2020/law-legal-studies.
- 22 See, generally, Jeremy Bentham, *A Fragment on Government; or, A Comment on the Commentaries* (2nd ed.), W. Pickering, London, 1823; John Austin, *The Province of Jurisprudence Determined and the Uses of the Study of Jurisprudence*, Weidenfeld & Nicolson, London, 1954; H.L.A. Hart, *The Concept of Law*, Clarendon Press, Oxford, 1961; Joseph Raz, *The Authority of Law*, Oxford University Press, Oxford, 1979.
- 23 See, generally, Ronald Dworkin, *Taking Rights Seriously*, Duckworth, London, 1978 and *A Matter of Principle*, Harvard University Press, Cambridge MA, 1985; Richard A. Posner, *Economic Analysis of Law* (2nd ed.), Little, Brown and Co., New York, 1977; John Rawls, *A Theory of Justice*, Oxford University Press, Oxford, 1973; Roberto Unger, 'The critical legal studies movement' (1983) 96 *Harvard Law Review* 561; John Finnis, *Natural Law and Natural Rights*, Oxford University

- Press, New York, 1980. A very useful overview of the whole debate about the proper role of law ('jurisprudence') is contained in Raymond Wacks, *The Philosophy of Law: A Very Short Introduction*, Oxford University Press, New York, 2006.
- 24 Jane Lee, 'Graduates shun legal profession', *The Sunday Age*, 20 May 2012, 6.
- 25 The Committee on Chinese Clinical Legal Education (CCCLE) is affiliated with the China Association for Legal Education. See, generally, Cecily E. Baskir, Ma Liqun and Li Ao, 'Chinese Clinical Legal Education: Globalizing and localizing', in Shuvro Prosun Sarker (ed.), *Clinical Legal Education in Asia*, Palgrave Macmillan, New York, 2015.
- 26 The debate centres on the notion of a 'thick' as opposed to a 'thin' concept of the rule of law. See, for example, Adrian Evans and Michael King, 'Reflections on the connection of virtue ethics to therapeutic jurisprudence' (2012) 35(3) *UNSW Law Journal* 717, at 727.
- 27 If rule of law debates are taught in law school in a manner that trivializes or devalues the contribution of ethics to lawyers' decision-making, that can have a negative impact on students' subsequent views about the relevance of legal ethics.
- 28 Eradicating poverty through social development: A practical guide for lawyers | International Bar Association (ibanet.org).
- 29 See www.quoteambition.com/confucius-quotes/.
- 30 See W. Larcombe, P. Nicholson and I. Malkin, 'Performance in law school: What matters in the beginning?' (2008) 18 *Legal Education Review* 72–3.
- 31 For the PCLL programme at the University of Hong Kong, see www.ple.hku.hk/the-pcll/.
- 32 A public procurator is an officer of state who is tasked with both the investigation and prosecution of crime. Public procurators must pass the National Unified Legal Profession Qualification Examination. See generally the Procurators Law of the People's Republic of China (2019 revision), www.pkulaw-com.easyaccess2.lib.cuhk.edu.hk/en_law/59086232f5482770bdfb.html.
- 33 Zhao Yan and Chen Dongliang, 'Beijing court conducted training for 450 newly recruited judicial officers', 7 September 2016, Beijing High Court.
- 34 See, generally, Ministry of Justice of the PRC, www.moj.gov.cn/government_public/content/2019-05/24/gggs_235608.html.
- 35 See, generally, wwwc.moex.gov.tw/main/Quarterly/wHandQuarterly_File.ashx?quarterly_id=334; <https://law.moj.gov.tw/LawClass/LawAll.aspx?pcode=R0040047>.