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Incorporating an affective framework into liberal legal education to achieve the development of a ‘better person’ and ‘good citizen’

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Abstract

This paper proposes an original framework for the incorporation of the affective domain into liberal legal education, in particular the undergraduate law degree. It argues that the aims of developing both the ‘better person’ and ‘good citizen’ can be facilitated by the incorporation of such a framework. The paper critiques liberal legal education’s current focus upon narrow cognitive forms of reason and rationality. By excluding affect, legal educators’ attempts to foster the insights and growth required to fully achieve the ends of liberal legal education are impeded, even obstructed. This paper advocates a novel affective framework incorporating four core aspects, experiential thinking, emotional authenticity, affective empathy and emotional reflexivity. Incorporating this framework has the potential to achieve the development of both the ‘better person’ and the ‘good citizen’ and foster synergies between both. This will significantly enrich liberal legal education and sustain and develop its importance within contemporary society.

Keywords: Legal Education; Liberal education; Affective domain; Better person; Good citizen

Introduction

This paper proposes an original affective framework to enable liberal legal education to successfully achieve its aims within the contemporary law school. The starting point of this paper is the notion that liberal legal education retains

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its international importance and value to society. Liberal education holds to 'the well-formed- and hard fought – judgement' that education should fundamentally assist students in developing their understanding of 'human things'.¹ In doing so, it challenges contemporary demands that education be in some way 'useful' or 'practical'. This approach retains its resonance today despite the incursions of neo-liberal policy within higher education via marketisation and narratives around students as consumers.² Internationally, members of the academy (and others) commonly seek to 'defend' or 'reclaim' liberal education.³ The value of liberal education is often restated within academia in both traditional and new ways (such as in critiquing the traditional liberal notion of an 'examined' life).⁴ It is also frequently utilised to challenge employability discourses which measure the value of higher education based upon its contribution to the economy and production of 'job ready' graduates.⁵ Despite such neo-liberal ideals generating a more consumerist culture within universities, students also still consistently demonstrate at least some (perhaps unconscious) commitment to the basic principles of liberal education, acknowledging the intrinsic value and enjoyment of learning.⁶ Significant concerns have been raised over the potential demise of liberal education in the light of wider trends, pressures and policy agendas influencing higher education, continuing to exacerbate neo-liberal consumerist tendencies.⁷ However, within legal education, there is evidence that (at least at present) it holds an enduring place for both law students and legal academics globally.⁸

¹ M. D. Guerra, 'The Place of Liberal Education in Contemporary Higher Education' (2013) 50(3) *Society* 251-256, 255.

² M. Thornton, *Privatising the Public University: The Case of Law 2011*.

³ See, for example, Y. Hadzigeorgiou, 'Reclaiming Liberal Education' (2019) 9(4) *Education Sciences* 264; F. Zakaria, *In Defense of Liberal Education* 2015.

⁴ A. Miller, *A New Vision of Liberal Education. The good of the unexamined life* 2016; C. Haberberger, 'A return to understanding: Making liberal education valuable again' (2018) 50(11) *Educational Philosophy and Theory* 1052.

⁵ D. B. MacKay, 'No Dilemma at all: The Importance of Liberal Education in Developing Skills for Employability' (2010) 3 *Collected Essays on Learning and Teaching Volume* <https://celt.uwindsor.ca/index.php/CELT/issue/view/373> (accessed 9th August 2021).

⁶ Marcela G. Cuellar, Alicia Bencomo Garcia & Kem Saichaie (2022) Reaffirming the Public Purposes of Higher Education: First-Generation and Continuing Generation Students' Perspectives, *The Journal of Higher Education*, 93:2, 273-296; R. Brooks, A. Gupta, S. Jayadeva and J. Abrahams, 'Students' views about the purpose of higher education: a comparative analysis of six European countries' *Higher Education Research and Development* (2021) 40 1375.

⁷ Thornton, 'How the Higher Education "Industry" Shapes the Discipline of Law: The Case of Australia' (2017) 5(2) *Griffith Journal of Law and Human Dignity* 101, 112.

⁸ A. Nicholson & P. Johnston, 'The value of a law degree – part 3: a student perspective' (2020) 55(4) *The Law Teacher* 431.

Indeed, it has been viewed as an important method of resistance against the greater incursion of neo-liberal agendas within law schools.⁹ This paper begins by identifying key features of liberal education generally, and liberal legal education in particular, which demonstrate its oppositionality to such neo-liberal agendas.

The earlier reference to ‘human things’¹⁰ refers to proponents of liberal education’s view of the aims of learning as the creation of either the ‘better person’ or ‘good citizen’.¹¹ To date, much of the relevant literature focuses on one, rather than both, of these aims, conceptualising them as separate and potentially even incompatible, for example, the work of Bradney focuses largely upon individual growth, whereas the work of Brownsword emphasises the importance of citizenship and community.¹² However, this article will suggest that such aims have a crucial synergy and can both be viewed as part of a holistic developmental process, with students experiencing both individual transformation and contributing to wider society. The affective framework proposed is designed to facilitate achievement of both aims synergistically.

The article moves on to discuss the importance of the affective domain (encompassing moods, feelings and emotions) and its relationship with cognition, positioning it as key to the aforementioned developmental process. It challenges the arguments of proponents of the liberal legal tradition who commonly characterise the achievement of either or both aims as a wholly intellectual pursuit, based solely upon cognitive function.¹³ Rather, it argues that, in doing so, such proponents disregard the crucial role which the affective domain plays within learning, personhood and citizenship.¹⁴ The article then moves on to propose an original framework of four core affective concepts, namely, experiential thinking, emotional authenticity, affective empathy and emotional reflexivity, which are essential for meaningful development as both

⁹ Doug Morrison & Jessica Guth, ‘Rethinking the neoliberal university: embracing vulnerability in English law schools?’ (2021) 55(1) *The Law Teacher* 42-56; D. Dixon, ‘The Poverty of Pessimism’ in *Imperatives for Legal Education Research* eds. B. Golder, N. Nehme, A. Steel & P. Vines 2019.

¹⁰ Guerra n.1.

¹¹ R. Burridge & J. Webb, (2008) ‘The values of common law legal education reprised’ 42(3) *The Law Teacher*, 263, 264.

¹² A. Bradney, *Conversations, Choices and Chances: The Liberal Law School in the Twenty-First Century* 2003, 86

¹³ E. Jones, *Emotions in the Law School: Transforming Legal Education Through the Passions* 2019, Chapter 1.

¹⁴ Mary Helen Immordino-Yang, *Emotions, Learning and the Brain* 2016, 18.

a 'better person' and 'good citizen'. It explores how these can be integrated into the legal curriculum in a way which is compatible with liberal aims. Given the continued global interest in, and relevance of, liberal legal education, it is concluded that integrating this framework within the law school curriculum has the potential to enrich and revitalise legal liberal education in a way which perpetuates and supports its continued and increased international relevance and value.

The characteristics and aims of liberal legal education

The key characteristics of the liberal tradition and liberal legal education

The origins of the liberal tradition are commonly attributed to ancient Greece and Rome, although the influences of the Far East and Middle East are also increasingly acknowledged.¹⁵ From its emergence, there have been tensions over what can, and should, be defined as a liberal education.¹⁶ However, what is generally termed as liberal education within universities today can be traced back to the 12th century and the creation of the Universities of Bologna, Paris, Oxford and (slightly later) Cambridge.¹⁷ Law was often included as a strand of a general liberal arts education within European universities from the Middle Ages.¹⁸ However, within the UK and US it was not until the nineteenth and twentieth centuries that the academic law degree became increasingly well-established. In the UK the Inns of Court and Law Society's Law School traditionally undertook professional legal training.¹⁹ Law as an academic discipline was developed in universities via the nineteenth century 'case book tradition' to carve out a niche for law schools as the site of a rational ordering of legal doctrine and principle.²⁰

¹⁵ B. A. Kimball, *The Liberal Arts Tradition: A Documentary History* 2010, Introduction; P. Axelrod, *Values in Conflict: The University, The Marketplace and the Trials of Liberal Education* 2001, Chapter 1.

¹⁶ F. Zakaria n.6, Chapter 2; Kimball n.14.

¹⁷ R. Barrett, *The Idea of a Higher Education* 1990, 18.

¹⁸ D. S. Clark, 'The Medieval Origins of Modern Legal Education: Between Church and State' (1987) 35(4) *The American Journal of Comparative Law* 653, 654; Freedman (1996) op. cit. (1996) n.32 at p.81.

¹⁹ Clark n.18 654.

²⁰ David Sugarman, 'Legal Theory, the Common Law Mind and the Making of the Textbook Tradition' in *Legal Theory and Common Law* ed. William Twining, 1986 at p.34.

There is a diffusion of definitions and descriptions of what constitutes a liberal education, with Rothblatt suggesting that '[I]t is possible for a liberal education to be all things to all men'.²¹ As well as epistemological differences, there are also differences in the ways in which the liberal tradition has developed within different countries.²² However, despite this breadth, it is possible to identify several key characteristics of liberal education.

First amongst these is the core notion that learning is, in itself, an intrinsic good.²³ As the key proponent of this approach within the legal academy, Bradney echoes this, stating that "Universities are like art galleries, being concerned with things that are good in themselves".²⁴ The question then arises as to what is it about the learning experience that constitutes such a 'good'? Liberal thinkers have emphasised that, for the individual, this is not about simply passively acquiring knowledge, or receiving a form of training in a particular technique or skill.²⁵ Instead, it is about understanding how to conceptualise and organise such knowledge and integrate it into a wider frame of reference.²⁶

The idea of 'freedom' arguably underlies this focus upon broad intellectual development, as opposed to specialism or fragmentation.²⁷ Suggestions of what this development should look like differ between liberal commentators and sometimes disciplines.²⁸ However, the commonalities between such

²¹ S. Rothblatt, *Tradition and Change in English Legal Education. An Essay in History and Culture* 1976 at 195.

²² K. A. Godwin, 'The Worldwide Emergence of Liberal Education' (2015) 79 *International Higher Education* 2-4; M. A. Boyle, 'Global liberal education: Theorising emergence and variability' (2019) 14(2) *Research in Comparative and International Education* 231.

²³ R. S. Peters, 'Aims of Education – A Conceptual Enquiry' in *The Philosophy of Education* ed. R. S. Peters (1973) 18; see also J. H. Newman, *The Idea of a University Defined & Illustrated I. In nine discourses delivered to the Catholics of Dublin II. In occasional lectures and essays addressed to the members of the Catholic University* 1994, 103; K. Jaspers, *The Idea of the University* 1960, 31.

²⁴ A. Bradney, 'Raising the Drawbridge: Defending University Law Schools. (1995) 1 *Web Journal of Current Legal Issues*.

²⁵ P. H. Hirst, *Knowledge and the curriculum* 1974, 47.

²⁶ Peters n.23 at 19; Zongyi Deng 'Bringing knowledge back in: perspectives from liberal education', (2018) 48(3) *Cambridge Journal of Education* 335-351; D. W. Hamlyn, 'Human Learning' *The Philosophy of Education* ed. R. S. Peters 1973, 179.

²⁷ James O. Freeman, *Idealism and Liberal Education* 1996 at 2; J. M. Halstead, 'Liberal Values and Liberal Education' in *Values in Education and Education in Values* eds. J. M. Halstead & M. J. Taylor 1996, 23.

²⁸ F. R. Leavis, *Education & The University* 1948, 43.

suggestions are captured well in the word ‘liberal’ itself. This encapsulates the notion of ‘liberating the person who receives it’ from ‘the notion of the present and the particular’.²⁹ It also aligns with the broader notions of freedom and autonomy within general liberal thought.³⁰ It is this approach that will develop individuals who, in the words of Nussbaum, ‘can call their minds their own’.³¹

It is another of liberal education’s key characteristics, that of rationality, which is arguably of most importance when considering the relationship between liberal legal education and the affective domain.³² The equation of education with the development and application of reason and rationality is a characteristic commonly emphasised by proponents of the liberal educational tradition.³³ Although the concept of rationality itself can be explained in different ways, the focus of liberal education is largely upon theoretical rationality, in other words, ‘...the rationality of cognitions, such as beliefs, in virtue of which we are theorizing beings seeking a true picture of our world’.³⁴ The way in which it conceptualises such theoretical rationality is largely through emphasis on the cognitive – effectively equating forms of cognitive reasoning with rationality. Given this, it is perhaps unsurprising that affect has been so frequently ignored and disregarded within the liberal legal education tradition.³⁵

In relation to contemporary law schools, Krook (in the Australian context) suggests that legal education has formed a ‘battleground’ for an intellectual war between ‘those who see law as a liberal art and those who see law as a science’.³⁶ A similar depiction has also been given within a UK setting.³⁷ This portrays liberal legal education as akin to socio-legal forms of study, in opposition to the would-be ‘science’ of the doctrinal tradition. It is

²⁹ C. H. Bailey, *Beyond the Present and the Particular: A Theory of Liberal Education*, 2010 at p.15.

³⁰ J. S. Mills, *On Liberty* 1854.

³¹ M. Nussbaum, *Cultivating Humanity. A Classical Defense of Reform in Liberal Education* 1997 at 295.

³² Halstead n.28 at 23; see also Bailey n.30 at 17.

³³ Bailey n.30 at 27; Hirst n.25 at 39.

³⁴ Robert Audi, ‘Theoretical Rationality. Its Sources, Structure and Scope’ in *Oxford Handbook of Rationality* 2004, 17.

³⁵ Jones n.13.

³⁶ Joshua Krook, ‘A Brief History of Legal Education; A Battle Between Law as a Science and Law as a Liberal Art’ (2017) 17(2) *Legal History*.

³⁷ John Hodgson, ‘Response: From gavotte to techno – but the dance goes on’ in *Perspectives on Legal Education. Contemporary Responses to the Lord Upjohn Lectures* ed. Chris Ashford, Nigel Duncan & Jessica Guth, 2016 at 196-206.

understandable that legal liberal education has commonly been equated with socio-legal studies, given the way it eschews the particular for the general.³⁸ This reflects the way that socio-legal study can enable students to go beyond insular doctrinal consideration of legal principles and instead develop broader insights into the intersections between law and society.³⁹ However, it should be noted that (regardless of the topic under consideration), liberal legal education still highly prizes rationality. Its common critique of the doctrinal tradition is not that it is wrong to take a ‘scientific’ approach, but rather that the approach it has currently chosen is flawed and, therefore, irrational, with approaches such as socio-legal scholarship being viewed as allowing ‘deeper and more critical thought’ and hence enhancing rationality.⁴⁰

The tensions between liberal legal education and the doctrinal tradition have often been condensed to a dichotomy between the law degree as a liberal arts degree and as vocational preparation for the legal profession (or employment more generally).⁴¹ Whilst there have been attempts to forge a form of peaceful compromise between these two sides, most notably by Twining,⁴² the tensions appear to continue, often manifested through concerns about the impact of neo-liberal agendas which favour employability and the marketization of higher education.⁴³ It should be noted that this dichotomising represents a reductionist view given the variety of other potential approaches and traditions open to legal educators, such as the integration of contemplative practices based upon ancient Eastern traditions, and the use of feminist legal pedagogy (neither of which are incompatible with an overall liberal approach).⁴⁴ However, this

³⁸ Bailey n.30; Bradney n.12 at 86.

³⁹ R. Collier, ‘Privatising the University and the New Political Economy of Socio-Legal Studies’ (2013) 40(3) *Journal of Law and Society* 463.

⁴⁰ J. Guth & C. Ashford, ‘The Legal Education and Training Review: regulating socio-legal and liberal legal education?’ 48(1) (2014) *The Law Teacher* 5; A. Bradney, ‘Law as a Parasitic Discipline’ (1998) 25(1) *Journal of Law and Society* 71.

⁴¹ Jones n.13.

⁴² W. Twining, *Blackstone’s Tower* 1994.

⁴³ R. Collier, ‘Privatizing the University and the New Political Economy of Socio-Legal Studies: Remaking the (Legal) Academic Subject’ (2013) 49 *Journal of Law and Society* 450; Thornton n.2.

⁴⁴ For contemplative practices, see S. L. Rogers, ‘The mindful law school: An integrative approach to transforming legal education’ (2012) 28 *Touro Law Review* 1189; R. Magee, ‘Legal Education as Contemplative Inquiry: An Integrative Approach to Legal Education, Law Practice, and the Substance of the Law We Make’ (2016) 3(1) *The Journal of Contemplative Inquiry*. For feminist legal pedagogy, see C. Menkel-Meadow, ‘Feminist legal theory, critical legal studies, and legal education or the fem-crits go to law school’ (1988) 38 *Journal of Legal Education* 61; D. L. Rhode, ‘Missing questions: feminist perspectives on legal education’ (1992) 45 *Stanford Law Review* 1547.

perceived dichotomy does illustrate that one of the key characteristics of legal liberal education is its rejection of the notion of the law degree acting for preparation for the legal profession.⁴⁵

Overall, therefore, we can characterise liberal legal education as an approach to the law degree which emphasises the value of law as an intellectual discipline rather than for its potential vocational or neo-liberal consequences, which takes a wider, often inter-disciplinary approach to topics and that continues to prize, even deify, the concept of rationality. These characteristics shape not only the pedagogy of liberal legal education, but also the way in which proponents seek to achieve its aims.

The aims of liberal legal education: 'Better person' or 'good citizen'?

In the same way that the key characteristics of liberal education are diffuse, the aims of liberal legal education are sometimes unclear. However, it is possible to identify two broad notions – that of the 'better person' or the 'good citizen':

The minimum credo for a liberal legal education includes a broad mission to prepare 'good citizens' or 'better people' in the sense of rational participants in the life of the community.⁴⁶

The 'better person'

The concepts of the 'better person' and the 'good citizen', and their relationship, are an under-explored issue within liberal education generally. Given the retention of knowledge is not viewed as sufficient on its own, this implies that that there is some impact from a liberal education which goes beyond simply expanding a personal store of information. For some liberal commentators this requires the development of the 'good person'. A number, such as Hirst, use phrases focused upon intellectual expansion, such as 'the development of... the self-conscious, rational mind of man... in its most fundamental aspect'.⁴⁷ Other liberal commentators are more expansive, referring to education as having a transformative effect upon an individual

⁴⁵ Bradney n.12.

⁴⁶ Burridge & Webb n.11. The term 'wise citizen' is also sometimes used, see Haberberger n.4 1054.

⁴⁷ Hirst n.25 at 39; Peters n.23 19.

(something arguably impossible without the involvement of affect).⁴⁸ However, both capture a sense of personal and individualistic growth and development as a result of learning, whether purely cognitive or more transformational in nature.

Those commentators who focus solely upon cognitive development may query the term ‘better person’ as appropriate, viewing the ends of liberal legal education as wholly intellectual and with no focus on developing specific values or virtues⁴⁹ Conversely, others would view the inculcation of such values or virtues as key to the liberal enterprise, as encapsulated by Arnold’s reference to ‘the duty and possibility of extricating and elevating our best self, in the progress of humanity towards perfection’.⁵⁰ Nevertheless, underpinning both such perceptions is the notion of an individual’s cognitive development leading them to make (better) informed choices in terms of values, allegiance and behaviour, whether that is through an objective oversight or via the inculcation of specific liberal values..

The individualised creation of the ‘better person’ is viewed by a significant number of proponents of liberal education as sufficient on its own.⁵¹ The suggestion is that individual enrichment is the preferred aim of liberal education, regardless of whether or not this leads to a particular form of contribution or approach to wider society. Indeed, a person may well choose not to participate in civic society, or otherwise act as a ‘good citizen’, because they have made a rational, reasoned decision that this is not their best course of action.⁵²

The ‘good citizen’

Other proponents of liberal education view its end as the creation of a ‘good citizen’, often stemming from influential American writers such as Dewey.⁵³ However, even this notion can be interpreted in different ways, mirroring the

⁴⁸ See, for example, Peters n.23 21-22.

⁴⁹ S. Fish, *Save the World on your Own Time* 2012; Newman n.23 91.

⁵⁰ M. Arnold, *Culture & Anarchy* 1971, 202.

⁵¹ M. Sanderson, ‘Vocational and Liberal Education: A Historian’s View’ (1993) 28(2) *European Journal of Education* 189.

⁵² Bradney n.12.

⁵³ J. Dewey, *Democracy and Education. An Introduction to the Philosophy of Education* 1916; Collini suggests that the idea of ‘socialization in civic values’ has resonance in both the US and France but ‘has never played very well in Britain’ (S. Collini, *What are Universities for?* 2012, 91).

discussion above over what constitutes the ‘better person’. There are those who argue that the ‘good citizen’ in liberal ideology is the person who has absorbed tenets of liberal philosophy and seeks to uphold and apply those values within wider society.⁵⁴ This suggests that the creation of the ‘good citizen’ is predicated upon law students accepting and championing particular liberal tenets, focused upon individual autonomy and freedom to the extent that a person’s actions do not harm the interests of others within society.⁵⁵ Pue captures this well in his comment ‘Liberal states rest on the manufacture of liberal souls’.⁵⁶ Within contemporary society this manifests itself as a commitment to ideals such as democracy and equality, demonstrated in a range of ways, such as the upholding of the right to freedom of speech and the freedom to protest.⁵⁷

Alternatively, others focus upon the idea of the ‘good citizen’ as the ‘rational participant’ within the community.⁵⁸ It could be surmised that there is something of an assumption that such a participant will, by virtue of their rational approach, be someone who upholds liberal values in any event. However, the stated focus of such proponents is largely upon developing qualities of critical thinking and fostering a form of intellectual curiosity, which shapes students’ participation within society in a broader, less directive manner with an emphasis upon the acceptance of pluralism.⁵⁹

The overall focus on ‘the good citizen’, in both its guises, appears closely entwined with the idea of the university (including the law school) as a public good. In other words, as enriching the intellectual, cultural and political life of the community.⁶⁰ In both the UK and US (and elsewhere), this was a central aspiration, even if it was not always fully realised in practice, in the evolution

⁵⁴ N. J. James, ‘Liberal Legal Education: The Gap Between Rhetoric and Reality’ (2004) 1(2) *University of New England Law Journal* 163; W. W. Pue, ‘Legal education's mission’ (2008) 42(3) *The Law Teacher* 270.

⁵⁵ Mills n.31 Chapter 4.

⁵⁶ Pue n.56 272.

⁵⁷ See, for example, the recent protests over the proposed Police, Crime, Sentencing and Courts Bill 2021 in relation of freedom to protest.

⁵⁸ Burridge & Webb n.11 264; R. Brownsword, ‘Law Schools for Lawyers, Citizens and People’ *The Law School – Global Issues, Local Questions* ed. F. Cownie 1999.

⁵⁹ M. Levinson, *The Demands of Liberal Education* 1999, 9.

⁶⁰ Collini n.55 x. This is also complemented by the wider focus on social justice of commentators such as bell hooks (see, for example, b. hooks, *Teaching to transgress: education as the practice of freedom* 1994) and Friere (see, for example, P. Friere, *Pedagogy of the Oppressed* 1970).

of the twentieth century university.⁶¹ In recent years a pervasive neo-liberal ideology has focused upon the marketization of higher education and a shift towards ends which can be characterised either as a private good, or as a form of re-conceptualisation of the public good. This conflates the notion of a ‘good’ with economic success, whether as a workplace-ready graduate or as a contributor to the prosperity of society.⁶²

Given this approach to higher education, it is perhaps unsurprising that the liberal notion of education as assisting a student to become a ‘better person’ or ‘good citizen’ has often been supplanted by a consumeristic, individualised view of students which focuses on their contribution to the knowledge economy rather than wider notions of flourishing and happiness.⁶³ However, there has been resistance to this within both the wider university and legal education, for example, by highlighting the need for the law degree to focus upon a mission of social justice.⁶⁴ The proposed affective framework set out in this paper is designed to encourage such resistance by providing liberal legal education with renewed vitality through the acknowledgment and utilisation of affect to develop students synergistically as both ‘better people’ and ‘good citizens’.

A holistic developmental process

Although the ‘better person’ and ‘good citizen’ have largely developed as separate traditions within liberal education, there is a strong argument that the two notions are in fact compatible, and synergistic, with the potential for students to engage in a process of development which encompasses both. The starting point for this is that formalised learning is not, on the whole, an entirely solitary activity. Even if it is ultimately aimed at the development and enrichment of the individual, much of the learning itself will be socially

⁶¹ R. L. Lieberwitz, ‘Vulnerability theory and higher education’ (2021) 55(1) *The Law Teacher* 5, 7-10; Jonathan Grant, *The New Power University. The social purpose of higher education in the 21st century* 2021, 19; L. C. Robbins, *The University in the Modern World and Other Papers on Higher Education* 1966.

⁶² B. Hensley, M. Galilee-Belfer & J. J. Lee, ‘What is the greater good? The discourse on public and private roles of higher education in the new economy’ (2013) 35(5) *Journal of Higher Education Policy and Management* 553.

⁶³ A. Alwick & S. Cannizzaro, ‘Happiness in higher education’ (2017) 71(2) *Higher Education Quarterly* 204.

⁶⁴ Chris Ashford and Paul McKeown *Social Justice and Legal Education* 2018.

constructed via formal and informal communities of learning.⁶⁵ The fact that higher education, including university legal education, can include seminars and forms of group work and peer learning demonstrates the importance and value placed on the co-creation of knowledge within some formal settings.⁶⁶ The pedagogic worth of both formal and informal peer learning is also well-established in the more general educational literature.⁶⁷ The outcome of such peer learning may well be an individual student developing or changing their own personal viewpoint, but this will have taken place as a consequence of the communal learning experience, in other words, the students as active citizens within their learning experience.⁶⁸

Given that students in these settings do not learn in isolation, whether intentional or not, students will also learn and absorb wider notions of citizenship (in the sense of belonging to a group or community) throughout their studies. If we are seeking to encourage students to be engaged and active learners instead of receptacles of knowledge we are, whether we like it or not, also shaping their notions of citizenship. It is naïve to think that the attitudes and values to citizenship modelled in teaching and learning environments will not influence the approach which students take to citizenship within wider society.⁶⁹ Even if an educator was to make a conscious decision to exclude any forms of discussion or dialogue around citizenship, this itself would amount to a deliberate statement around citizenship, characterising it as something which should be separate from law and justice.⁷⁰ As Maharg explains:

Theories of learning that are focused on the singular mind
bracket the world and set it aside. The world cannot be set

⁶⁵ Paul Adams, 'Exploring Social Constructivism: Theories and Practicalities' (2006) 34(3) *Education* 243.

⁶⁶ Alison Bone. 'The twenty-first century law student' (2009) 43(3) *The Law Teacher* 222; David Boud, Ruth Cohen and Jane Sampson eds. *Peer Learning in Higher Education: Learning from and with Each Other* 2001.

⁶⁷ D. Boud, 'Making the move to peer learning' *Peer Learning in Higher Education: Learning from and with each other* eds. D. Boud, R. Cohen & J. Sampson 2001, 1.

⁶⁸ N. Zepke, 'Learning with peers, active citizenship and student engagement in Enabling Education' (2018) 9(1) *Student Success* 61.

⁶⁹ Kathleen Lilley, Michelle Barker, and Neil Harris. 'Exploring the process of global citizen learning and the student mind-set' (2015) 19(3) *Journal of Studies in International Education* 225.

⁷⁰ For a counterpoint see Fish n.51.

aside. We are ineluctably part of the world and it of us and our social relationships affect generations of knowledge.⁷¹

This is perhaps particularly the case within law, where so many of the topics considered touch upon key themes within society, from sexual offences to voting systems, from human rights to notions of the ‘public interest’. As students become engaged with the theories, ideas, case law and debates in these areas it seems inevitable that their ideas about society, and their place within it, will begin to form and develop (although possibly not as fully as they could or should do, given the current lack of acknowledgment of the affective domain).⁷² Despite neo-liberal incursions into legal education, there is also often a strong thread of commitment to social justice to be found within law schools, including through the provision of free law clinics and the other outreach activities commonly found within clinical legal education.⁷³ In addition, many law students are likely to have a level of prosocial motivation which supports notions of citizenship. They may be studying law to improve society or to in some way benefit certain groups within society. There is evidence from the US, Australia and the UK that many students at least begin law school with intrinsic goals which are orientated towards social justice and community service.⁷⁴

Of course, simply learning more about society does not necessarily mean that students will then wish to participate within it as ‘good citizens’. There is the possibility they may make a deliberate decision not to participate, or to limit their participation, or indeed to engage with a wholly different system of societal values than that of liberal democracy. However, Burrows argues that liberal education can develop core abilities that are pre-requisites for

⁷¹ Paul Maharg, *Transforming Legal Education. Learning and Teaching the Law in the Early Twenty-first Century* 2007, 6.

⁷² F. Cownie, ‘Alternative Values in Legal Education’ (2003) 6(2) *Legal Ethics*, 159.

⁷³ Donald Nicolson, ‘Legal Education, ethics and access to justice: forging warriors for justice in a neo-liberal world’ (2015) 22(1) *International Journal of the Legal Profession* 51.

⁷⁴ Kennon M. Sheldon and Lawrence S. Krieger, ‘Does Legal Education have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being’ (2004) 22 *Behavioral Sciences and the Law* 261; Andy Boon, ‘From public service to service industry: the impact of socialisation and work on the motivation and values of lawyers’ (2005) 12(2) *International Journal of the Legal Profession* 229. For a nuanced discussion of law students’ ethical development see Richard Moorhead, Catrina Denvir, Rachel Cahill-O’Callaghan, Maryam Kouchaki & Stephen Galoob ‘The ethical identity of law students’ (2016) 23(3) *International Journal of the Legal Profession* 235,

participation and action, namely, abstract thinking, self-direction, social interaction, and language.⁷⁵ It has already been noted that one of liberal education's key characteristics is the notion that learning has an intrinsic, even transformative, value, rather than being instrumentalist in quality. Peter argues that, for a person to be educated, their knowledge and understanding 'must permeate his way of looking at things rather than be "hived off"'.⁷⁶ If students develop such abilities it therefore seems likely that many will make a rational, informed decision to utilise them within society, particularly given the recognised associations between knowledge and understanding, critical thinking and global citizenship.⁷⁷ Indeed, it is arguable that, for liberal legal education's resonance to persist, it is necessary to develop such pre-requisites to function as a counterbalance to existing neoliberal discourses.⁷⁸

In addition, for an individual to learn effectively and grow intellectually there needs to be a sense of autonomous or intrinsic motivation, rather than an extrinsic, un-internalized focus such as, for example, simply acquiring knowledge because it is a prescribed element of a module or programme.⁷⁹ If a student experiences an intrinsic interest or enjoyment in a topic it is more likely that they will also be motivated to act upon what they are learning, whether it be by voting in an election, protesting on a particular issue or debating with family and friends.⁸⁰ Even if they do not find themselves engaged by the topic, within a liberal legal education they are likely to be encouraged to examine their own values and responses to it to identify why this

⁷⁵ David Burrows, 'Liberal Education and Effective Action' (2019) 68 (3-4) *The Journal of General Education* 289.

⁷⁶ Peters n.23 19.

⁷⁷ Lynn Davies, 'Global citizenship: abstraction or framework for action?' (2006) 58(1) *Educational Review* 5.

⁷⁸ J.McGee, M. Guihot & T. Connor 'Rediscovering Law Students as Citizens: Critical Thinking and the Public Value of Legal Education' (2013) 38(2) *Alternative Law Journal* 77.

⁷⁹ Carl A. Benware & Edward L. Deci (1984) 21 *Quality of learning with active versus passive motivational set. American Educational Research Journal* 755; Edward L. Deci & Richard M. Ryan, 'The "What" and "Why" of Goal Pursuits: Human Needs and the Self-Determination of Behavior' (2000) 11(4) *Psychological Inquiry* 227.

⁸⁰ Richard M. Ryan & Edward L. Deci, 'Intrinsic and extrinsic motivations: Classic definitions and new directions' (2000) 25 *Contemporary Educational Psychology* 54; Marylene Gagne & Edward L. Deci, 'Self-Determination Theory and Work Motivation' (2005) 26 *Journal of Organizational Behaviour* 331; Adam M. Grant, 'Does intrinsic motivation fuel the prosocial fire? Motivational synergy in predicting persistence, performance, and productivity' (2008) 93(1) *Journal of Applied Psychology* 48.

is the case. This form of reflection ensures they are more informed about society and their own sense of citizenship.⁸¹

In other words, in developing a ‘better person’, a liberal education is also likely to fuel behaviour and actions which can be equated with notions of ‘good citizenship’. The two concepts can be viewed as synergistic, rather than oppositional. Working towards liberal education’s notion of the ‘better person’ also fosters the abilities and forms of motivation which contribute to the development of the ‘good citizen’. In trying to create a ‘good citizen’, liberal education facilitates personal growth and reflection, benefiting both the individual and society. Not all students may fully achieve both aims, depending on (amongst other things) their motivations, view of learning and disposition. However, it is likely that most will develop in a way which, at least in part, satisfies both aims.⁸²

Having synthesised the characteristics and aims of liberal legal education to depict a holistic focus which can contribute to the development of both the ‘better person’ and ‘good citizen’, it is necessary to consider in detail the role which affect has to play within this form of endeavour. This will demonstrate the necessity of acknowledging the affective domain in striving to fully meet liberal legal education’s aims.

The affective domain and its relationship with cognition

Definitions of affect

The term ‘affect’ is defined in a range of ways. A traditional distinction has been made between cognition (thought), affect (feeling) and conation (inclination).⁸³ More recently, definitions of affect have ranged from extremely broad characterisations, sometimes incorporating cognition and conation, such as Blackman and Venn’s reference to ‘the non-verbal, non-conscious dimensions of experience’⁸⁴ to more narrow suggestions, such as ‘emotion and

⁸¹ Haberberger n.4.

⁸² M. S. Roth, *Beyond the University. Why Liberal Education Matters* 2014, 189; see also M. Oakshott, *Rationalism in Politics and Other Essays* 1962, 198-9.

⁸³ Ernest R. Hilgard, ‘The Trilogy of Mind: Cognition, Affection and Conation’ (1980) 16 *Journal of the History of the Behavioral Sciences* 107.

⁸⁴ Lisa Blackman & Couse Venn, ‘Affect’ (2010) 16(1) *Body & Society* 7, 8.

mood'.⁸⁵ There has been considerable discussion over whether emotions form a part of the affective domain, with some accounts treating them as synonymous and others viewing emotions as one element of a broader range of feelings, moods and preferences.⁸⁶ Others draw a clear distinction between affect and emotions, with Feldman Barrett arguing that affect is a term for 'the general sense of feeling that you experience throughout each day' which are ever-present and, on occasion, are transformed into more complex and transitory experiences we know as emotions.⁸⁷

As indicated in the Introduction, for the purposes of this paper, the terms 'affect' and 'affective' domain will be used as a form of shorthand to encompass moods, feelings and emotions. It is acknowledged this could be seen as adding to definitional confusion, however, there is a significant overlap in the ways in which these elements interact within learning and teaching environments, such as a law school. For example, a student will enter a lecture or workshop experiencing affect in terms of their mood that day (be it feeling bored and tired or alert and interested).⁸⁸ They may experience specific emotions throughout the session, based on their appraisal of events, such as happiness at seeing their best friend in the room, anger if the instructor is late without notice, or upset and agitation if dealing with sensitive content. This may impact on their feelings about the topic, the module and the instructor, as well as influencing their mood as they leave the session.⁸⁹ This illustration demonstrates the range of affective elements present at any one time in an individual's daily life and also the inter-connections between them all.⁹⁰ Each of the different elements of affect (including, within this paper's definition,

⁸⁵ S. Schnall, 'Affect, Mood and Emotions' in *Social and Emotional Aspects of Learning* ed. Sanna Jarvela, 2011, 59.

⁸⁶ For the former, see George Loewenstein, 'Defining Affect' (2007) 46(3) *Social Science Information* 405. For the latter, see Joseph P. Forgas, 'Affect in Legal and Forensic Settings: The Cognitive Benefits of not Being Too Happy' in *Emotion and the Law. Psychological Perspectives* ed. Brian H. Bornstein and Richard L. Wiener 2010, 15.

⁸⁷ Lisa Feldman Barrett, *How Emotions Are Made. The Secret Life of the Brain* 2017, 72.

⁸⁸ Moods are generally of a longer duration than emotions and influenced by a wide range of biological and psychological factors (R. E. Thayer, *The Origin of Everyday Moods: Managing Energy, Tension, and Stress* 1997).

⁸⁹ Zane Asher Green & Sadia Batool, 'Emotionalized learning experiences: Tapping into the affective domain' (2017) 62 *Evaluation and Program Planning* 35; Colin Beard, Sue Clegg & Karen Smith, 'Acknowledging the Affective in Higher Education' (2007) 33(2) *British Educational Research Journal* 235.

⁹⁰ Reinhard Pekrun, Thomas Goetz, Wolfram Titz & Raymond P. Perry, 'Academic Emotions in Students' Self-Regulated Learning and Achievement: A Program of Qualitative and Quantitative Research' (2002) 37(2) *Educational Psychologist* 91.

emotions) will be experienced by the student throughout their daily life via a sense of affective valence and arousal.⁹¹ In other words, whether something is experienced as a pleasant or unpleasant feeling, and how the strength of that experience varies in intensity over time. The effects and impacts of these affective experiences will depend upon an individual's capacity for affective regulation, and upon the type and nature of the emotions involved. However, their presence is inescapable.⁹²

Affect and cognition as inter-related entities

As well as appreciating the pervasive and omnipresent nature of affect, it is also necessary to understand the ways in which it is an integral part of learning.⁹³ The relevance of the affective domain has been partially acknowledged within education for many years.⁹⁴ However, there has been a tendency to retain the characterisation of cognition and affect as separate functions.⁹⁵ Within higher education generally, and legal education in particular, this was manifested through a form of Cartesian dualism which divided and dichotomised cognition and affect and prized the former at the expense of the latter.⁹⁶ Affect was seen as a bodily function, to be suppressed or disregarded, whereas cognition was seen as a higher function of the mind, to be developed and prioritised. More recently, there has been what has been described as an 'affective' or 'therapeutic' turn within education.⁹⁷ Although the law school has remained relatively resistant to this turn,⁹⁸ the overall shift

⁹¹ Feldman Barrett n.123 72.

⁹² D. Trampe, J. Quoidbach & M. Taquet 'Emotions in Everyday Life' (2015) 10(12) *PLoS ONE*.

⁹³ Immordino-Yang n.14.

⁹⁴ David R. Krathwohl, Benjamin S. Bloom & Bertram B. Masia, Taxonomy of educational objectives: The classification of educational goals. Handbook II: Affective domain 1964.

⁹⁵ Hilgard n.119. This is also demonstrated in Krathwohl et al's separate taxonomies for the cognitive and affective domains (n.130).

⁹⁶ Terry Hyland, 'Mindfulness-based interventions and the affective domain of education' (2014) 40(3) *Educational Studies* 277. Jones n.13.

⁹⁷ Bessie Dernikos, Nancy Lesko, Stephanie D. McCall, Alyssa Niccolini eds. *Mapping the Affective Turn in Education: Theory, Research and Pedagogy* 2020. For a critique see Kathryn Ecclestone and Dennis Hayes, *The Dangerous Rise of Therapeutic Education* 2008.

⁹⁸ Gillian Calder, 'Whose body is this? on the role of emotion in teaching and learning law' in *Research Handbook on Law and Emotion* eds. Susan A. Bandes, Jodie L. Madeira, Kathryn D. Temple & Emily Kidd White 2021; Jones n.13; Paul Maharg and Caroline Maughan (eds) *Affect and Legal Education. Emotion in Learning and Teaching the Law* 2011.

in focus has led to a number of key insights which can be applied within legal education. Notable among these is that separating cognition from affect is erroneous because '[i]t is literally neurobiologically impossible to build memories, engage complex thoughts, or make meaningful decisions without emotion.⁹⁹

Instead, affect and cognition have a bi-directional relationship – what we feel influences how we think and what we think influences how we feel.¹⁰⁰ Affect impacts both student and instructor motivation and interest, determining what we do (and do not) care about.¹⁰¹ It influences students' interpretation, judgement, decision-making and reasoning as well as their interactions with instructors, peers and others.¹⁰² It is not merely a case of trying to exclude or regulate affect to optimise learning, instead it is about a far more complex interaction with affect as an inescapable element of learning processes.¹⁰³ Danvers illustrates this well when discussing critical thinking within higher education (already referred to in terms of its link with citizenship).¹⁰⁴ She argues that this is 'an intensely affective process', embodied and relational.¹⁰⁵ Her empirical work with first year undergraduate students suggested they experienced not just transient emotions (such as nervousness around a specific activity) but also as a more complex, sometimes conflicting, set of on-going feelings.¹⁰⁶ As such, acknowledging these affects can open up new pedagogical landscapes and allow students to explore more fully 'the imperfection of all

⁹⁹ Immordino-Yang n.14.

¹⁰⁰ Helen Demetriou & Elaine Wilson, 'Synthesising affect and cognition in teaching and learning' (2009) 12 *Social Psychology of Education* 213.

¹⁰¹ Mary Ainley, 'Connecting with Learning: Motivation, Affect and Cognition in Interest Processes' (2006) 18 *Educational Psychology Review* 391.

¹⁰² Isabelle Blanchette & Anne Richards, 'The influence of affect on higher level cognition: A review of research on interpretation, judgement, decision making and reasoning' (2010) 24(4) *Cognition and Emotion* 561; Amanda D. Angie, Shane Connelly, Ethan P. Waples & Vykinta Kligyte 'The influence of discrete emotions on judgement and decision-making: A meta-analytic review' (2011) 25(8) *Cognition and Emotion*, 1393; Tyng M. Chai, Amin U. Hafeez, Saad N. M. Mohamad & Malik S. Aamir, 'The Influences of Emotion on Learning and Memory' (2017) 8 *Frontiers in Psychology* 1454.

¹⁰³ Isabelle Blanchette & Serge Caparos, 'When emotions improve reasoning: The possible roles of relevance and utility' (2013) 19(3-4) *Thinking & Reasoning* 399.

¹⁰⁴ Emily Clair Danvers, 'Criticality's affective entanglements: rethinking emotion and critical thinking in higher education' (2016) 28(2) *Gender and Education* 282. See also Sherri DioGuardi 'Critical Thinking in Criminal Justice Ethics: Using the Affective Domain to Discover Gray Matters' (2016) 27(4) *Journal of Criminal Justice Education* 535.

¹⁰⁵ Danvers n.140 at 295.

¹⁰⁶ Danvers n.140 at 285-286.

views of the world’ and ask ‘questions about how we are co-entangled and co-implicated’.¹⁰⁷ Similarly, in the context of legal education, Maharg identifies that liberalism itself involves strong affective urges ‘about the nature of knowledge, society, the individual, privacy, freedom and the like’.¹⁰⁸ Taking the example from above of a student entering a lecture or workshop, if they are feeling bored their motivation is likely to diminish, affecting their concentration and leaving them less likely to absorb and engage with any new concepts introduced. Conversely, if they are alert and interested, they may well have the optimum level of affective arousal to engage fully and challenge themselves to develop their cognitive skills further by attempting to apply the new concept in a way which reflects their experience.

Understanding affect as an inescapable part of learning, and one which must be engaged with rather than simply excluded or regulated, has significant implications for both liberal education generally and legal liberal education in particular. This can be demonstrated by returning to the key characteristics of liberal legal education identified previously. If it is about the intellectual pursuit of law as an intrinsic good in a way which requires more than mere knowledge transmission, then it becomes necessary for the affective aspects of learning to be acknowledged and incorporated to enable students to learn in deep and potentially transformative ways.¹⁰⁹ Without these, thinking (and in consequence learning) becomes ‘arid and shallow’.¹¹⁰

Liberal legal education’s conception of rationality is also challenged. If affect can no longer be seen as irrational, but is instead integral to commonly accepted components of rationality within law (such as reasoning), it cannot be separated or excluded from rationality.¹¹¹ Indeed, it can be argued that some aspects of affect, such as intentional emotions involved in the appraisal of a situation, in

¹⁰⁷ Danvers n.140 at 295.

¹⁰⁸ P. Maharg, *Transforming Legal Education. Learning and Teaching Law in the Early Twenty-First Century* 2007, 7.

¹⁰⁹ Immordino-Yang n.14; Jones) n.13.

¹¹⁰ Angela P. Harris & Marjorie M. Schultz, “‘A(nother) Critique of Pure Reason’: Toward Civic Virtue in Legal Education’ (1993) 45(6) *Stanford Law Review* 1773; Pekrun n.126.

¹¹¹ Michel Tuan Fam, ‘Emotion and Rationality: A Critical Review and Interpretation of Empirical Evidence’ (2007) 11(2) *Review of General Psychology* 155; Mark Lance & Alessandra Tanesini, ‘Emotion and Rationality’ (2004) 30 *Canadian Journal of Philosophy Supplementary Volume* 275.

fact, enhance rationality or are themselves rational.¹¹² This means that, to study and engage effectively, students will need to develop an understanding of the influences of the affective domain on the different facets of learning and how to both regulate and utilise these influences.¹¹³

Regardless of the specificities of emotion's influence, it is clear that the affective domain is relevant and influential. Even if a separation between affect and rationality were possible, with cognitive rationality alone being acknowledged within educational settings, it would leave a significant gap within learning, again reducing it to something akin to knowledge transmission. The reasoning and judgement required even to appreciate the connections and inter-relationship between facts are weakened through the absence of affect. The polarization of reason and affect 'prevents either from enriching the other', resulting in emotions and feelings that are 'undisciplined, unexamined, and unowned', as well as thinking that is 'arid and shallow'.¹¹⁴ Insights from branches of psychology and neurology can both be used to justify its inclusion and also to facilitate students' engagement with, and understanding of, this relationship.¹¹⁵

In summary, applying key fundamental concepts from psychology and neuroscience demonstrates that the exclusion of affect from liberal legal education is not possible. Even if it were, it would be ill-advised and unreflective of the characteristics of such an education. Therefore, the remainder of this paper will seek to construct a framework of core affective concepts which can inform the characteristics of liberal legal education and assist it in meeting its overall aims by holistically developing both the 'better person' and the 'good citizen'. The concepts identified were each selected because they can each be applied to both aims, reinforcing the synergistic relationship between them. Each concept is broad enough to encompass both,

¹¹² Ronald De Sousa, *The Rationality of Emotion* 1987; Klaus L. Scherer, 'On the rationality of emotions: Or, When are emotions rational?' (2011) 50(3-4) *Social Science Information* 330.

¹¹³ J. Tan, J. Mao, Y. Jiang, M. Gao, 'The Influence of Academic Emotions on Learning Effects: A Systematic Review' (2021) 18 *International Journal of Environmental Research and Public Health*; Pekrun et al n.126.

¹¹⁴ Harris & Schultz n.110 1779; see also Carole Leathwood & Valerie Hey, 'Gender/ed discourses and emotional sub-texts: theorising emotion in UK higher education' (2009) 14(4) *Teaching in Higher Education* 429.

¹¹⁵ Bronwyn E. Wood, Rowena Taylor, Rose Atkins & Michael Johnson, 'Pedagogies for active citizenship: Learning through affective and cognitive domains for deeper democratic engagement' (2018) 75 *Teaching and Teacher Education* 259.

depending on its use and application within a programme or course. A number of suggestions for practical applications are provided for each concept. It should be noted that often these are not specific to legal education but instead drawn from other disciplines. This reflects the type of intellectual breadth which is key to liberal thought, whilst also acknowledging the limitations of existing legal pedagogy in this area. Legal educators will then have the flexibility to draw on such suggestions and adapt them to the diverse needs of individual programmes and courses.

Core affective concepts for personhood and citizenship

This section identifies the four affective concepts which assist in developing the ‘better person’ and the ‘good citizen’ within liberal legal education. It is not being suggested that these are in themselves sufficient for this progress. However, it is argued that these are necessary components to be developed alongside the other traditional ‘cognitive’ elements currently most closely associated with liberal education. It is not anticipated that a liberal legal education will enable every student to attain and fully develop all of these concepts, but each has a value in its own right as well as being part of a wider developmental process.

It is also worth noting that a number of these concepts are not solely or exclusively affective in nature, in that they often involve complex inter-plays between cognition and affect.¹¹⁶ However, each has a strong affective element which is required, but currently often ignored or undervalued. In addition, each acknowledges and validates the importance of affect in a way often missing in discussions of liberal legal education. This also aligns with this paper’s overall position, challenging the false dichotomy or form of Cartesian dualism which is often constructed between affect and cognition.¹¹⁷

Experiential thinking: Relevance and value

The notion of experiential thinking is based on the work of Epstein, whose ‘cognitive-experiential self-theory’ draws together a number of earlier psychological theories which posit that there are two different ways of thinking.¹¹⁸ Drawing on these, Epstein identified two different ways of

¹¹⁶ Ainley n.101.

¹¹⁷ Joanna Conaghan, *Law and Gender* 2013 at p.208; Jones n.13.

¹¹⁸ Simon John Handley, Stephen J. Newstead & Helen Wright, ‘Rational and Experiential Thinking: A Study of the REI’ in Richard J. Riding & Stephen Raynor (eds.) *International*

processing information, termed as 'rational' and 'experiential'.¹¹⁹ The experiential mode is driven by affect, largely in the form of emotions, which are in turn generated by the way in which an individual interprets a particular event.¹²⁰ For example, if a person is coming towards you with a knife in a darkened alley you are likely to interpret them as a threat and feel scared and anxious. If a person is coming towards you with a knife during a birthday party, you are likely to feel excited and happy because it's time to cut the birthday cake.¹²¹ There is a social constructivist basis to this as your interpretations will have been shaped by your previous experiences and interactions with others.¹²² Epstein explains the role of experiential thinking as follows:

At its lower levels of operation, it is a crude system that automatically, rapidly, effortlessly, and efficiently processes information. At its higher reaches, and particularly in interaction with the rational system, it is a source of intuitive wisdom and creativity. Although it represents events primarily concretely and imaginatively, it is capable of generalization and abstraction through the use of prototypes, metaphors, scripts, and narratives.¹²³

It is the rational thinking style that is most associated with academic achievement, mirroring liberal education's focus on rationality. However, the experiential thinking style has been found to have a significant correlation with positive interpersonal relationships, empathy, creativity, aesthetic judgment, humour, and intuition.¹²⁴ Although perhaps not commonly associated with academic success (particularly within law), these elements do have an important role to play within learning. For example, Immordino-Yang & Faeth discuss the role of 'skilled intuition' in shaping approaches and responses to

Perspectives on Individual Differences Vol 1 Cognitive Styles Ablex Publishing Corporation 2000.

¹¹⁹ Seymour Epstein, 'Integration of the Cognitive and the Psychodynamic Unconscious' (1994) 49(8) *American Psychologist* 709-724, 711; Seymour Epstein 'The Self-Concept Revisited. Or a Theory of a Theory' (1973) 28 *American Psychologist* 404.

¹²⁰ Epstein *ibid.* 715.

¹²¹ M. Corbetta & G. Shulman 'Control of goal-directed and stimulus-driven attention in the brain' (2002) 3 *Nature Reviews Neuroscience* 201.

¹²² Lisa Feldman Barrett, 'Constructing emotion' (2011) 20(3) *Psihologijske teme* 359, 372.

¹²³ Epstein n.119.

¹²⁴ Paul Norris & Seymour Epstein, 'An Experiential Thinking Style: Its Facets and Relations with Objective and Subjective Criterion Measures' (2011) 79(5) *Journal of Personality* 1043.

learning tasks based upon previous emotional reactions.¹²⁵ Creativity is also required to enable individual learners to synthesise and apply information within interdisciplinary study¹²⁶ and to form a 'vision of where they want to go'.¹²⁷ The growing interest in experiential learning also evidences the value of experiential thinking.¹²⁸ Drawing on the work of Dewey and others,¹²⁹ Kolb & Kolb refer to learning as '[n]ot just the result of cognition, learning involves the integrated functioning of the total person - thinking, feeling, perceiving, and behaving'.¹³⁰

In terms of liberal legal education, there is some evidence that studying law decreases students' reliance on an experiential thinking style. Towness O'Brien *et al* applied the Rational-Experiential Inventory to assess the thinking styles of ANU College of Law students in Australia.¹³¹ This included one cohort nearing the end of their first year of study and one cohort who were surveyed at both the beginning and end of their first year of study.¹³² They found there was a 'significant difference' between the thinking styles of the cohort surveyed twice when comparing the beginning and end of the year, with rational thinking increasing and experiential thinking decreasing.¹³³ The study also provided some evidence that those students who did retain their propensity for experiential thinking had higher levels of wellbeing.¹³⁴ This mirrors a broader theme in the literature on lawyer wellbeing which suggests that legal education's interpretation of 'thinking like a lawyer' can be harmful.¹³⁵ It is

¹²⁵ Mary Helen Immordino-Yang & Matthias Faeth, 'The Role of Emotion and Skilled Intuition in Learning' *Mind, brain and education: Neuroscience implications for the classroom* ed. David A. Sousa 2010.

¹²⁶ Merel Van Goch, 'Creativity in liberal education before and after study commencement' (2018) *4th International Conference on Higher Education Advances* 1475.

¹²⁷ Robert J. Sternberg, 'Wisdom, Intelligence and Creativity Synthesized: A New Model for Liberal Education' (Fall 2009) *Liberal Education* 10.

¹²⁸ See, for example, Janet Eyler, 'The Power of Experiential Education' (Fall 2009) *Liberal Education* 24.

¹²⁹ Dewey n.55.

¹³⁰ Alice Y. Kolb & David A. Kolb, 'Learning Styles and Learning Spaces: Enhancing Experiential Learning in Higher Education' (2005) 4(2) *Academy of Management Learning & Education* 193.

¹³¹ M. Towness O'Brien, S.Tang & K. Hall, 'Changing our Thinking: Empirical Research on Law Student Wellbeing, Thinking Styles and the Law Curriculum' (2011) 21(1/2) *Legal Education Review* 149.

¹³² Towness O'Brien *et al*, *ibid.* 154.

¹³³ Towness O'Brien *et al* *ibid.* 162.

¹³⁴ Towness O'Brien *et al* *ibid.* 163.

¹³⁵ C. James 'Lawyers' wellbeing and professional legal education' (2008) 42(1) *The Law Teacher* 85.

essentially an even narrower sub-section of the rational thinking style, involving 'a form of linear analysis in a constricted paradigm, best used for a specific purpose'.¹³⁶ However, there is a tendency for law schools to portray it as a 'superior way of thinking' rather than a useful approach in specific circumstances (such as when analysing problem scenarios).¹³⁷

Overall, there are a number of compelling reasons for law schools to purposefully seek to foster experiential thinking within their curricula. One of these is to ensure that attributes such as creativity and aesthetic judgement are not overlooked within legal education.¹³⁸ To do so would be to prioritise narrow forms of rational thinking in a way which seems to undermine liberal education's emphasis on breadth and different perspectives.¹³⁹ To produce rigid minds, which analyse all arguments and situations through a narrow legalistic prism, forgoes the significant advantages of experiential thinking and learning. Over-reliance on 'rational' thinking and 'thinking like a lawyer' has the potential to be detrimental to wellbeing in a way which will, in turn, be likely to harm the students' motivation and engagement with their learning.¹⁴⁰ Therefore, experiential learning has a relevance and value for liberal legal education.

The fact that experiential thinking can, at its lower levels of operation, result in potential bias and intolerance is important to acknowledge.¹⁴¹ It is therefore not intended to downplay the importance of cognition and rationality within the law degree (not least in fostering students' understanding of the potential and limitations of experiential thinking). However, a reliance solely on rational thinking and 'thinking like a lawyer' suggests a deification of the most narrow of legalistic mindsets, rather than a focus on developing the 'better person' who can draw creatively upon their personal experience, contextualise their learning and apply it across aspects of their life, or the 'good citizen' who can positively interact with society and respond intuitively to others. If this is the case, then it

¹³⁶ James (2008) *ibid.* 91.

¹³⁷ James (2008) *ibid.* 91.

¹³⁸ J. Weinstein & L. Morton, 'Stuck in a rut: The role of creative thinking in problem solving and legal education' 9 (2002) *Clinical Law Review* 835.

¹³⁹ B. Hepple, 'The Renewal of the Liberal Law Degree' (1996) 55(3) *Cambridge Law Journal* 470.

¹⁴⁰ Y. Lu, D. T. L. Shek & Z. Xiaoqin, 'The Influence of Personal Well-Being on Learning Achievement in University Students Over Time: Mediating or Moderating Effects of Internal and External University Engagement' (2018) 8 *Frontiers in Psychology*.

¹⁴¹ J. J. Gunnell & S. J. Ceci, 'When Emotionality Trumps Reason: A Study of Individual Processing Style and Juror Bias' (2010) 28 *Behavioral Sciences and the Law* 850.

is hard to see how a liberal legal education can avoid embracing experiential thinking in ways which foster the intellect more broadly in order to achieve its aims.

Experiential thinking: Applications within legal education

Experiential thinking has the potential to be developed and honed through a process of learning and development.¹⁴² Within law, aspects of experiential thinking such as creativity have been most commonly associated with problem-solving activities and developing lawyering skills.¹⁴³ In particular, creative problem-solving is generally positioned as an important skill for future lawyers, enabling them to consider the wider, non-legal factors which may well be involved within the generation of a seemingly legal issue and its eventual resolution.¹⁴⁴ As Menkel-Meadow suggests 'Good problem solving requires many modes of thinking, in which legal, analytic and analogical thinking are a part, but not the whole, of what we need'.¹⁴⁵ Suggested ways to foster such creative problem-solving include word play, reframing situations, use of narratives, mind mapping, the use of analogy and metaphor or even using toys, costumes and props.¹⁴⁶ For example, performing 'skits' and 'role plays' to re-enact problem question scenarios, and even using 'nerf weaponry' in negotiation exercises!¹⁴⁷

Wider educational literature on experiential thinking (and related concepts) indicates the potential for a much broader application of experiential thinking. Yorks and Kasl suggest it involves both fostering an appropriate learning environment and working with students in different ways.¹⁴⁸ The former can involve introducing specific 'rituals' at the start of a teaching session to assist

¹⁴² C. Harteis & S. Billett, 'Intuitive expertise: Theories and empirical evidence' (2013) 9 *Educational research review* 145.

¹⁴³ See, for example, J. Weinstein & Li Morton, 'Stuck in a Rut: The Role of Creative Thinking in Problem Solving and Legal Education' (2003) 9 *Clinical Law Review* 835.

¹⁴⁴ A. M. Seielstad, 'Community Building as a Means of Teaching Creative, Cooperative, and Complex Problem Solving in Clinical Legal Education' (2002) 8 *Clinical Law Review* 445.

¹⁴⁵ C. Menkel-Meadow, 'Aha--Is Creativity Possible in Problem Solving and Teachable in Legal Education' (2001) 6 *Harvard Negotiation Law Review* 97, 99; J. Gerarda Brown, 'Creativity and Problem-Solving' (2003-2004) 87 *Marquette Law Review* 697, 706.

¹⁴⁶ Menkel Meadow n.145 123-124.

¹⁴⁷ Gerarda Brown n.145 706-707.

¹⁴⁸ L. Yorks & E. Kasl, 'I know more than I can say: A taxonomy for using expressive ways of knowing to foster transformative learning' (2006) 4(1) *Journal of Transformative Education* 43.

students in transitioning into a space where they can be both cognitively and affectively engaged, for example, using guided visualisations or mindfulness-related activities. It can also involve including storytelling, allowing students to share their own prior experiences (or those of others) to foster empathy and build connections within the classroom.¹⁴⁹ In terms of working with students, they refer to the need to evoke experiences and to encourage a consciousness of emotions and feelings. For example, stimuli such as a guest speaker, an object or a piece of music could be used to build students' connection with an experience or idea. Students could then be encouraged to respond intuitively via free writing or drawing.¹⁵⁰ Yorks and Kasl also refer to the need to facilitate creative ways of capturing insights and concepts: 'If a learner creates an expressive representation of a new insight, he or she can later relive the entire learning experience by reexperiencing the expressive representation'.¹⁵¹ This could be done through a physical (bodily) enactment or artistic representations.

Within legal education, there is the potential to adopt many of these suggestions and techniques. There has already been work done to challenge the highly text-based focus of law by expanding the use of movement and visual arts.¹⁵² Some legal educators have already begun to incorporate mindfulness activities within their teaching.¹⁵³ Watkins & Guihen have recently experimented with using both narrative and metaphors within formative assessment feedback to students.¹⁵⁴ However, to date there is no evidence of these approaches having been absorbed into the mainstream of legal education. In the US context, Kennedy famously described the first-year law school experience of being introduced to a 'hot' case, one with a sympathetic claimant and seemingly unscrupulous defendant who successfully defeats the claim. He explains:

The point of the class discussion will be that your initial reaction of outrage is naïve, nonlegal, irrelevant to what you're supposed to be learning, and maybe substantively

¹⁴⁹ Yorks & Kasl *ibid.* 51-52.

¹⁵⁰ Yorks & Kasl *ibid.* 53-55.

¹⁵¹ Yorks & Kasl *ibid.* 55.

¹⁵² Z. Bankowski, M. Del Mar & P. Maharg, *The Arts and the Legal Academy: Beyond Text in Legal Education* 2016.

¹⁵³ R. V. Magee, *Contemplative practices and the renewal of legal education* (2013) 135 *New Directions for Teaching and Learning* 31; A. Cullen, *Cultivating a Reflective Approach to the Practice of Law: The Use of Meditation in Legal Education* (2019) 48 *Southwestern Law Review* 343.

¹⁵⁴ D. Watkins & L. Guihen, *Using Narrative and Metaphor in Formative Feedback* (2018) 68(1) *Journal of Legal Education* 154.

wrong into the bargain. There are “good reasons” for the awful result when you take a legal and logical “large view”, as opposed to a knee-jerk passionate view...¹⁵⁵

Despite this quotation now being over forty years old, it still has resonance, reflecting the continuing emphasis on rigid and narrow forms of ‘thinking like a lawyer’ discussed previously.¹⁵⁶ A simple way to begin redressing the balance between this interpretation of rational thinking and introducing experiential thinking could be to allow law students to explore this initial and intuitive ‘hot’ response to a case, rather than encouraging them to suppress or disregard it. At its most basic, this could involve a question to draw student’s explicit attention to their initial reaction, for example, ‘how do you feel about this case?’. Developing this further, heightening the impact of this initial reaction via stimuli such as photographs, a video clip or a replica of an item of evidence, could lead to a vivid connection with both the case and the emotional reactions it generates. This would enrich the wholly cognitive approach currently taken within liberal legal education in a way which allows students to understand both themselves as a person, and their position within society, in a more holistic manner (which in itself facilitates better learning).¹⁵⁷

Affective authenticity: Relevance and value

If students are to be permitted to develop both their rational and experiential thinking within the law degree, it is also necessary for them to be equipped with the affective authenticity to be able to fully explore and interpret their affective responses and reactions. Trilling draws an important distinction between sincerity and authenticity, defining sincerity as ‘a congruence between avowal and actual feeling’.¹⁵⁸ Salmela echoes this by arguing that emotional sincerity is simply the truthful expression of a particular affective state, however fleeting or incongruent with the person’s usual values. There is a discernible value to be found in affective sincerity itself, in the way it enables individuals to correctly identify and interpret the affective states they

¹⁵⁵ D. Kennedy, ‘Legal education and the reproduction of hierarchy’ (1982) 32 *Journal of Legal Education* 591, 594.

¹⁵⁶ James n.135.

¹⁵⁷ P. Maharg, *Transforming Legal Education. Learning and Teaching the Law in the Early Twenty-first Century* 2007; C. R. Rogers & H. J. Freiberg, *Freedom to Learn* 1994.

¹⁵⁸ Lionel Trilling, *Sincerity and Authenticity* 1974, 2.

experience.¹⁵⁹ This is a vital part of self-knowledge, which in turn frames, guides and directs behaviour (despite such knowledge not always being accurate).¹⁶⁰ However, simply being able to correctly recognise an affective state does not imply in itself any form of consistency or connection with one's values. An example of this is emotional contagion, where an individual's emotions or moods are transferred to or 'caught' by others around them.¹⁶¹ This could lead to someone sincerely feeling 'happy' or 'sad' as a result of someone they are in close proximity to experiencing that particular emotion, without it reflecting their true self. Therefore, the focus in this affective framework is upon affective authenticity.

There are many different interpretations of the word 'authenticity'.¹⁶² The word itself has origins in Latin and ancient Greek and is most commonly viewed as meaning being genuine or 'true to one's self'.¹⁶³ Therefore, affective authenticity is where these affective states 'are congruent with, or integral to one's self, not just passing episodes that occur in one's body and mind'.¹⁶⁴ As a result, there is a normative element to it, as to understand one's values and identity it is necessary to have a conception of what is being strived for, in other words, what is 'good'.¹⁶⁵ The link between emotional authenticity and an individual's values and inner being demonstrates a richness which has particular resonance to liberal education's notion of the 'better person'. Our emotions indicate to us what we value and care for. If someone is unable to ascertain whether their affective state is authentic, then they cannot use these cues and signals to assist them in identifying and understanding their values and true self.

¹⁵⁹ David Pugmire, 'Real Emotion' (1994) 54(1) *Philosophy and Phenomenological Research* 105; Christoph Jäger, 'Affective Ignorance' (2009) 71 *Erkenntnis* 123.

¹⁶⁰ Hazel Markus, 'Self Knowledge: An Expanded View' (1983) 51(3) *Journal of Personality* 543; Jonathon D. Brown, *The Self* 1998.

¹⁶¹ Vijayalakshmi and Sanghamitra Bhattacharyya, 'Emotional Contagion and its Relevance to Individual Behavior and Organizational Processes: A Position Paper' (2013) 27(3) *Journal of Business and Psychology* 363.

¹⁶² Jacob Golumb, *In Search of Authenticity. From Kierkegaard to Camus* 1995.

¹⁶³ Merlin B. Thompson, 'Authenticity in Education: From Narcissism and Freedom to the Messy Interplay of Self-Exploration and Acceptable Tension' (2015) 34 *Studies in the Philosophy of Education* 603.

¹⁶⁴ Mikko Salmela, 'What is Emotional Authenticity?' (2005) 35(3) *Journal for the Theory of Social Behaviour* 209, 217.

¹⁶⁵ Nimrod Aloni, 'A Redefinition of Liberal and Humanistic Education' (1997) 43 *International Review of Education* 87, 102.

The exact relationship between emotions and moral values is heavily debated, with Kristjánsson suggesting emotions can be characterised as either ‘value-recorders’ or ‘value’ donors’.¹⁶⁶ In other words, as either assisting in identifying and interpreting a person’s existing objective values or as generating a person’s values through their subjective lens. Regardless of which characterisation is chosen, the key point for the purposes of this paper is that there is some form of relationship in place, one which requires us to access and understand of our affective states to develop and understand our values. As such, an examined life has to be one which encompasses and acknowledges affect:

[...]if one admits the possible existence of hidden, subterranean, unacknowledged forces that may to some extent govern one’s life, that may determine one’s actions, without suitable self-examination it may never be clear whether it is such alien forces that are living their life through us while we passively surrender to their impetus.¹⁶⁷

This is particularly the case when, as noted earlier, liberal education strives for students to integrate their learning into their lives more widely.¹⁶⁸ This cannot occur if students are unable to identify, and act in tune with, their authentic values as a ‘better person’.

The emphasis on the need for affective sincerity and authenticity in self-examination is particularly challenging for those involved with legal education where the traditional focus has been upon suppressing or disregarding affect.¹⁶⁹ This arguably requires a form of affective inauthenticity, with students (and instructors) either hiding or ignoring their genuine affective responses. One way to characterise this is as a form of ‘emotional labour’.¹⁷⁰ In particular, a form of ‘surface acting’ which involves an inauthentic portrayal of particular emotions or, in the case of legal education, no emotions.¹⁷¹ It is a form of role-play or performance designed to meet social expectations in a given situation.

¹⁶⁶ Kristján Kristjánsson, *Virtuous Emotions* 2018 31.

¹⁶⁷ Jerome Neu, ‘Authenticity and the Examined Life’ in John Deigh (ed.) *On Emotions: Philosophical Essays* 2013.

¹⁶⁸ Peters, n.23.

¹⁶⁹ Maharg and Maughan n.98; Jones n.13.

¹⁷⁰ Arlie Russell Hochschild, *The Managed Heart. Commercialization of Human Feeling* 1983.

¹⁷¹ Hochschild *ibid*.

This can lead to a sense of exhaustion and cynicism.¹⁷² In turn, the stress and emotional dissonance involved could impede students' engagement with their learning, acting as a barrier to intrinsic values.¹⁷³

Our acquisition of knowledge and the way in which we process and frame it are not neutral processes, instead they are shaped by our perceptions, experiences and values.¹⁷⁴ Therefore, the form of learning involved in liberal legal education involves (indeed requires) self-examination and an understanding of values and the true self. It is inevitable, as educational theories of social constructivism demonstrate so clearly, that these individual attitudes and responses will also be influenced by the wider societal and cultural contexts the student in question inhabits.¹⁷⁵ Conversely, as students identify and understand their values more clearly, this is likely to lead to them enacting such values within society, interacting with others in authentic and meaningful ways. This once again demonstrates the synergies between the 'better person' and 'good citizen', with individual self-examination also required for a wider appreciation of notions of society and citizenship to develop. Affective authenticity is a crucial affective foundation for this type of insight and understanding, making it a valuable concept to incorporate within liberal legal education.

Affective authenticity: Applications within legal education

To foster affective authenticity within legal education, it is necessary for students to have the self-awareness to acknowledge and identify the emotions and other affect they are experiencing during their learning.¹⁷⁶ Many of the techniques to foster emotional literacy currently used within compulsory schooling can potentially be adapted to the law school to assist in this, such as enhancing learners' emotional vocabulary and teachers modelling appropriate

¹⁷² Samantha Rae Powers and Karen K. Myers (2020) 34(2) 'Work-Related Emotional Communication Model of Burnout: An Analysis of Emotions for Hire' *Management Communication Quarterly* 155-187.

¹⁷³ Nikki Bromberger, 'Enhancing Law Student Learning - The Nurturing Teacher' (2010) 20(1 and 2) *Legal Education Review* 45-61.

¹⁷⁴ V. R. Delclos & R. P. Donaldson 'Contemporary liberal education: slowing down to discern' (2014) 22(1) *On the Horizon* 7; A. Miller, 'Rhetoric, Paideia and the Old Idea of a Liberal Education' (2007) 41(2) *Journal of the Philosophy of Education* 183-206.

¹⁷⁵ L. S. Vygotsky, *Mind in society: The development of higher psychological processes* 1978.

¹⁷⁶ S. Douglas, 'Incorporating Emotional Intelligence in Legal Education: A Theoretical Perspective' (2015) 9(2) *e-Journal of Business Education and Scholarship of Teaching* 56.

behaviour.¹⁷⁷ Enhancing emotional vocabulary involves giving students the linguistic tools to correctly identify and explain their emotional experiences, allowing them to 'elucidate more nuanced and intricate emotions from a more inexplicit general state of emotional arousal'.¹⁷⁸ This could be done by incorporating greater usage of emotional vocabulary into the teaching of general legal topics, potentially drawing upon storytelling and narrative as tools.¹⁷⁹ There have also been examples of targeted programmes within law schools focused upon developing such skills. For example, in the US context, Cain introduced a session of one hour per week for ten weeks on 'emotional intelligence' for law students which included speakers from other disciplines (such as psychology), the use of audio-visual materials and small group discussions.¹⁸⁰ Although in this case the focus was on upskilling students for work on a clinical legal education programme and as future legal professionals, the author acknowledges it as a 'first step' and as a 'successful and rewarding' experience.¹⁸¹

More generally, legal educators have an important role to play in modelling the use of expressive vocabulary relating to emotions and sharing their emotional reactions.¹⁸² While this may entail a degree of emotional labour, it can be integrated into existing teaching practices. For example, Stewart discusses the value of using little half stories, about 'the ordinary change in encounters and events and what people do with this change' as starting points for teaching, describing them as 'building a muscle to respond to what happens around us in singular moments'.¹⁸³ Using such stories and anecdotes can not only foster experiential thinking and a sense of connection, but also enable legal academics to incorporate a richer emotional vocabulary and model an openness around emotions which is valuable as a step towards affective authenticity. For

¹⁷⁷ S. Srikanth & R. Sonawat, 'Emotional literacy: The ABC of understanding emotions' (2012) 3(3) *Indian Journal of Positive Psychology* 309.

¹⁷⁸ A. S. Dylman, E. Blomqvist & M. F. Champoux-Larsson, 'Reading habits and emotional vocabulary in adolescents' (2020) 40(6) *Educational Psychology* 681, 682.

¹⁷⁹ C. Grose, 'Storytelling across the Curriculum: From Margin to Center, from Clinic to Classroom' (2010) 7 *Journal of the Association of Legal Writing Directors* 37; Watkins & Guihen n.190.

¹⁸⁰ P. J. Cain, 'A First Step toward Introducing Emotional Intelligence into the Law School Curriculum: The Emotional Intelligence and the Clinic Student Class' (2003) 14 *Legal Education Review* 1.

¹⁸¹ Cain *ibid.* 16-17.

¹⁸² A. Juergens, 'Practising what we teach: The importance of emotion and community connection in law work and law teaching' (2005) 11(2) *Clinical Law Review* 413.

¹⁸³ K. Stewart, 'Teaching Affectively' *Mapping the Affective Turn in Education: Theory, Research and Pedagogies* eds. B. Dernikos, N. Lesko, S. McCall & A. Niccolini 2020.

example, in a law of obligations class, sharing a personal experience of a contract for a much-anticipated concert or event being cancelled would allow the teacher to express frustration and disappointment openly and give students an opportunity to relate that experience, and those emotions and feelings, to their own life events. It may be that students are also encouraged to share stories from their personal contexts, whilst bearing in mind the need to ensure that the burden of educating others is not placed upon individuals whose demographics, background or circumstances have led them to experience disadvantage.¹⁸⁴

Equipping students with the self-awareness to acknowledge and identify the emotions they are experiencing will provide them with the requisites required to be affectively sincere. However, as discussed previously, affective authenticity also requires a congruence between affect and values.¹⁸⁵ Within legal education, there has been a traditional tendency to disregard values, alongside affect, focusing instead upon the ‘rational coherence’ of a particular policy or law.¹⁸⁶ However, in recent years there has been a number of calls for the importance of values to be acknowledged.¹⁸⁷ These largely seem to emphasise plurality in values, rather than an inculcation of liberal values specifically, an approach which is in tune with the notion of affective authenticity: If students understand their own values, they will then be able to align them with their affective responses. This does not only apply in the legal context, but also within their individual life and interactions with society.

To foster this understanding, it is possible for law schools to adapt and use existing programmes designed to foster an understanding of individual values, such as Gentile’s *Giving Voice to Values* programme.¹⁸⁸ More broadly, pedagogic approaches including a focus on open debate and critical inquiry are valuable, involving students as ‘active participants and co-constructors of knowledge’.¹⁸⁹ The way adversarial systems of law offer (at least) two contrasting perspectives on a legal issue can be viewed as fertile ground for

¹⁸⁴ J. Haritaworn, ‘Perverse Reproductions: Notes From the Wrong Side of the Classroom’ (2011) 8(1) *Journal of Curriculum and Pedagogy* 25, 27.

¹⁸⁵ Salmela n.164.

¹⁸⁶ F. Cownie ‘Alternative Values in Legal Education’ (2003) 6(2) *Legal Ethics* 159, 160.

¹⁸⁷ See, for example, W. Pue, ‘Educating the Total Jurist’ (2005) 8(2) *Legal Ethics* 208; G. Ferris, *Uses of Values in Legal Education* 2015.

¹⁸⁸ M. C. Gentile, *Giving Voice to Values. How to Speak Your Mind When You Know What’s Right* 2010. For discussion in a legal context see Ferris n.187, Chapter 9.

¹⁸⁹ M. Walker, ‘Universities and a Human Development Ethics: a capabilities approach to curriculum’ (2012) 47(3) *European Journal of Education* 448, 455.

this type of engagement. However, if constrained by highly technical language, strict boundaries about what issues and arguments can be admitted as ‘relevant’ or ‘valid’, the requirement for there to be a ‘winner’ and ‘loser’ and other adversarial constructs, this approach can be overly restrictive.¹⁹⁰ Therefore, one way to foster freer critical dialogue can be to focus less on the traditional law school fare of appellate case law and instead promote wider engagement with so-called ‘alternative’ dispute resolution and alternative legal paradigms, including therapeutic jurisprudence and integrative law.¹⁹¹ For example, when teaching law of obligations students could be introduced to the integrative law notion of ‘conscious contracts’ and the emphasis it puts upon the values of the contracting parties, as a way of developing broader discussions around the values inherent within contract law and the implications of those within different arenas where contracts are formed.¹⁹²

Affective empathy: Relevance and value

Empathy is perhaps the aspect of the affective domain which is most commonly alluded to within liberal education, potentially because it is commonly recognised as an ability which can be taught and learnt.¹⁹³ For example, Martha Nussbaum refers to the ‘narrative imagination’, which requires students to foster ‘a capacity for sympathetic imagination that will enable us to comprehend the motives and choices of people different from ourselves’.¹⁹⁴ Whilst Nussbaum proposes using literature to develop this capacity, there is a clear overlap with the notion of empathy. In fact, there is no single accepted definition of empathy.¹⁹⁵ However, it is commonly agreed that genuine

¹⁹⁰ C. Menkel-Meadow, ‘The Lawyer as Problem Solver and Third-Party Neutral: Creativity and Nonpartisanship in Lawyering’ 72 (1999) *Temple Law Review* 785; M. Towness O’Brien, ‘Facing down the gladiators: Addressing law school’s hidden adversarial curriculum’ (2011) 37(1) *Monash University Law Review* 43.

¹⁹¹ See, for example, S. L. Brooks, ‘Practicing (and teaching) therapeutic jurisprudence: Importing social work principles and techniques into clinical legal education’ (2004) 17 *Thomas Law Review* 513; J. K. Wright, *Lawyers as Changemakers. The Global Integrative Law Movement* 2017.

¹⁹² J. Marson, H. Alissa & K. Ferris, ‘Driving Towards a More Therapeutic Future? The Untraced Drivers Agreement and Conscious Contracting’ (2021) 25(1) *European Journal of Current Legal Issues*.

¹⁹³ R. Samra and E. Jones, ‘Fostering empathy in clinical teaching and learning environments: A unified approach’ (2019) 6(1) *Australian Journal of Clinical Education*; Frederic W. Platt & Vaughn F. Keller, ‘Empathic communication’ (1994) 9(4) *Journal of General Internal Medicine* 222.

¹⁹⁴ Nussbaum n.31, 85.

¹⁹⁵ B. M. P. Cuff, S. J. Brown, L. Taylor & D. J. Howat, ‘Empathy: A Review of the Concept’ (2016) 8(2) *Emotion Review* 144-153. D. Batson, ‘These Things Called Empathy:

empathy has both cognitive and affective elements, although arguments remain around which (if either) of these elements predominates.¹⁹⁶ The type of empathy most commonly associated with law schools and lawyers is a cognitive form of empathy or ‘perspective-taking’, in other words, ‘the ability to understand another’s view, even if it is different from your own, by cognitively “putting yourself in the place of ‘another person’.”¹⁹⁷ Such a cognitive ability has significant instrumental value in building rapport with clients.¹⁹⁸

The affective element of empathy is often ignored within legal education.¹⁹⁹ In fact, it is generally characterised as more problematic than cognitive perspective-taking. It has been criticised as potentially leading to biases and prejudice by favouring a single and relatable instance over innumerable, potentially worthier, instances, which did not elicit such an immediate affective response.²⁰⁰ However, the value of affective empathy has also been highlighted:

Untutored empathy can blind us to the non-actual and the wider context. But it can spur us to reflect on what the alternatives to the actual situation are, and to consider their impact in the light of principles that may get their grip on us in virtue of resonating with impartially empathic responses.²⁰¹

Therefore, although in and of itself affective empathy may be flawed, when combined with cognitive elements it provides the potential for a creative, rich and deep understanding of the situations of others, an understanding that can

Eight Related but Distinct Phenomena’ in *The Social Neuroscience of Empathy* eds.J. Decety & W. Ickes 2011.

¹⁹⁶ J. Bošnjaković & T. Radionov, ‘Empathy: Concepts, Theories and Neuroscientific Basis’ (2018) 54 *Alcoholism and Psychiatry Research* 123.

¹⁹⁷ G. Barnett & R. E. Mann, ‘Empathy deficits and sexual offending: A model of obstacles to empathy’ (2013) 18(2) *Aggression and Violent Behavior* 228.

¹⁹⁸ C. Westaby and E. Jones, ‘Empathy: an essential element of legal practice or ‘never the twain shall meet’?’ (2018) 25(1) *International Journal of the Legal Profession* 107.

¹⁹⁹ Westaby & Jones *ibid.*

²⁰⁰ P. Bloom, *Against Empathy. The Case for Rational Compassion* 2016.

²⁰¹ A. Kaupinnen, ‘Empathy and Moral Judgement’ in *Routledge Handbook of the Philosophy of Empathy* (eds) 2016.

then be developed into a wider social and political consciousness and has even been suggested as the basis of moral agency.²⁰²

Affective empathy is at the heart of students' development as a 'better person' and 'good citizen' within liberal legal education. The affective response allows the individual a potentially stronger and more accurate understanding of the feelings and needs of others, developing them as a 'better person'. The understanding and insights affective empathy provides also become a bridge to understanding society and developing an appreciation of the role of, and need for, citizenship within it. This role also, once again, illustrates that the 'better person' and 'good citizen' should not be dichotomised as separate ends of liberal legal education. It cannot be guaranteed that an individual empathetic response will be converted into positive action for, as Nussbaum points out, the best torturers must be highly empathetic to understand how to best torment their victim.²⁰³ However, by incorporating affective empathy as a valid and potentially valuable response within legal education, liberal educators are given the opportunity to explore with students what such a response means and how it can be aligned with both individual and societal values such as social justice and freedom (or whichever values the individual student holds dear).

Affective empathy: Applications within legal education

Perhaps the area currently most closely associated with empathy within law schools is that of clinical legal education.²⁰⁴ It is suggested that giving students the opportunity to hear clients' own experiences and positioning these as central to the giving of legal advice can foster increased levels of empathy.²⁰⁵ While this is valuable, there are two potential limitations with this approach. Firstly, the type of empathy likely to be emphasised and valued by clinical

²⁰² P. Margulies, 'Re-Framing Empathy in Clinical Legal Education' (1999) 5 *Clinical law Review* 605; E. Aaltola, 'Affective empathy as core moral agency: psychopathy, autism and reason revisited' (2014) 17(1) *Philosophical Explorations* 76.

²⁰³ M. Nussbaum 'Reply to Amnon Reichmann' (2006) 56(2) *Journal of Legal Education* 320, 321.

²⁰⁴ S. Whittam, K. Saban & A. Lawton, 'Do we want a human first, and a lawyer second?: Developing law student empathy through clinical legal education' (2021) *International Journal of Clinical Legal Education*; A. Gascón-Cuenca, C. Ghitti & F. Malzani 'Acknowledging the relevance of empathy in clinical legal education. Some proposals from the experience of the University of Brescia (IT) and Valencia (ESP)' (2018) 25 *International Journal of Clinical Legal Education*. 218; Margulies n.238.

²⁰⁵

supervisors is a form of cognitive perspective-taking.²⁰⁶ At a point where students are often being taught lessons about the need for professional boundaries and encouraged to demonstrate detachment and neutrality, it can be difficult for clinical supervisors to have the understanding, time and resources to explicitly discuss the more complex role and importance of affective empathy in an appropriate manner.²⁰⁷ Secondly, in some clinical settings at least, the focus is very much on the development of lawyering skills as preparation for legal practice in a manner which appears contrary to the aims of liberal legal education.²⁰⁸ These potential limitations should not detract from the ways in which clinical legal education can foster empathy. For some students this may be a naturally occurring process, as a result of their exposure to real-world legal scenarios. For others, it may be their clinical programme does give them explicit opportunities to explore and acknowledge aspects of affective empathy.²⁰⁹ Even where the focus is largely upon practical preparation, it is likely that there will be some form of reflective element which will allow for a more personal, education-focused exploration of such a skill.²¹⁰ Therefore, clinical legal education is certainly valuable, but is not, on its own, sufficient to fully integrate affective empathy into liberal legal education.

Considering the legal curriculum more broadly, a number of the pedagogic techniques discussed in relation to experiential thinking and affective authenticity are also relevant in fostering students' affective empathy. For example, incorporating narrative and storytelling can assist students in understanding someone else's position not only cognitively but also affectively because 'a concrete story comes closest to actual experience and so may evoke our empathic distress response more readily than abstract theory'.²¹¹ This does not have to involve the legal educator telling the story – it may be possible to invite guest speakers with relevant experience or ask students to contribute

²⁰⁶ J. Gerada Brown, 'Deeply contacting the inner world of another: practicing empathy in values-based negotiation role plays' (2012) 39 *Washington University Journal of Law & Policy* 189.

²⁰⁷ Samra, R. & Jones, E. 'Fostering empathy in clinical teaching and learning environments: A unified approach' (2019) 6(1) *Australian Journal of Clinical Education*.

²⁰⁸ R. Grimes, 'Experiential learning and legal education – the role of clinic in UK law schools' in E. Jones and F. Cownie. Eds. *Key Directions in Legal Education. National and International Perspectives* 2020.

²⁰⁹ See above n. 144.

²¹⁰ V. Roper, 'Reflecting on Reflective Practices in Clinical Legal Education' (2019) 26 *International Journal of Clinical Legal Education*.216.

²¹¹ T. M. Massaro, 'Empathy, legal storytelling, and the rule of law: New words, old wounds' (1988) 87 *Michigan Law Review* 2099, 2105.

(again with appropriate acknowledgement of the vulnerability and unpaid labour this can entail).²¹² Such experiences can also be evoked via audio-visual resources, from news interviews to documentaries to films. As indicated by Nussbaum, the use of literature, selected to highlight relevant legal topics, is also valuable.²¹³ Encouraging students to design and participate in role plays has the potential to bring narratives and stories to life in an imaginative way which once again engages participants affectively.²¹⁴

Overall, the ways in which affective empathy are fostered can range significantly. They can entail small shifts in focus within more traditional teaching and learning activities, such as drawing students' awareness to their affective response when they hear something likely to invoke empathy or including a brief reflection on your own emotional reaction to a relevant news story. However, they can also include activities with an explicit focus upon empathy. For example, Cornell argues that students should be encouraged to read legal cases in an empathetic manner.²¹⁵ Students could be asked to construct an emotional narrative for a defendant or claimant, entering into their world and enhancing their understanding of the affective stories underlying the (often somewhat technical and dry) judgments. This extends the exercise of examining their own initial intuitive response suggested earlier.

More creative methods, less commonly used within legal education, can also be used to foster empathy. For example, Niccolini *et al* discuss the creation of an arts-based workshop in a postgraduate course on gender and education where they developed the practice of 'kinshipping'. This involved asking students to bring in objects they felt an affective connection to. The objects were then discussed (again, using storytelling) and threaded to one another with multi-coloured yarn, creating 'string figures' together.²¹⁶ The authors argue that this enabled students to 'identify connections and dissonances by the patterns made, engaging with difference and tensions'.²¹⁷ This use of tension as a pedagogic tool is particularly helpful. If students engage with affective

²¹² J. Haritaworn, n.184, 27.

²¹³ Nussbaum, n.31.

²¹⁴ K. Douglas & C. Coburn, 'Students designing role-plays: Building empathy in law students' (2009) 61 *Legal Education Review* 55.

²¹⁵ J. L. Cornell, 'Reading Cases for Empathy' (2022) 17 *University of St. Thomas Law Journal* 772.

²¹⁶ A. D. Niccolini, S. Zarabadi and J. Ringrose, 'Spinning Yarns: Affective kinshipping as posthuman pedagogy' (2018) 24(3) *Parallax* 324, 325.

²¹⁷ Niccolini *ibid.* at 325.

empathy, they are likely to experience discomfort as their privileged (or non-privileged) status becomes apparent through their greater understanding of the affective experiences of others. This discomfort is likely to be felt most keenly by those in a privileged position who may not have previously had to engage with such dissonance. In itself, it therefore has the potential to be a powerful teaching tool, challenging complacency and engendering a sense of both individual and collective responsibility.²¹⁸

Emotional reflexivity: Relevance and value

Reflexivity itself is a complex and widely debated term. At its simplest it can be defined as the inner dialogue or conversation which individuals experience.²¹⁹ However, as used in this paper, the notion of emotional reflexivity involves moving beyond the forms of self-reflection involved in affective authenticity and, to some extent, within experiential thinking. Instead, it implies such emotional self-reflection being used to in some way alter or shape subsequent actions, responses or choices as part of an individual's life and within their interactions with society.²²⁰ It is not only about individual reflection, but is also a relational process, encompassing interpretation and judgements on the wider social context.²²¹ Therefore, when engaged in alongside affective empathy, it ensures that individuals are not indulging in forms of 'passive empathy' but are instead required to take responsibility as a result, navigating, questioning and acting upon 'the complex relations of power and emotion' which our empathetic response can assist us in accessing.²²² Overall, emotional reflexivity contributes to an individual's personal development, aligning their affective responses, values, actions and choices so they are congruent.²²³ It also facilitates the process of becoming a 'good

²¹⁸ M. Zembylas, 'Affect, race, and white discomfort in schooling: decolonial strategies for 'pedagogies of discomfort'' (2018) 13(1) *Ethics and Education* 86; M. Zembylas, 'Encouraging shared responsibility without invoking collective guilt: exploring pedagogical responses to portrayals of suffering and injustice in the classroom' (2019) 27(3) *Pedagogy, Culture & Society* 403.

²¹⁹ M. A. Archer, *Making our Way through the World: Human Reflexivity and Social Mobility* 2007, 3.

²²⁰ M. Holmes, 'The Emotionalization of Reflexivity' (2010) 44(1) *Sociology* 139; A. Giddens, *Modernity and Self-identity: Self and Society in the Late Modern Age* 1991.

²²¹ I. Burkitt, 'Emotional Reflexivity: Feeling, Emotion and Imagination in Reflexive Dialogues' (2012) 46(3) *Sociology* 458.

²²² M. Bowler, *Feeling Power. Emotions and Education* 1999.

²²³ W. S. Ryan & R. M. Ryan, 'Toward a social psychology of authenticity: Exploring within-person variation in autonomy, congruence, and genuineness using self-determination theory' (2019) 23(1) *Review of General Psychology* 99.

citizen' by fostering an individual's ability to understand, interpret and act appropriately upon both their cognitive and affective reactions and responses, enabling them to enact meaningful change in institutions and society.²²⁴

Writers such as Holmes and Burkitt emphasises that 'emotional reflexivity' should not be viewed as a cognitive process designed to achieve a more effective way of monitoring and managing emotions.²²⁵ Instead, Burkitt argues that 'emotion is the source of all our thinking as it is integral to the relations we have with our world and the people within it'.²²⁶ This means that emotional reflexivity is 'embodied and relational, in ways beyond the habitual; infusing people's interactions with others in the world'.²²⁷ As with affective empathy, it also demonstrates that attempts to dichotomise the 'better person' and 'good citizen' are based on a false distinction being drawn between the individual and personal and the social, emphasising the intricate ways in which these interact.²²⁸

Within liberal legal education, fostering emotional reflexivity is important not only for students' self-awareness as they strive to become a 'better person', but also to instil in them an awareness of 'the possibilities for change' on a wider scale, which they can utilise as a 'good citizen'.²²⁹ Reflection and reflexivity more generally are increasingly becoming an accepted part of both higher education generally and legal education particularly.²³⁰ The inclusion of emotional reflexivity in this paper's affective framework therefore provides liberal legal educators with a valuable opportunity to influence and guide the ways in which such reflection and reflexivity are conceptualised and explored with students going forward. In particular, its inclusion aligns such concepts and exploration with liberal notions of self-examination and the accompanying development of values and broader notions of citizenship. Emphasising the need for emotional reflexivity can also enhance affective authenticity and

²²⁴ T. Ruebottom & E. R. Auster, 'Reflexive dis/embedding: Personal narratives, empowerment and the emotional dynamics of interstitial events' (2018) 39(4) *Organization Studies* 467.

²²⁵ Holmes n. 220 at 61; Burkitt n.221 at 459.

²²⁶ Burkitt n.221 at 461.

²²⁷ M. Holmes, 'Researching Emotional Reflexivity' (2015) 7(1) *Emotion Review* 61.

²²⁸ Burkitt n.2521; Holmes n.220

²²⁹ Ruebottom & Auster n.224.

²³⁰ R. Spencer, 'First they tell us to ignore our emotions, then they tell us to reflect': The development of a reflective writing pedagogy in clinical legal education through an analysis of student perceptions of reflective writing' (2014) 21 *International Journal of Clinical Legal Education*.

affective empathy, providing an overall holistic affective approach and demonstrating how the four affective concepts identified each link and mutually support each other when seeking to attain the ends of liberal legal education.

Emotional reflexivity: Applications within legal education

While reflection and reflexivity have become an increasingly acknowledged part of higher and legal education, to date this has been largely focused upon the cognitive. In other words, upon what a student thought rather than what they felt.²³¹ Therefore, there is a need to explicitly focus upon the emotional aspects of reflexivity to counter-balance this over-emphasis on rationalising the process. Ruebottom and Auster suggest that bringing a diverse range of people together (for example, for a concert or other event) to create ‘interstitial spaces’ can enhance emotional reflexivity by enabling individuals to become dis-embedded from the familiar and usual.²³² In particular, they identify two complementary mechanisms which can be used, namely, the ‘sharing of personal narratives of injustice and action’ and ‘individual collective empowering’.²³³

Within legal education, the former could include various forms of storytelling around law and the legal system, designed to demonstrate their societal impacts. It could include inviting guest speakers to discuss their experiences, either as a defendant or claimant themselves, or as a legal professional or on behalf of a charity. It could even involve students sharing their experiences from extra-curricular work, such as in clinical legal education settings.²³⁴ The emotional responses and reactions to these could enable students to challenge assumptions and expectations they may have, giving them the opportunity to re-examine the role, workings and impact of law and the legal system. There is also the potential for students to construct a meta-narrative around the function and role of legal education itself by examining the hidden norms and

²³¹ Spencer n.230; M. Harvey, C. Baumann & V. Fredericks, ‘A taxonomy of emotion and cognition for student reflection: introducing emo-cog’ (2019) *Higher Education Research & Development*, 38(6), 1138.

²³² Ruebottom & Auster n.224 at 471.

²³³ Ruebottom & Auster n.224 at 469.

²³⁴ Tyler, J. A., & Mullen, ‘Telling tales in school: Storytelling for self-reflection and pedagogical improvement in clinical legal education’, (2011) *Clinical Law Review*, 18, 283.

expectations within law schools, including the notion of ‘thinking like a lawyer’ discussed above.

In relation to the notion of ‘individual collective empowering’, Ruebottom & Auster describe this as ‘activities that make salient the power of individual actors within a group’.²³⁵ This empowerment can take place via metaphors, tropes and other forms of symbolism and through the creation of embodied, physical collective experiences.²³⁶ The former can be achieved within legal education via the language used by educators (and invited speakers) and the deliberate inclusion of relevant quotations and readings from others within teaching materials. Students are likely to be accustomed to the use of such techniques from their reading of academic articles and case law, for example, Lord Denning’s famous metaphor of the company as a human body.²³⁷ However, to incorporate such techniques in a way which fosters emotional reflexivity will require a deeper interaction which both involves imagination and fosters a sense of collective engagement. The latter is arguably the greater challenge, given a tendency within legal education (including liberal variants) to individualism.²³⁸ Nevertheless, this can be tackled (at least in part) via the intentional use of collective projects and an emphasis on legal ethics. The value of both these components is well-demonstrated in relation to clinical legal education, but their wider incorporation within the law school curriculum could further promote emotional reflexivity.²³⁹

The creation of embodied, physical collective experiences can be achieved in a range of ways including using theatrical techniques and games,²⁴⁰ walking and mapping geographical terrains to understand their interactions with the law²⁴¹ and incorporating contemplative practices such as mindfulness exercises which take a holistic approach to the affective, cognitive and physical

²³⁵ Ruebottom & Auster n.224 at 478.

²³⁶ Ruebottom & Auster n.224 at 478.

²³⁷ *Bolton Engineering Co Ltd v Graham & Sons Ltd* [1957] 1 QB 159, 172.

²³⁸ H. Brown, ‘The cult of individualism in law school’ (2000) 25(6) *Alternative Law Journal* 279.

²³⁹ See, for example, D. Nicolson, ‘Calling, character and clinical legal education: a cradle to grave approach to inculcating a love for justice’ (2013) 16(1) *Legal Ethics* 36.

²⁴⁰ G. Calder, ‘Performance, Pedagogy and Law: Theatre of the Oppressed in the Law School Classroom’ *The Moral Imagination and the Legal Life. Beyond Text in Legal Education* eds. Z. Bankowski & M. Del Mar (Eds.) 2013, 215-254.

²⁴¹ A. Philippopoulos-Mihalopoulos, ‘Mapping the lawscape: Spatial law and the body’ *The Arts and the Legal Academy* eds. Z. Bankowski, M. Del Mar & P. Maharg, 133-148.

domains.²⁴² Although contemplative practices have sometimes been characterised as individualistic, there is an increasing emphasis on their potential as agents for social change, for example, through fostering awareness of inter-connections between individuals and communities.²⁴³

In addition to these specific focuses, emotional reflexivity can be fostered more generally across liberal legal education through an intentional approach to the law degree which highlights such reflexivity's relevance and value within induction and orientation, includes the creation of an individual learning and/or personal development plan by each student and frequently revisits the notion within the curriculum, for example, within portfolios for assessment.²⁴⁴ These techniques can be used to not only enhance individual reflection, but also to create a form of community of practice which fosters collective dialogue and sharing and, in turn, creates the circumstances for action and change based on these. This once again contributes to both the 'good person' and 'better citizen'.

Conclusion: Enrichment through affective redefinition

Affective aspirations represent an alternative view of the value of higher education that needs to remain in our discourse, even more so because such views are at risk in the current milieu.²⁴⁵

This paper critiques existing literature's emphasis on liberal legal education as aiming to create either the 'better person' or 'good citizen' as wholly separate ends. It instead conceptualises the two as equally valid and important aims which are synergistic and can both be incorporated within a student's developmental journey through the law degree. The paper challenges liberal legal education's current focus on the cognitive domain by demonstrating that it is necessary to include the affective domain as a core and fundamental part

²⁴² S. L. Rogers, 'The mindful law school: An integrative approach to transforming legal education' (2012) 28 *Touro Law Review* 1189.

²⁴³ P. Kaufman, 'Critical contemplative pedagogy' (2017) 14(1) *Radical Pedagogy* 1; C. Singh, 'Contemplative pedagogy and practices in higher education: a tool for transformative learning, youth development and social change' (2017) 3 *International Education and Research Journal* 321.

²⁴⁴ Suggestions made to develop reflective practice in M. M. Leering, 'Integrated Reflective Practice: A Critical Imperative for Enhancing Legal Education and Professionalism' (2017) 95(1) *Canadian Bar Review* 47.

²⁴⁵ Kathleen M. Quinlan, 'How Emotion Matters in Four Key Relationships in Teaching and Learning in Higher Education' (2016) 64(3) *College Teaching* 101, 110.

of the student journey to enable such development and progression. The original framework constructed within this paper identifies four core affective elements which are essential to this development, deepening students' understanding of, and engagement with, both personhood and citizenship. Although none of the core affective elements proposed here are sufficient on their own to achieve this purpose, they have a bi-directional relationship with cognition, which renders them essential for the growth and development which is at the heart of all liberal education. By providing an original perspective on the aims of liberal legal education and a framework for the utilisation of affect, this paper presents a theoretical basis for the contemporary development of liberal legal education. For liberal education to retain its resonance within law schools, it is necessary for it to embrace this basis. Doing so will evolve liberal legal education in a way that equips it for the increasing incursion of neo-liberal policies and agendas and the rigours of the twenty-first century legal academy.