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A NEW LEGAL ETHICS EDUCATION PARADIGM: CULTURE AND VALUES IN INTERNATIONAL ARBITRATION

MAGDALENE D'SILVA*

I INTRODUCTION

Cultural understanding and sensitivity, or the lack thereof, is perhaps the single major cause of international disputes in the first place. Let us not fall into the same trap as does the western businessman who closes a deal in unknown territory without first doing his homework, assuming the rest of the world operates the same as his own culture and is then baffled when his venture runs into trouble.¹

This article offers a typology for rethinking the case for legal ethics education in the English law degree curriculum, by discussing the role of culture and values in the field of international arbitration. Unlike the situation in other Anglo-American common law jurisdictions such as Australia and the United States, legal ethics is not currently a mandatory foundation subject in the English law degree. Persistent debate in England and Wales now revolves around whether it should be. The question is the subject of ongoing discourse,² and in this 'outsider's' opinion the reasons for hesitancy are valid. There are understandable concerns about an already overcrowded law degree curriculum, and whether a law degree should remain a purely academic qualification for a liberal education that

* Solicitor (non-practising) of the Supreme Courts of Tasmania, New South Wales, England & Wales, and the High Court of Australia. I thank the following people for their helpful comments: Professor William Twining, Professor Derek Roebuck, Professor Doug Jones AO, Professor Nigel Duncan and Dr David Herling. All errors and omissions remain my own. The author originally presented this paper at the Socio-Legal Studies Association (SLSA) Conference at the University of York in England on 28 March 2013 and thanks the SLSA for providing a bursary to attend. The author dedicates this article to lawyer and friend, Claudia (Jane) Walton (1956–2013) who was a founding member of the St James Ethics Centre in New South Wales, and a pioneer of values based vocational legal ethics education in Australia.

¹ Karen Mills, 'The Importance of Recognising Cultural Differences in International Dispute Resolution' in Michael Pryles and Michael Moser (eds), *Asian Leading Arbitrators' Guide to International Arbitration* (Juris, 2007) 76.

² Nigel James Duncan, 'Why Teach Legal Ethics On Undergraduate Law Degrees?' Working Paper Series, SSRN, 4 February 2011 at <<http://ssrn.com/abstract=1755046>>.

recognises the existence of different values and teaches students to be aware of the need for individual autonomy to make conscious choices about their own values. By doing this, a liberal education refrains from promoting any particular values over others and does not seek to inculcate students with some values but not others.³

There is also uncertainty about what actually constitutes *legal ethics*. Even if the scope of this concept is agreed, it does not precisely determine what should be taught in accredited legal ethics courses. In this context it should be noted that post-graduate legal ethics courses based on professional practice usually adopt a largely rules-based focus on legal professional conduct regulation.⁴ The 2013 Legal Education and Training Review (for the future of legal services education and training regulation in England and Wales) said:

The centrality of professional ethics and legal values to practice across the regulated workforce is one of the clearest conclusions to be drawn from the LETR research data, and yet the treatment of professional conduct, ethics and ‘professionalism’ is of variable quality across the regulated professions.⁵

Yet the delay in introducing legal ethics in the English law degree can be seen positively, as providing a unique opportunity to produce a first class curriculum, and the discussion’s growing focus on legal ethics as synonymous with ‘values’⁶ is highly commendable. This is because the legitimacy and effectiveness of legal ethics education might be harmed by a positivist legal practitioner conduct rules-based approach — which, as Barnaby⁷ has said, requires a re-conceptualisation of legal ethics in a way that responds to real life experience.

This article addresses the topic as follows. Part II explains why, in a liberal legal education, different legal cultural values play a role in academic and practice-based legal ethics and arguably ought to be included in legal ethics education generally. Part III attempts to

³ See generally Anthony Bradney, *The Liberal Law School In The Twenty-First Century* (Hart Publishing, 2003); Anthony Bradney, ‘How To Live: Aristocratic Values, the Liberal University Law School and the Modern Lawyer’ [2011] 2 *Web Journal of Current Legal Issues* <<http://webjcli.ncl.ac.uk/2011/issue2/bradney2.html>>.

⁴ *Ibid* 1.

⁵ Legal Education and Training Review, *The Future of Legal Services Education and Training Regulation in England and Wales* (June 2013), xiii.

⁶ For example see Richard Moorhead, ‘Are Your Ethics Influenced By Your Values?’ *Lawyer Watch* 12 December 2012 < <http://lawyerwatch.wordpress.com/2012/12/12/are-your-professional-ethics-influenced-by-your-values/>>; Christine Parker and Lee Aitken, ‘The Queensland “Workplace Culture Check”: Learning From Reflection of Ethics Inside Law Firms’ (2011) 24(2) *Georgetown Journal of Legal Ethics* 299.

⁷ Suzette Barnaby, ‘Legal Ethics for the Real World: A Model For Engaging First Year Law Students’ (2004) 4(2) *Queensland University of Technology Law Journal* 1, 26.

demonstrate this argument by referring to legal ethics issues and soft law reform developments in the field of international arbitration as a typology. The article concludes that the case for rethinking legal ethics education in a graduate or undergraduate law degree (regardless of jurisdiction) can perhaps be made on the basis that in a liberal legal education, teaching about diverse cultural values in legal ethics courses is necessary for all law students who will inevitably graduate into a transnational/sub-global and global environment, whether or not they enter legal practice.⁸ In so far as moves toward a global mindset as a formal goal of legal education are concerned, the International Association of Law Schools Global Deans Forum (of more than 80 law schools around the world), convened in Singapore in September 2013 and agreed on the Singapore Declaration on Global Standards and Outcomes of a Legal Education ('Declaration').⁹ This Declaration states (amongst others matters) that legal education needs to be informed by evolving domestic and international norms.¹⁰ The Declaration also recognises that one of the desired legal education outcomes for law students is an understanding of 'Values':

A law graduate should know and understand the need to act in accordance with:

- i. The professional ethics of the jurisdiction; and
- ii. The fundamental principles of justice and the rule of law.¹¹

Consequently, this article is based on the premise that a main function of a liberal legal education is to provide law students with an awareness of different legal profession norms and values within their own jurisdiction and other jurisdictions, in diverse 'social, political and economic contexts.'¹² The article argues that this function can be fulfilled by a new legal ethics education paradigm by referring to culture and values in international arbitration as a typology.

⁸ Anthony Bradney, 'An Educational Ambition for "Law and Literature"' (2000) 7 *International Journal of the Legal Profession* 343, 346. See generally Anthony Bradney, *Conversations, Choices and Chances: The Liberal Law School in the Twenty First Century* (Hart Publishing, 2003).

⁹ *The Singapore Declaration on Global Standards and Outcomes of a Legal Education* <<http://www.ialsnet.org/wordpress/wp-content/uploads/2013/09/Singapore-Declaration-2013.pdf>>.

¹⁰ Ibid 3.

¹¹ Ibid, 4.

¹² See generally David B Wilkins, 'Professional Ethics For Lawyers and Law Schools: Interdisciplinary Education and the Law School's Ethical Obligation to Study and Teach About the Profession' (2001) 12 *Legal Education Review* 47, 60-1.

II THE SCOPE OF LEGAL ETHICS EDUCATION

This Part discusses the scope of legal ethics education in the context of its current gestation in England and Wales, where undergraduate legal ethics courses are not yet mandatory. A brief comparative overview of examples of legal ethics education and academic scholarship in comparative common law jurisdictions in Australia and the United States is provided. In those jurisdictions, legal ethics has been a mandatory component in the university law degree curriculum for some decades.

The meaning and scope of *legal ethics* as a concept (or as it known in some jurisdictions, ‘lawyers’ professional responsibility¹³ and ‘professional conduct’) is broad and somewhat unclear. Many have already ably sought to define legal ethics,¹⁴ and it is unhelpful to repeat the task here. For the purpose of the discussion in this article, legal ethics is regarded as *all* legal professional behaviour involving the exercise of discretion. This encompasses not just technical instruction on professional conduct with regard to minimum compliance with professional codes and rules, but also the motivations, incentives and values that influence discretionary decisions about the best approach to take in any given situation when seeking to serve the interests of justice *and* a client’s best interests.

A prevailing view is that ‘ethics and values are at the core of training and regulation ... integral to the concept of a regulated legal services provider’.¹⁵ Seen in this way, the nature and teaching of legal ethics must go beyond technical instruction on meeting minimum regulatory standards, but not so far that it becomes too esoteric, because inter-disciplinary scholarship about lawyer behaviour and legal ethics philosophy is becoming more important to understand and explain concerns about economic downturns in other parts of society (such as the role played by large law firm lawyers in systemic corporate failures around the world during the past decade).¹⁶

¹³ The term is taken from the title of a leading legal ethics university text in Australia: Gino Dal Pont, *Lawyers’ Professional Responsibility in Australia and New Zealand* (Thomson Reuters, 5th ed, 2012).

¹⁴ For example see Donald Nicholson and Julian Webb, *Professional Legal Ethics: Critical Interrogations* (Oxford University Press, 2000) 4.

¹⁵ Legal Education Training Review, *Key Issues II: Developing the Detail*, Discussion Paper 02/2012 (Ilex Professional Standards, Bar Standards Board, Solicitors’ Regulation Authority, 2012) 4. See also Richard Moorhead et al, ‘Designing Ethics Indicators for Legal Services Provision’ UCL Centre for Ethics and Law Working Paper No. 1 September 2012, which is also published by the Legal Services Board: <http://www.legalservicesboard.org.uk/what_we_do/Research/Publications/pdf/designing_ethics_indicators_for_legal_services_provision_lsb_report_sep_2012.pdf>.

¹⁶ See Christine Parker and Tanina Rostain, ‘Law Firms, Global Capital, and the Sociological Imagination’ (2011) 80 *Fordham Law Review* 2347; Joan Loughrey, *Corporate Lawyers and Corporate Governance* (Cambridge University Press 2011) 1; Doreen McBarnet, ‘Financial Engineering or Legal Engineering? Legal Work, Legal Integrity and the Banking Crisis’ (Paper Presented at the Conference on the Future of Financial Regulation, Glasgow University, 29–30 March 2009);

Where legal ethics is taught and studied alongside other substantive law subjects, it arguably provokes an early ethical mindset in the inductive or deductive analysis and application of legal principles to legal problems. As Parker and Rostain cogently argue in their socio-legal analysis of the role of a large Australian commercial law firm in the controversy over the James Hardie corporate restructure, had the relevant junior lawyer involved decided to refer to scholarly literature on legal ethics, that *may* have assisted them to better understand the situational context in which they were working when under pressure to craft legal advice based purely on black letter law.¹⁷

Yet the potentially unwieldy scope of what constitutes legal ethics is rightly recognised to be an important obstacle to be surmounted *before* legal ethics can be uniformly introduced as a legal education course, as is being considered by relevant professional bodies in England and Wales with professional academic support.¹⁸ The other issue that needs to be mentioned with regard to the utility of legal ethics education (but which is beyond the scope of this article) is the fact that a law degree is not the only route to a legal practice career in England and Wales.¹⁹ This article does not address that issue but does acknowledge that the introduction of mandatory legal ethics education in the English law degree needs to engage questions about why and whether similar education needs to be replicated for all lawyers, including those who enter legal practice by routes other than by obtaining a law degree.

It is useful to juxtapose the English hesitancy toward legal ethics education in the law degree curriculum with the way in which legal ethics education is more widely taught by law schools in the United States, where law is studied as a postgraduate degree (the Juris Doctor or 'JD') only after another discipline has been first studied at the undergraduate level. The possibly more enthusiastic teaching of legal ethics education in the United States may be part of a favourable response by many US and Canadian law schools to the 2007 *Carnegie Report*.²⁰ That report reviewed the teaching of law and recommended various ways in which law school curricula

John C Coffee Jr, 'The Attorney As Gatekeeper: Am Agenda for the SEC' (2003) 103 *Columbia Law Review* 1293; David Kershaw and Richard Moorhead, 'Consequential Responsibility for Client Wrongs: Lehman Brothers and the Regulation of the Legal Profession' (2013) 76(1) *Modern Law Review* 26.

¹⁷ Parker and Rostain, above n 16, 2354.

¹⁸ Andrew Boon, Report for the Law Society of England and Wales 2010 *Legal Ethics at the Initial Stage: A Model Curriculum* (The Law Society, 2010). Also see Legal Education Training Review, above n 13, 4. Consider the New York University Law School's 'Centre for Professional Values and Practice': <http://www.nyls.edu/centers/harlan_scholar_centers/center_for_professional_values_and_practice>.

¹⁹ Avrom Sherr and Lisa Webley, 'Legal Ethics in England and Wales' (1997) 4 *International Journal of the Legal Profession* 1, 9.

²⁰ Anne Colby, William Sullivan and Judith Welch Wegner, *Educating Lawyers: Preparation for the Profession of Law* (Jossey Bass, 2007).

could be reformed to better prepare graduates for the practice of law. Although perhaps contrary to the tone of discussion in the English context (a liberal education which is removed from the values solely pertaining to vocational legal practice), the comparison is worth bearing in mind.

Harvard Law School's JD, for example, requires students to complete *two* courses from its Professional Responsibility range of offerings, which includes: 'Ethics and Tactics in Criminal Law', 'Government Lawyer' (prosecutor ethical duties), 'Introduction to Advocacy: Skills and Ethics in Clinical Practice' and 'Legal Profession: Law and Social Movements'.²¹ The focus at Harvard (as an example of the approach to legal ethics education courses at leading US law schools) appears to be much broader than the professional conduct of the individual lawyer as a unit of behaviour. Subjects are directed at understanding the legal profession, its history of evolution, its role in politics and community reform, its own diversity — and, indeed, the duty the profession owes to itself to be ethical in the way it operates, not only with regard to client and court room duties, but to one another. Ten years ago, Harvard's Director of the Program on the Legal Profession, Professor David Wilkins, rightly referred to a law school's duty to study and teach about the legal profession while acknowledging that legal ethics teachers did not (and perhaps still do not) entirely agree on the meaning of legal ethics.²² Although speaking about inadequacies in legal ethics pedagogy in American legal education at the time, some of Wilkins's views were prescient with regard to a lack of serious scholarship on normative structures in legal practice, and the then attempt to address this by creating legal ethics education programs as a foundation for the serious study and understanding of lawyer professionalism.²³ Wilkins's own comprehensive scholarship on legal profession duties, by way of critical analysis of the evolution of the lawyer–client relationship from agency²⁴ toward a series of networks (a concept which this paper expands upon in the second part),²⁵ has been similarly echoed in recent academic scholarship as helping to explain the lack of social connectedness of modern lawyers as hindering their ability to 'come to grips with the situations in which they find themselves'.²⁶

²¹ Harvard Law School Fall 2013 Program is accessible at <<http://www.law.harvard.edu/academics/curriculum/catalog/index.html?o=64677>>.

²² Wilkins, above n 12, 47.

²³ Ibid 48.

²⁴ David B Wilkins, 'Team of Rivals? Toward a New Model of the Corporate Attorney–Client Relationship' [2009] 78 *Fordham Law Review* 2067.

²⁵ Wilkins, above n 12, 2093 cites Robert Eli Rosen, "'We're All Consultants Now": How Changes in Client Organizational Strategies Influences Change in the Organization of Corporate Legal Services' (2002) 44 *Arizona Law Review* 637, 643.

²⁶ Parker and Rostain, above n 16, 238.

Australian law schools similarly provide legal ethics ('professional conduct') as a mandatory course in the Australian law degree curriculum pursuant to the Uniform Admission Rules, which require all courses to address as a minimum an *individual* lawyer's professional conduct in the form of 'duties' to the court, to clients, to fellow practitioners and to the community, as well as a basic knowledge of trust accounting (the ethical handling of client's money).²⁷ Legal ethics is also one of six Threshold Learning Outcomes (TLOs) for the Bachelor of Laws (LLB) under the Australian Qualifications Framework (AQF) administered by the Tertiary Education Quality and Standards Agency (TEQSA). TLO 2, on Ethics and Professional Responsibility, states:

Graduates of the Bachelor of Laws will demonstrate:

- a. An understanding of approaches to ethical decision-making;
- b. An ability to recognise and reflect upon, and a developing ability to respond to legal issues;
- c. An ability to recognise and reflect upon the professional responsibility of lawyers in promoting justice and in service to the community; and
- d. A developing ability to exercise professional judgement.

Irrespective of whether a law degree is studied as an undergraduate or graduate degree in Australia (depending on the relevant institution's rules for student acceptance), an accredited law degree is mandatory across Australia for all law graduates wishing to pursue careers as practising lawyers. Australia does not have a non-law degree/diploma qualification route to qualifying as a lawyer. The contrasting position in England and Wales is that lawyers may obtain a non-law degree (in disciplines such as English Literature, Ancient Greek History or Modern Languages for example) and then complete a one-year conversion law diploma before completing a period of pupillage in barristers' chambers, or a training contract in a firm of solicitors. Those pursuing a career as a barrister must complete either an undergraduate degree in law (LLB) *or* an undergraduate degree in *any other subject* followed by a one year conversion law course,²⁸ a one-year bar professional training course ('BPTC'), and then one year of pupillage in a set of barristers' chambers.²⁹ Those wishing to become solicitors must complete an undergraduate qualifying law degree or, for those already working in a legal office, apply to become

²⁷ *Towards a National Legal Profession: Revised Uniform Admission Rules* (2008) Law Admissions Consultative Committee: Law Council of Australia <http://www.lawcouncil.asn.au/shadomx/apps/fms/fmsdownload.cfm?file_uid=07812379-D1A2-1252-4084-11841B12FC10&siteName=lca>.

²⁸ The Graduate Diploma in Law ('GDL').

²⁹ See Bar Council of England and Wales, 'How to Become a Barrister', <<http://www.barcouncil.org.uk/becoming-a-barrister/how-to-become-a-barrister/>>.

members of the 'Chartered Institute of Legal Executives' after passing examinations for admission as a fellow. The other option for those who do not hold a qualifying law degree is to complete a Common Professional Examination Course or a Graduate Diploma in Law (a one-year conversion law course). This is followed by completion of the Legal Practice Course, and then a two-year training contract in a firm of solicitors, during which time the candidate must also complete a one-week Professional Skills Course that addresses client care and professional standards, advocacy and communication skills, and financial and business skills.³⁰

Although many law graduates do not go on to qualify and practise law as lawyers, the argument here is that those who study law still need an appreciation of the legal ethical context in which the law is studied, practised, lobbied and reformed. Nevertheless, even in Australia as an example, the minimum legal ethics course requirements at the undergraduate stage are still primarily focused on the regulation of the professional conduct of individual lawyers, and the author is unaware of any empirical research in the Australian context that shows that this form of mandatory undergraduate legal ethics education has produced more ethical lawyers than prior generations who solely learned legal ethics on the job.³¹

Perhaps empirical research on the ethical standards of Australian law graduates in this regard is unnecessary given that, despite its relatively small population compared to that of the USA and England and Wales, Australia is notably advanced in its legal ethical consciousness in university law school education, in terms of the increasingly uniform incorporation of insightful legal education academic scholarship,³² along with a growing number of legal ethics initiatives by legal profession bodies.³³ The flurry of legal ethics

³⁰ See 'Routes to Qualifying' < <http://www.lawsociety.org.uk/careers/becoming-a-solicitor/routes-to-qualifying/>>.

³¹ Consider Michael Robertson, 'Renewing a Focus on Ethics in Legal Education' (Paper presented to the Australian Lawyers and Social Change Conference, 22–24 September 2004); Margaret Castles, 'Challenges to the Academy: Reflections on the Teaching of Legal Ethics in Australia' (2001) 12 *Legal Education Review* 81. Also see Sarah Jane Hiller's PhD topic being undertaken at the University of Tasmania in 2013, titled 'Legal Education: Teaching Ethics and Legal Professionalism to Foundation Law Students and the effectiveness of reflective journals as a pedagogical tool' <<http://www.utas.edu.au/law/people/law-people-profiles/sarah-hiller>>.

³² There is a rich body of legal education and ethics scholarship in Australia. For example see: Nick James, 'Australian Legal Education and the Instability Critique' (2004) 28 *Melbourne University Law Review* 375; Parker and Aitken, above n 6; Christine Parker, 'What Do They Learn When They Learn Legal Ethics?' (2001) 12 *Legal Education Review* 175.

³³ The Law Institute of Victoria was the first law society in Australia to introduce mandatory ongoing legal ethics education for its legal profession in 2004, and this has been followed by some (but not all) states and territories. The Queensland Law Society is also progressively engaging in legal ethics discourse and education and is nobly seeking to inculcate the question of values into its definitions.

projects activity across Australia might conversely indicate that concerns about the need to adapt and evolve legal ethics education are not unique to England and Wales. Similar debate is also occurring in Canada about the introduction of ongoing mandatory legal ethics education for admitted practising lawyers,³⁴ noting that 'Professional Responsibility' is now a mandatory discrete subject in the Canadian law degree curriculum.³⁵

Although various law schools in Australia have created and are producing leading and progressive legal ethics education programs in the law degree curriculum, *therapeutic jurisprudence* initiatives at Monash University in Victoria are worthy of particular note, given this article's attempt to demonstrate the importance of legal ethics education by considering the role of culture and values in international arbitration as a typology. According to Evans and King,³⁶ therapeutic jurisprudence is an approach that recognises the parallel role of virtue ethics (in the Aristotelian sense of an ethic of goodness, courage, honesty, thoughtfulness, benevolence, compassion and resolve),³⁷ by drawing on studies in behavioural sciences to see the law as a series of processes and actors which recognises that its actors (lawyers and the judiciary for example) have a positive and negative effect on the well-being of others in society. Therapeutic jurisprudence is a progressive approach that the Monash law school appears to be taking to the study and teaching of law and legal ethics in legal education, which recognises that 'the law and the behavioural sciences share an interest in the nature of the human psyche and human behaviour, and the mechanics of positive behavioural change.'³⁸

In short, this is an example of an approach to legal education which ultimately accepts that the law and the legal profession comprise diverse social human beings living in 'communities tied together with normative bonds'.³⁹ As values and culture are inherent aspects of human beings, it follows that values and culture are inherent in the study and understanding of legal ethics — as the behaviour of lawyers

³⁴ Jocelyn Downie and Richard Devlin, 'Fitness for Purpose: Mandatory Continuing Legal Ethics Education for Lawyers' (2009) 87 *Canadian Bar Review* 773; Richard Devlin, Jocelyn Downie and Stephanie Lane, 'Taking Responsibility: Mandatory Legal Ethics In Canadian Law Schools' (2007) 56(6) *The Advocate* 761.

³⁵ Professional Responsibility is now a separate and mandatory subject for all Canadian law schools as decreed by the Federation of Law Societies of Canada. See 'Syllabus Professional Responsibility' (May 2013) <http://www.flsc.ca/_documents/NCASyllabusProfessionalRespMay2013.pdf>.

³⁶ Adrian Evans and Michael King, 'Reflections on the Connection of Virtue Ethics to Therapeutic Jurisprudence' (2012) 35(3) *University of New South Wales Law Journal* 717.

³⁷ Ibid 718.

³⁸ Ibid 724.

³⁹ Lawrence M Friedman, 'The Concept of the Self in Legal Culture' (1990) 38(4) *Cleveland State Law Review* 517, 517.

who are human beings in a professional context, most particularly in international arbitration where values and culture play a leading role. The argument offered here thus does not favour or reject legal ethics as a mandatory legal education requirement in England and Wales. Rather, the aim is to appeal to those who seek to promote the development of law through progressive research scholarship, to inspire all students (whether they become legal practitioners and/or proponents of law reform in other roles) to frame their substantive study of law as an academic discipline, within the context of the cross-cultural legal ethical challenges they will inevitably face in transnational settings of a globalised era.⁴⁰

A An Example: Legal Ethics at City University London's Law School

In addition to courses offered by the Centre for Ethics and Law at University College London,⁴¹ the Graduate Diploma in Law Programme ('GDLP') one year conversion course offered by the City Law School at City University London ('City') is at least one example of legal ethics being made the eighth area of legal knowledge for law students (in addition to the mandatory seven foundation subjects required in all law degrees in England and Wales).⁴² City's 'Introduction to Legal Ethics' course satisfies the eighth area of knowledge requirement, although it occupies a far smaller part of the programme than any of the foundation subjects. Dr. David Herling reported to the author his having received consistently high positive feedback from student survey responses to City's legal ethics course curriculum, which is not doctrinal, or based on technical instruction about professional conduct rules. Rather, the stated aim of City's legal ethics course is to engender students with both an ethical literacy and a sense of the ethical challenges they will face in the practice of substantive law, by taking into account lawyers' perceived and actual role in society and how their professional duties will be met under commercial and regulatory market pressures imposed by the state.⁴³ City's legal ethics course is oriented towards engaging thought-provoking discussion about values, and encourages students

⁴⁰ The author is anecdotally aware that different law schools in the United Kingdom have made various attempts to introduce legal ethics education in undergraduate law degrees with various degrees of success. The author notes for example conference paper abstracts for presentations at the Society of Legal Scholars Bristol Conference on *Practice, Profession and Ethics*, September 2012.

⁴¹ 'Lawyers: Practice and Ethics' is also taught in the undergraduate law degree program at University College London by Professor Richard Moorhead.

⁴² The author thanks Dr David Herling at the City Law School in London for providing information on his legal ethics course in the GDLP, for the purpose of this article.

⁴³ Under the *Legal Services Act 2007* (UK) Part 1 s 1(e), a stated regulatory objective is the promotion of competition in legal services.

to reflect on how their own values will be expressed, tested and developed in legal practice.⁴⁴

B *The Evolution of Legal Ethics: Values*

These values-based aims are an important foundation of legal ethics education for undergraduate students because they cultivate a conscious emotional awareness of their own values as well as more global and transnational cultural values — in the sense of a *legal ethics pluralism* that is not confined to one's own domestic national jurisdiction as non-western legal cultural values also exist. The author has, for example, previously made the case in Australia (where legal profession regulation is further complicated by constitutional federalism) that technical legal ethics education needs to move beyond navel gazing preoccupation with domestic and state-based professional conduct rules.⁴⁵

This is not to suggest that legal ethics needs to go 'global' (although as is outlined later there are certainly movements at the international coalface in that direction). Rather, the suggestion is that legal ethics may be essential for undergraduate law students because, as Flood and Lederer explain, the practice of law is increasingly globalised with many lawyers now training in one jurisdiction, obtaining postgraduate qualifications in another and then working globally, as 'the legal profession defers to globalisation in response to client demand'.⁴⁶ Indeed, it is due to the phenomenon of cross-border lawyering that the term 'lawyer' is necessarily used in this article to refer to anyone with a legal qualification, because the path to legal practice admission varies around the world.⁴⁷

Legal ethics discourse therefore asks:⁴⁸ what do lawyers value, personally and professionally, and what are the broader cultural

⁴⁴ See the City Law School, Graduate Diploma in Law Programme, *Introduction to Legal Ethics* Course Outline 2012/2013. The author understands that other legal scholars in the United Kingdom regularly conduct legal ethics courses at leading universities such as University College London.

⁴⁵ Magdalene D'Silva, 'Comparative Professional Responsibility and Legal Ethics Education: Privilege in Global Legal Services' (2012) 5(1) *Journal of the Australasian Law Teachers Association* <<http://alta.mycms.com.au/resources/PDFs/JALTA/2012/DSilva%20Comparative%20Professional%20Responsibility%20and%20Legal%20Ethics%20Education.pdf>>.

⁴⁶ John Flood and Peter D Lederer, 'Becoming A Cosmopolitan Lawyer' (2011) 80 *Fordham Law Review* 2513, 2513.

⁴⁷ See Harvard Law School's reports on different routes to legal admission around the world: <http://www.law.harvard.edu/programs/plp/pages/comparative_analyses.php>.

⁴⁸ In Australia, for example, the Queensland Law Society (QLS) website states that: 'Lawyers' ethics are principles and values which, along with conduct rules and common law, regulate a lawyer's behaviour. They act as a guide to ensure right conduct in the daily practice of law': <<http://ethics.qls.com.au/content/topic/legal-ethics>>. Also see W Bradley Wendel, 'Value Pluralism in Legal Ethics' (2000) 78(1) *Washington University Law Review* 113, 132.

and community contexts in which lawyers fulfil and generate their values?⁴⁹ Legal ethics can be a matter of understanding the internal personal values of the individual as well as the way the external cultural values of their working environment⁵⁰ (law firm, in-house, government, barristers' chambers, court rooms, private international arbitration venues, for example) impact upon and influence their discretion in *any* professional setting.⁵¹ This includes settings outside public court-rooms (such as in private international arbitration proceedings), where law graduates in one jurisdiction increasingly compete with foreign overseas law graduates from other jurisdictions,⁵² in a transnational economic and business world that is influenced by global law firm expansionism.⁵³

Global law firm expansionism leads to another important point about rethinking the case for undergraduate legal ethics education, which is that legal ethics is recognised to be less a matter of responsibility for just the individual lawyer. Although the regulation of lawyer professional ethics has traditionally focused on the lawyer as an individual behavioural unit who is personally accountable for their professional conduct, the regulation of law firms as a behavioural unit now also exists. The advent of alternative business structures⁵⁴ under the UK's *Legal Services Act 2007* ('LSA') for example, permits non-lawyers to become owners of legal practices and thereby influence the cultural values and ethical behaviour of

⁴⁹ Corey S Shdaimah, 'Legal Services Lawyers: When Conceptions of Lawyering and Values Clash' in Leslie C. Levin & Lynn Mather (eds), *Lawyers In Practice Ethical Decision Making In Context* (The University of Chicago Press, 2012) 317.

⁵⁰ Susan Swaim Daicoff, *Comprehensive Law Practice: Law as a Healing Profession* (Carolina Academic Press, 2011) 8.

⁵¹ Wendel, above n 48, 173.

⁵² Carole Silver, 'States Side Story: Career Paths of International LLM Students, or "I Like to Be in America"' (2012) (6) 80 *Fordham Law Review* 2383; Carole Silver, 'The Variable Value of US Legal Education in the Global Legal Services Market' (2011) 24 *Georgetown Journal of Legal Ethics* 1.

⁵³ Yves Dezalay and Bryant G Garth, 'Corporate Law Firms, NGOs and Issues of Legitimacy for a Global Legal Order' (2012) 80 *Fordham Law Review* 2309, 2310.

⁵⁴ For a discussion of the regulatory situation of alternative business structures in New South Wales, Australia, where Slater and Gordon became the first law firm in the world to incorporate and list itself on a public stock exchange see: Laurel Terry, Steve Mark and Thalia Gordon, 'Adopting Regulatory Objectives for the Legal Profession' (2012) 80 *Fordham Law Review* 2685; Christine Parker, 'Peering Over the Ethical Precipice: Incorporation, Listing, and the Ethical Responsibilities of Law Firms' (2008) *University of Melbourne Legal Studies Research Paper* 339.

its lawyers.⁵⁵ Scholars such as Parker⁵⁶ and Chambliss⁵⁷ have also explained how the structure and culture of the traditional law firm partnership model impacts upon and self-regulates the professional behaviour of each employed lawyer.

Furthermore, empirical research into law firm legal ethics culture is increasingly being conducted by legal profession regulatory bodies themselves (an example is the Queensland Legal Services Commission),⁵⁸ signalling the more widespread emergence of empirical research in the context of state-based legal profession regulation. If legal profession regulators are now becoming concerned with the broader ethical culture of lawyers as a group,⁵⁹ questions arise as to whether a corresponding duty rests on law schools to provide law students with an awareness of the group context in which they are obtaining a liberal education and/or vocational law degree — noting that it is the law school environment, and not the postgraduate stage, where students first set the moral compass for their future careers.⁶⁰

In devising a new legal ethics education paradigm with regard to transnational cultural values, it is important to note that legal professions are regulated differently in each of the world's national jurisdictions. Each jurisdiction has a diverse approach to the perceived role of lawyers in society and 'the law of lawyering'.⁶¹ Traditional approaches to the doctrinal teaching of law and the role of lawyers face interesting competition. New approaches include those arising in the United States, where the Comprehensive Law

⁵⁵ See *Legal Services Act 2007* (UK) Part 3, 'Reserved Legal Activities' 18 and Part 5 'Alternative Business Structures'. Also see John Flood, 'The Re-landscaping of the Legal Profession: Large Law Firms and Professional Re-regulation' (2011) 59(4) *Current Sociology* 529, 514.

⁵⁶ Christine Parker et al, 'The Ethical Infrastructure of Legal Practice in Larger Law Firms: Values, Policy and Behaviour', *University of Melbourne Legal Studies Research Paper No 324* <<http://ssrn.com/abstract=1098085>>.

⁵⁷ Elizabeth Chambliss, 'Measuring Law Firm Culture' (2010) 52 *Studies in Law, Politics and Society* 1, 2.

⁵⁸ See Queensland Legal Services Commission <[http://www.lsc.qld.gov.au/ethics-checks/surveys#The workplace culture check](http://www.lsc.qld.gov.au/ethics-checks/surveys#The%20workplace%20culture%20check)>.

⁵⁹ Parker and Aitken, above n 6.

⁶⁰ See Adrian Evans and Josephine Palermo, 'Australian Law Students' Perceptions of their Values: Interim Results in the First Year — 2001 — A Three Year Empirical Assessment' (2002) 5 *Legal Ethics* 103; Fiona Cownie, 'Exploring Values in Legal Education' [2011] 2 *Web Journal of Current Legal Issues* <<http://webjcli.ncl.ac.uk/2011/issue2/cownie2.html>>; Laurence Etherington and Robert Lee, 'Ethical Codes and Cultural Context: Ensuring Legal Ethics in the Global Law Firm' (2007) 14(1) *Indiana Journal of Global Legal Studies* 95, 111, who cite Donald Nicolson, 'Making Lawyers Moral? Ethical Codes and Moral Character' (2005) 25 *Legal Studies* 601, 608. Also consider L F Perez-Hurtado and J Montoya, 'Teaching Values through Pedagogical Practice in Legal Education' [2011] 2 *Web Journal of Current Legal Issues* <<http://webjcli.ncl.ac.uk/2011/issue2/perez2.html>>.

⁶¹ See Christine Parker and Adrian Evans, *Inside Lawyers' Ethics* (Cambridge University Press, 2007).

Movement for example, is redefining the practice of ‘law as a healing profession’.⁶² The key premise there appears to be a return to traditional ideals of professionalism by serving the interests of justice and the client’s best interests as a form of community public service.⁶³ Legal professionalism in the US Comprehensive Law Movement appears to also specifically emphasise a heightened conscious duty to advise clients to avoid or resolve legal disputes earlier and more collaboratively, where this is in their best interests (with the added bonus of reducing lawyer stress).⁶⁴

Finally, it is understood that legal education in England and Wales at the postgraduate stage is considered to be increasingly subject to overt capitalist imperatives of large private law firms, which raises ‘fundamental questions about the moral, ethical, and fiduciary values instilled by legal education’.⁶⁵ If the moral ethical compass for a student’s career is set at law school, perhaps there is a moral duty on universities to equip students with a conscious awareness and ability to later identify any capitalist pressures to act unethically, if and when they enter legal practice at the postgraduate stage.

III CULTURE AND VALUES IN INTERNATIONAL ARBITRATION: MARKET COMPETITION FOR A DOMINANT *ETHICS LEX MERCATORIA*?

This Part suggests a legal culture paradigm for rethinking the case for legal ethics education by combining socio-legal discourse on legal culture with a discussion of culture and legal ethics in international arbitration as a typology. International arbitration is a private and confidential dispute resolution process between international parties, outside a national court system, by which the contracting parties agree to be bound by an enforceable decision of a neutral third-party arbitrator or panel of arbitrators.⁶⁶ Although international arbitration is further delineated into private and public forms (international commercial arbitration and international public investor-state treaty arbitration), the term ‘international arbitration’ is used in this article (except where the public-private distinction

⁶² Daicoff, above n 50.

⁶³ Dal Pont, above n 13, 7.

⁶⁴ Workplace stress is reported to be the number one reason for lawyers calling the United Kingdom’s Lawcare helpline in 2012; more than a third of callers were trainees with less than five years of experience: Catherine Baksi, ‘Stress Tops Lawyers’ Concerns in 2012’ *The Law Society Gazette* 7 January 2013 <<http://www.lawgazette.co.uk/news/stress-tops-lawyers-concerns-2012>>.

⁶⁵ James Faulconbridge, ‘Alliance “Capitalism” and Legal Education: An English Perspective’ (2011) 80 *Fordham Law Review* 2651, 2656.

⁶⁶ Margaret L Moses, *The Principles and Practice of International Commercial Arbitration* (Cambridge University Press, 2008) 1.

needs to be specified) to encompass both forms for the purpose of discussing legal ethics education.

Disputes that parties choose to have resolved by international arbitration are often of high value, and the legal services involved are a part of the sizeable contribution made by the UK's international legal services sector to national gross domestic product.⁶⁷ Globalisation has enabled international arbitration to become the preferred method of private cross-border commercial contract dispute resolution for at least two reasons: the perceived neutrality of the arbitral process outside the national court system of any one country, and the correspondingly greater ease of enforceability of an international arbitral award over a national court judgment in the 149 parties to the United Nations' 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards.⁶⁸

Before considering international arbitration as a potential typology for legal ethics education, it is necessary to discuss culture/legal culture and legal ethics, to understand the meaning and context of the argument for a new legal ethics education paradigm.

A Culture/Legal Culture, Values and Legal Ethics Education

Scholarship in the English legal academy and the 2013 Legal Education Training Review ('LETR') in England and Wales shows a growing consensus about the connection between culture, values and legal ethics.⁶⁹ The 2013 LETR made it clear that the teaching and maintenance of professional ethics and values are central to the integrity and the administration of justice in English legal services.⁷⁰ Globalisation arguably then requires other legal cultures and traditions to be recognised in legal education. However the term 'globalisation' ought to be used cautiously⁷¹ as its over-use risks exaggerating and promoting inaccurate perceptions of the true extent of global ideas and arguments in jurisprudence.⁷² Rather, understanding globalisation

⁶⁷ *City UK Legal Services Report* March 2013, 3.

⁶⁸ 2010 International Arbitration Survey: Choices in International Arbitration (White and Chase, Queen Mary University, 2010); Bernard Hanotiau, 'International Arbitration in a Global Economy: The Challenges of the Future' (2011) 28(2) *Journal of International Arbitration* 89–103; Nana Japaridze, 'Fair Enough? Reconciling The Pursuit of Fairness and Justice With Preserving the Nature of International Commercial Arbitration' (2008) 36(4) *Hofstra Law Review* 1415, 1418.

⁶⁹ See Richard Moorhead et al, above n 13, 114; Andrew Boon and John Flood, 'Globalization of Professional Ethics? The Significance of Lawyers' International Codes of Conduct' (1999) 2(1) *Legal Ethics* 29, 51.

⁷⁰ Legal Education Training Review, above n 5, vii.

⁷¹ William Twining, *General Jurisprudence: Understanding Law from a Global Perspective* (Cambridge University Press, 2009) xix.

⁷² *Ibid.*

as a process that increases interdependent transnational interactions through the law and other systems (the economy, communications, technology, language, and migration)⁷³ supports an appreciation of the challenges that arise from different cultures being transported around the world (such as by human migration).⁷⁴ Once we accept globalisation as a process by which culture is transported around the world, the term ‘culture’ then requires some definition. Considered to be one of the most complex and flexible concepts in the English language,⁷⁵ *culture* might be simply regarded as:

[A] way in life in general, and encompasses values, premises and practices in terms of which members of any given community order their interactions. It encodes frames of meaning, moral orders and tacit understandings that guide social actors in the course of their daily lives.⁷⁶

Culture is about how we function with each other through different modes and channels of communication.⁷⁷ The concept of culture thus has a broad meaning⁷⁸ which enables it to be used to describe the behaviour of any group of people — in this case lawyers and their own legal cultures, which includes how they train, qualify and operate. Ogus’ citation of Legrand’s definition of legal culture is helpful here: ‘a framework of intangibles within which an interpretive community operates, which has a normative force for this community ... which, over the *longer durée*, determines the identity of a community as a *community*’.⁷⁹ Ogus has also characterised legal culture as an economic functioning network that is prone to being monopolised by practising lawyers who control entry to their profession and protect against competition.⁸⁰ Although Ogus was writing in 2002 before the more recent national law reforms of legal profession regulation in England and Wales which aim to promote competition and a strong diverse legal profession,⁸¹ Ogus’ comments are still valid noting that some sectors may still lack competition and diversity.⁸²

Friedman similarly referred to legal culture as ‘public knowledge of and attitudes and behaviour patterns toward the legal system’⁸³

⁷³ Ibid, 14.

⁷⁴ Ralph Grillo et al, *Legal Practice and Cultural Diversity* (Ashgate 2009) ch 2.

⁷⁵ Fiona Cownie, *Legal Academics, Culture and Identities* (Hart Publishing, 2004) 5.

⁷⁶ Grillo, et al, above n 74, ch 2.

⁷⁷ Mills, above n 1, 55.

⁷⁸ Cownie, above n 75.

⁷⁹ Anthony Ogus, ‘The Economic Basis of Legal Culture: Networks and Monopolization’ (2002) Vol 22(3) *Oxford Journal of Legal Studies* 419, 421.

⁸⁰ Ibid 434.

⁸¹ *Legal Services Act* 2007 c. 29 Part 1 (e)(f).

⁸² Michael Blackwell, ‘Old Boys’ Networks, Family Connections and the English Legal Profession’ (2012) *Public Law* 426.

⁸³ Lawrence M Friedman, *The Legal System: A Social Science Perspective* (Russell Sage, 1975), cited in Roger Cotterrell, *Law, Society and Culture* (Ashgate, 2006) 83.

and 'attitudes, values and opinions held in society with regard to law, the legal system and its various parts';⁸⁴ and as nothing more than the 'ideas, attitudes, values, and opinions about law held by people in a society'.⁸⁵ According to Friedman, apart from 'structure' (the legal framework) and 'substance' (the rules and norms used by institutions), legal culture creates the third vital element of a 'legal system' ('ideas, attitudes, beliefs, expectations and opinions on the law')⁸⁶ — *demand*.⁸⁷ Friedman has argued that lawyers' legal thoughts are bound by their culture, which in turn determines the extent to which legal thoughts change.⁸⁸ Ginsburg's critical analysis of culture in international arbitration adds further clarity: lawyers form communities of professionals who produce common sets of norms and expectations that shape behaviour within the community, and globalisation, in turn, puts pressure on national legal cultures that were once autonomous and are now subject to external forces under processes of globalisation.⁸⁹ The context of how lawyers think is then, as Cotterrell has rightly pointed out, one in which legal culture is on the one side, a broad comparison and recognition of wide historical movements beyond national state legal systems, and on the other, a form of legal pluralism in a social scientific sense (such as legal anthropology).⁹⁰ Indeed it is perhaps legal culture's *indeterminacy*⁹¹ that places it alongside the legal realist view that the law (by way of interpretation and application) has a level of indeterminacy that necessarily challenges traditional models of legal ethics.⁹²

Friedman's original conception of legal culture was thus concerned about an over-emphasis on legal positivist approaches to the doctrinal study of 'law in books without acknowledging the power of law in action',⁹³ and in that context he made his well-known identification of an *internal* legal culture between legal professionals, and an *external*

⁸⁴ Friedman is cited by Tom Ginsburg, 'The Culture of Arbitration' [2003] 36 *Vanderbilt Journal of Transnational Law* 1335, 1336–77.

⁸⁵ Lawrence M Friedman, 'Law, Lawyers and Popular Culture' (1988) 98 *Yale Law Journal* 1579.

⁸⁶ Lawrence M Friedman, *Law and Society: An Introduction* (Prentice-Hall, 1977) 7.

⁸⁷ *Ibid* 6.

⁸⁸ *Ibid* 85.

⁸⁹ Ginsburg, above n 84, 1337.

⁹⁰ Cotterrell, above n 83, 84.

⁹¹ *Ibid*. This is important for legal profession studies in the context of globalisation. See for example Mihaela Papa and David B Wilkins, 'Globalization, Lawyers and India: Toward a Theoretical Synthesis of Globalization Studies and the Sociology of the Legal Profession' (2011) 18(3) *International Journal of the Legal Profession* 175.

⁹² David B Wilkins, 'Legal Realism For Lawyers' (1990–1991) 104 *Harvard Law Review* 469, 478–496.

⁹³ Susan Silbey, 'Legal Culture and Cultures of Legality' in John Hall, Laura Grindstaff and Ming-Cheng Lo (eds), *Handbook of Cultural Sociology* (Routledge, 2010) 471.

legal culture of the wider lay community beyond.⁹⁴ Friedman's conception of an internal and external legal culture is a useful way to understand the relationship between legal culture, values and ethics in international arbitration, in the sense of autonomous sovereign national legal cultures that are increasingly impacted by the broader external legal culture of a transnational legal community.⁹⁵ This is a useful typology for legal ethics education for modern law students with regard to their own internal values and externally between each other as individuals — juxtaposed with the external cultural values of the various legal and non-legal environments in which they will communicate and operate upon graduation.

Ginsburg has similarly described two notions of legal culture. One is a general legal culture where national aspects of a culture are expressed in its national legal system. The other is a legal culture consisting of norms and expectations shared by legal actors who produce culture over time by repeated actions and, perhaps akin to Ogus's notion, form an epistemic community.⁹⁶ Globalisation puts external pressure on national legal cultures that are becoming less separate and autonomous due to cross-national interaction. Transnational interaction of cultures occurs in international arbitration, which accounts for an increased discussion of culture in international arbitration legal ethics and the 'gradual convergence in norms, procedures and expectations of participants in the arbitral process.'⁹⁷

In the United States, legal scholar's discourse on legal ethics education has already progressed to analysis of the challenges of cross-cultural legal ethics education in both transnational and domestic legal practice.⁹⁸ In acknowledging that law teachers in the United States use legal ethics to improve legal professions and the delivery of legal services, Genty has said:

All legal cultures struggle with the question of how to educate students and lawyers to be ethical professionals ... the purpose of the cross-cultural conversations in this paper would be to develop principles of legal ethics education ... that can be applied across cultural contexts.⁹⁹

⁹⁴ Lawrence M Friedman, *The Legal System: A Social Science Perspective* (Russell Sage, 1975) 195, 233.

⁹⁵ Consider for example arguments about an autonomous arbitral legal order. See Emmanuel Gaillard, *Legal Theory of International Arbitration* (Martinus Nijhoff, 2010). This point is also valid beyond international arbitration, when considering questions on the autonomous sovereignty of national legal systems in the European Union.

⁹⁶ Ginsburg, above n 84, 1335.

⁹⁷ Ginsburg, above n 84, 1336.

⁹⁸ Phillip Genty, 'The Challenges of Developing Cross-Cultural Legal Ethics Education, Professional Development and Guidance for the Legal Professions' (2011) *Journal of the Professional Lawyer* 37. This paper usefully canvasses US academic literature on cross-cultural legal education and domestic and international legal ethics issues.

⁹⁹ Ibid 37.

A *Culture and Values in International Arbitration*

A brief critical analysis of culture and values in international arbitration arguably presents a typology for a potential structural approach to legal ethics education in England and Wales. International arbitration can be used to create a new legal ethics education paradigm for teaching law students to embrace their own innate ethical conscious awareness of the role of values in legal professional behaviour, without normatively engaging in debates over legal ethics definitions and codified rules about what one should and should not do. A significant feature of international arbitration that distinguishes it from international litigation through a nation's public courts is that each of the parties chooses an arbitrator (for what is usually a three-person tribunal panel) whom *they* believe and are confident will be favourably disposed to their case without the appearance of bias.¹⁰⁰ Lawyers and academics who practise and teach in international arbitration almost universally regard the principle of *party autonomy* (in the form of parties being permitted to appoint an arbitrator to a tribunal panel) as 'perhaps the most important thing a lawyer does with respect to resolving the client's dispute.'¹⁰¹ This is because:

[t]he skill, experience and knowledge of the arbitrators will have a significant impact on the quality of the process and of the award. In addition, arbitrators are fundamentally more powerful than judges, because unlike judges, their decision usually cannot be overturned on the basis of fact or law. An arbitrator can misinterpret the law, or make an egregious mistake ... counsel will generally be unable to vacate the award resulting from mistakes.¹⁰²

International arbitration scholarship generally¹⁰³ shows that a lawyer's capacity to know, understand and manage each international arbitrator's own ethical approach and cultural values is arguably one of the most fundamental legal skills needed and wielded. As leading international arbitration treatises declare, 'an arbitrator should be able to ensure that any misunderstandings that may arise during the deliberations of the arbitral tribunal (for instance, because of differences of legal practice, culture, or language) are resolved before they lead to injustice'.¹⁰⁴

Assessing the professional and personal qualities, credentials, experience and reputation of international arbitrators is arguably about

¹⁰⁰ Moses, above n 66, 122.

¹⁰¹ Ibid 116; J D M Lew, L A Mistelis, S M Kröll, *Comparative International Commercial Arbitration* (Kluwer, 2003) ch 10, 10–30; Alan Redfern and Martin Hunter, *Law and Practice of International Arbitration* (Sweet and Maxwell, 4th ed, 2004) 1–15.

¹⁰² Ibid.

¹⁰³ See for example Blackaby et al, *Redfern and Hunter on Law and Practice of International Commercial Arbitration* (Sweet and Maxwell, 2009) [4.26].

¹⁰⁴ Ibid.

assessing their ethical cultural approach and predicting how they will exercise their individual discretion in the management and resolution of a dispute. International arbitrator assessment is therefore one of the most difficult aspects for lawyers and their commercial clients in practice. The difficulty exists because *predictability* and *certainly of outcome* are two key values in international arbitration, and are amongst other popular reasons why commercial party clients prefer international arbitration over litigation through national courts.¹⁰⁵ This preference arises from a *perception* that the values of predictability and certainty are met by ensuring that at least one of the arbitrators on a tribunal panel will be someone known to and appointed by one's own side. Consequently leading international arbitration legal ethics scholars such as Rogers have proposed arbitrator information projects that seek to collate information about arbitrator candidates in a way that is consistent and publicly accessible.¹⁰⁶ However, as Karton has rightly acknowledged, predictability of an arbitrator's behaviour and ethical approach still remains one of the most challenging aspects in international arbitration¹⁰⁷ because unlike judges, their past performance is less open to scrutiny as arbitral awards and decisions are not published. This renders the process of knowing and foreseeing a potential international arbitrator's values and attitudes to a party's case — 'a gamble'.¹⁰⁸

This brings us to an analysis of the impact of globalisation on the study and practice of law and the need for legal ethics education as an inherent aspect of such study. International arbitration is a useful typology for this analysis because it demonstrates Friedman's idea of internal and external legal cultures and how processes of globalisation allow international arbitrators, lawyers and their clients, to constantly transcend traditional cultural boundaries. Using international arbitration as a typology in this way can facilitate a paradigm for the design of new legal ethics education in England and Wales, especially noting that international arbitration is presented by some as a legal system that legitimately operates in its own autonomous non-state universe.¹⁰⁹

¹⁰⁵ *SIA/PWC 2010 International Arbitration Survey* (School of International Arbitration at Queen Mary University of London and PriceWaterhouseCoopers, 2010) 13.

¹⁰⁶ Catherine Rogers 'The Politics of International Investment Arbitrators' (2013) 12 *Santa Clara International Law Review* <SSRN: <http://ssrn.com/abstract=2347843>>. Also see Catherine Rogers, *The International Arbitrator Information Project: An Idea Whose Time Has Come* (2012) <<http://kluwer.practicesource.com/blog/2012/the-international-arbitrator-information-project-an-idea-whose-time-has-come/>>.

¹⁰⁷ Joshua Karton, *The Culture of International Arbitration and the Evolution of Contract Law* (Oxford University Press, 2013) 7.

¹⁰⁸ *Ibid* 8.

¹⁰⁹ Gaillard, above n 95, 139; Ralf Michaels, 'Dreaming Law Without A State: Scholarship On International Arbitration As Utopian Literature' (2013) 1(1) *London Review of International Law* 35–62.

Local national culture and legal culture in the regulation of international arbitration are very closely related to a conscious evolution of international arbitration legal ethics as comprising culture, values and diverse legal norms.¹¹⁰ The increasingly widespread recognition of socio-legal and psycho-legal factors in the promulgation of legal ethics standards at the transnational level arguably points to an increasing need to include legal ethics courses in the England and Wales law degree curriculum. As Rogers has said,¹¹¹ the inherent legal cultural diversity of international arbitration legal practice regularly creates universal ethical challenges arising from a lack of a uniformly consistent and enforceable global system of regulation of international arbitrators, as lawyers and law firms operate beyond the reach of national bar associations and regulatory bodies.¹¹² Party-appointed arbitrators in international arbitration are, for example, considered to be translators of 'legal culture ... when matters that are self-evident to lawyers from one country are puzzling to lawyers from another'.¹¹³ Although the idea that international arbitration exists in its own self-regulated autonomous universe has been criticised,¹¹⁴ if we accept for the moment that international arbitration lawyers work in private and confidential settings in an adjudication system specifically designed to avoid the purview of national state court systems, these settings present regular challenges for international arbitrators and lawyers who are educated and trained in common law and civil law systems and then called upon to apply different sets of substantive and procedural laws from different legal traditions.¹¹⁵

¹¹⁰ Margaret L Moses, 'Ethics In International Arbitration: Traps For The Unwary' (2012–2013) 10 (1) *Loyola University Chicago Law Review* 73, 74–78. In 2013 the International Chamber of Commerce ('ICC') convened the ICC UK Annual Arbitrators Forum titled 'Ethics in international arbitration-is the time ripe for an international code of conduct?' in London on 27 November 2013 to discuss amongst other matters, the role of norms.

¹¹¹ Catherine Rogers, 'The Ethics of Advocacy in International Arbitration' *Penn State Law Legal Studies Research Paper No. 18-2010*, 3–4 <<http://ssrn.com/abstract=1559012>>. Rogers has previously proposed a methodology to develop ethical norms to govern lawyer conduct in international commercial arbitration, and to design integrated mechanisms to make those norms binding and enforceable through multiple codes via arbitral institutions. See Catherine A Rogers, 'Context and Institutional Structure in Attorney Regulation: Constructing An Enforcement Regime for International Arbitration' (2003) 39 *Stanford Journal of International Law* 1; Catherine A Rogers, 'Between Cultural Boundaries and Legal Traditions: Ethics In International Commercial Arbitration' (2006) *Bocconi Legal Studies Research Paper Series* No.06-01 <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=280850> (cited with author permission).

¹¹² *Ibid* 11.

¹¹³ Claudia T Salomon, 'Selecting an International Arbitrator: Five Factors to Consider' (October 2002) 17(10) *Mealey's International Arbitration Report* 1, 3.

¹¹⁴ See Jan Paulsson, 'Arbitration's Fluid Universe', Lecture delivered at the London School of Economics, 24 November 2009. Also see Michaels, above n 107.

¹¹⁵ Rashda Rana and Michelle Sanson, *International Commercial Arbitration* (Thomson Reuters, 2011) 98–101.

It is not uncommon in such situations for multiple sets of law firms from different jurisdictions to represent the same commercial client in a matter in order for the lawyers acting as advocates to obtain legal advice themselves about the applicable local law of the client's place of domicile (where, for example, such law was chosen to be the law of the contract in dispute). International arbitration is thus often described as a world in which legal cultural traditions directly meet, and scholarly discourse regularly addresses questions of the need for cultural sensitivity; ethical clashes and legal cultural convergence;¹¹⁶ and harmonisation as opposed to delocalisation of legal systems of the seat of the arbitration itself. The very notion of a 'culture clash' in international arbitration is either asserted or rejected.¹¹⁷

Cultural communication issues that arise in international arbitration then go beyond a mere civil law/common law legal system divide¹¹⁸ to include nuanced differences in language (even when English is the designated language), clothing attire, modes of addressing those from other national traditions, facial expressions when interacting with arbitrators of different cultural backgrounds, body language, the role of religion (for example energy or oil contracts in the middle east may be subject to Sharia law) and even the meaning of 'truth' varies across national cultures.¹¹⁹

Scholarly commentary in international arbitration thus shows that culture, legal culture and legal ethics are regarded as indeterminate yet fundamental concepts that demand the careful exercise of lawyer discretion with a sensitive appreciation of diverse legal ethical values. These are core, fundamental legal skills¹²⁰ that require lawyers to be aware of their own 'cultural baggage'¹²¹ and overcome communication challenges arising from personal attachment to their culture (language and religion), by understanding different legal cultural values arising from common law and civil law systems.¹²²

Examples where legal cultural challenges arise include the way in which witnesses are prepared and interviewed before a hearing: witness 'coaching', as an English lawyer might know it, is permitted

¹¹⁶ John M. Townsend, 'Clash and Convergence on Ethical Issues in International Arbitration' (2004) 36 *Inter-American Law Review* 1.

¹¹⁷ Leon E Trakman, "'Legal Traditions" and International Commercial Arbitration' (2006) 17(1) *American Review of International Arbitration* 1; Tom Ginsburg above n 81; Jan Paulsson 'Cultural Differences in Advocacy in International Arbitration', in R D Bishop and E G Kehoe (eds), *The Art of Advocacy in International Arbitration* (Juris, 2010); Renata Brazil-David, 'Harmonization and Delocalization of International Commercial Arbitration' (2011) 28(5) *Journal of International Arbitration* 445.

¹¹⁸ Philip Genty, 'Overcoming Cultural Blindness in International Clinical Collaboration: The Divide Between Civil and Common Law Cultures and Its Implications For Clinical Education' (2008) 15 *Clinical Law Review* 131.

¹¹⁹ Mills, above n 1, 54–69.

¹²⁰ Rogers, above n 106, 9.

¹²¹ Rana and Sanson, above n 115, 98.

¹²² Trakman, above n 117.

in the United States, while witness contact is largely eschewed by lawyers trained in civil law systems. Another example is the submission and exchange of documentary evidence: discovery in the United States is far broader than in most other jurisdictions, such that the term is apparently rarely used in international arbitration. Questions also arise as to whether to employ an adversarial common law style of witness cross-examination at the risk of upsetting a civil law system international arbitrator who might be appointed by the other party.¹²³ The conundrum of understanding and determining what legal cultural values and ethical behaviours are appropriate for one arbitration to the next is thus highly challenging for lawyers operating in international arbitration as a transnational dispute resolution system that is invariably private (proceedings are completely closed to the public), confidential (documents, records and evidence are generally not disclosed outside the tribunal proceedings)¹²⁴ and, in the majority of cases, unpublished (when awards are published, names and identities are redacted).¹²⁵

B International Arbitration as a Legal Ethics Education Typology

This section attempts to marry the concepts of legal culture, values and ethics in law to explain the need for legal ethics courses in legal education. It does this by exploring the way in which these concepts are the foundation of a scholarly research boom in international arbitration as one of the world's fastest growing areas of transnational legal study and practice. International arbitration legal ethics scholarship covers a range of topics from the influence of third-party funders to questions over the need for international codes of conduct. The development and production of debates currently raging over the regulation and ethical self-regulation of international arbitration arguably demonstrate why legal ethics education is important at the undergraduate law degree stage, and why an internal and external legal cultural paradigm may assist the design of such a course as a substantive body of legal academic knowledge, other than just as professional vocation skills.

Following the first major sociological study of international arbitration by Dezalay and Garth in 1996,¹²⁶ Karton used grounded

¹²³ Rogers, above n 106, 2–5.

¹²⁴ Rana and Sanson, above n 115, ch 8.

¹²⁵ Thomas Schulz, 'Concept of Law in Transnational Legal Orders' (2011) 2(1) *Journal of International Dispute Settlement* 59, 79.

¹²⁶ See Yves Dezalay and Bryant G Garth, *Dealing In Virtue: International Commercial Arbitration and the Construction of a Transnational Legal Order* (Chicago University Press, 1996). This work empirically examined the ways in which reputational 'symbolic capital' (adopting the theory propounded by Pierre Bourdieu) is generated and enables international arbitrators to be appointed and re-appointed.

theory to conduct an empirical socio-legal analysis of published international arbitration awards (by the International Court of Arbitration at the International Chamber of Commerce), and found that a common cultural approach is being increasingly taken by arbitrators in the area of private international commercial arbitration.¹²⁷ This common culture arguably also manifests common values in a converging legal ethical culture¹²⁸ arising from instrumental network pathways,¹²⁹ such as law student mootings at international arbitration competitions; graduates writing and speaking at conferences and legal education events; and students eventually practising in a law firm that specialises in international arbitration, assisting arbitrators (usually voluntarily and unpaid) or by working for an international arbitration institution or organisation.¹³⁰ Although international arbitration is used as a typology to demonstrate the importance of legal ethics education to inspire students with an awareness of diverse cultural values when studying and applying procedural aspects of international arbitration law, the same can be said for the study of substantive contract law, noting that in so far as legal practice is concerned, those who work in international commercial transactions and contracts must be sensitive to the cross-jurisdictional impact of different legal systems so as to produce an ‘integrated global product’.¹³¹

While such instrumentally based networks as conveyors of culture, values and ethical attitudes are not unusual to most professions and other areas of law,¹³² it is equally arguable that such networks are uniquely important in international arbitration because it is primarily *through* networks (and not just through deductive legal reasoning in the law of statute or the doctrine of precedent under *stare decisis*) that one learns a style of interpreting, applying and advising upon substantive law because international arbitration is predominantly private and confidential (hence legitimate calls for it to become more accessibly open).¹³³ While changes have been occurring in 2013 as

¹²⁷ Joshua D.H. Karton, ‘International Commercial Arbitrators’ Approaches to Contractual Interpretation’ (2012) 28(2) *International Business Law Journal/Revue de Droit des Affaires Internationales*.

¹²⁸ Whitmore Gray, ‘Is There a Growing International Arbitration Culture?’ in Albert Jan Van Den Berg (ed), *International Dispute Resolution: Towards An International Arbitration Culture* (International Council for Commercial Arbitration ICCA Congress Series No 8, Seoul [1996] 1998) 23.

¹²⁹ Cotterrell, above n 83, 69. Ogus, above n 79.

¹³⁰ Doug Jones, ‘Challenges and Benefits Facing Young ADR Practitioners’ (Conference Paper presented to the Chartered Institute of Arbitrators Irish Branch, Dublin, 12 November 2011).

¹³¹ David Howarth, *Law As Engineering: Thinking About What Lawyers Do* (Edward Elgar, 2013) 29.

¹³² Cotterrell, above n 83, 5, 7, 68–78.

¹³³ Consider Joshua Karton, ‘A Conflict of Interests: Seeking A Way Forward on Publication of International Arbitral Awards’ (2012) 28(3) *Arbitration International* 447.

more international arbitral institutions begin to break away from the status quo by publishing redacted arbitral awards, publication is done in a way that still maintains party and arbitrator privacy and confidentiality.¹³⁴ The lack of public access to the ethical cultural attitudes of arbitrators, in the way the public can access the attitudes of judges through published court decisions, means that being an active member of international arbitration networks *as gatekeeper guardians of a dominant legal ethical culture*, largely determines one's success:

We know the process, the institutions and the arbitrators better than any of our competitors. We combine this understanding with industry knowledge, geographical reach and commitment to the highest standards of service that we're told other arbitration practices cannot match.¹³⁵

One of the most common forms of legal ethical challenge in the private sphere of international commercial arbitration arises in the interpretation and application of the doctrines of client confidentiality, professional secrecy and client/legal professional privilege.¹³⁶ It is beyond the scope of this article to examine the various laws and approaches to these doctrines taken by different jurisdictions around the world. It is sufficient to say that in the absence of clear universally enforceable laws for a uniform procedure of international arbitration, what will or will not be considered ethical will depend on the different approaches taken by the arbitrators who are individually appointed to each tribunal panel, *on a case by case basis*. The different approaches arise by virtue of the fact that lawyers from different legal traditions and cultures will in turn take divergent approaches to deciding what evidence should be disclosed or withheld in arbitral proceedings.¹³⁷ Successful lawyers in this field adapt their legal skills set accordingly,¹³⁸ as adaptability across different legal cultural

¹³⁴ See for example the new *Singapore International Arbitration Centre* 2013 Rules as at 1 April 2013, r 28.10 on the publication of redacted arbitral awards. See also Alberto Maletesta and Rinaldo Sali (eds), *The Rise of Transparency in International Arbitration: The Case for the Publication of Arbitral Awards* (Juris, 2013).

¹³⁵ See for example the website of law firm Freshfields Bruckhaus Deringer <http://www.freshfields.com/en/france/what_we_do/our_services/International_arbitration/>.

¹³⁶ Bernard F Meyer-Hauser and Philipp Sieber, 'Attorney Secrecy v Attorney-Client Privilege in International Commercial Arbitration' (2007) (May) *Arbitration* 148 (Journal of the Chartered Institute of Arbitrators).

¹³⁷ Catherine Rogers, 'Fit and Function In Legal Ethics: Developing A Code of Conduct for International Arbitration' (2001) 23 *Michigan Journal of International Law* 342, 371.

¹³⁸ Karton, above n 133, recommends that common law lawyers in international commercial arbitration should be prepared for the possibility that an arbitrator of either common law or civil law system education and training will adopt a civil law system approach to questions of the admission of extrinsic evidence to discern the parties' intentions behind a commercial contract.

traditions is considered to be the main indicator of competency in international arbitration.¹³⁹

It is therefore unsurprising that the professional ethics of international arbitrators,¹⁴⁰ and that of lawyers working in transnational global settings such as private and public international law,¹⁴¹ are increasingly the subject of research.¹⁴² The big issues are being directly tackled by international legal profession bodies such as the International Bar Association ('IBA') in its promulgation of voluntary codes and rules of ethics for lawyers practising in international arbitration (for example see the *IBA Rules on the Taking of Evidence in International Arbitration* (2010), the *IBA Guidelines on Conflicts of Interest in International Arbitration* (2004), and the *IBA Rules of Ethics for Arbitrators* (1994)). Similar types of guidelines exist for lawyers practising in the European context under the *Charter of Core Principles of the European Legal Profession and Code of Conduct for European Lawyers* by the Council of Bars and Law Societies of Europe (CCBE 2010).¹⁴³ These guidelines have been adopted by the various national bar associations of European countries¹⁴⁴ and address matters such as the function of lawyers in society; client confidentiality; trust and personal integrity; and the duties of lawyers in relation to courts, clients, other lawyers and the community at large.¹⁴⁵

In May 2013 the IBA's Arbitration Committee completed a consultative survey project on the legal ethics of legal counsel representing parties in international arbitration.¹⁴⁶ The IBA taskforce

¹³⁹ For example see Chambers and Partners review and rankings of the world's best international arbitration law firms at <<http://www.chambersandpartners.com/uk/editorial/46311>>.

¹⁴⁰ Rogers, above n 137.

¹⁴¹ See for example a very interesting paper by Matthew Windsor (PhD Candidate University of Cambridge 2012–15), 'International Legal Advisers to Government: Towards a Theory of International Professional Responsibility' (Presented at the Socio-Legal Studies Association Conference, University of York, 26 March 2013).

¹⁴² Arman Sarvarian, *Professional Ethics at the International Bar* (Oxford University Press, 2013).

¹⁴³ Council of Bars and Law Societies of Europe (CCBE) <http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/EN_Code_of_conductp1_1306748215.pdf>. For a background on the CCBE Code see: Laurel S Terry, 'An Introduction to the European Communities' Legal Ethics Code Part I: An Analysis of the CCBE Code of Conduct' (1993) 7(1) *Georgetown Journal of Legal Ethics* 1; Robert W Wachter, 'Ethical Standards in International Arbitration: Considering Solutions to Level the Playing Field' (2011) 24 *Georgetown Journal for Legal Ethics* 1143, 1151–5.

¹⁴⁴ For the entire list see: <http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/Table_adoption_of_th1_1358409892.pdf>.

¹⁴⁵ The CCBE code is viewable at <http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/EN_Code_of_conductp1_1306748215.pdf>.

¹⁴⁶ The IBA Guidelines on Party Representation in International Arbitration (2013) are available at <http://www.ibanet.org/LPD/Dispute_Resolution_Section/Arbitration/Default.aspx>.

consists of senior international lawyers and legal academics, from various Anglo-American nations, who have sought to address legal ethics dilemmas at the transnational level on issues such as the conduct of lawyers representing parties in international arbitration; whether and to what extent domestic standards of professional conduct will or will not apply to lawyers; how to deal with witnesses and the exchange of expert evidence in international arbitrations; and how to deal with corruption, money laundering, forgery and illegality.¹⁴⁷ The promulgation of such guidelines¹⁴⁸ demonstrates that legal ethics is recognised by international legal profession bodies and the global/transnational legal profession itself to be a substantive issue in its own right that is fundamental to maintaining international arbitration's legitimacy in order to serve and maintain the global rule of law.¹⁴⁹

However, students, academics and legal practitioners need to know that unlike the position in many domestic legal professional regulatory regimes, transnational legal ethical rules can be inconsistent, non-enforceable, negotiable, and subject to cultural interpretation — and are consequently not mandatory. The fluidity of transnational legal ethical rules and norms makes the case stronger for legal ethics education at the law degree stage in order to raise awareness of the need for an internal, values-based individual compass. What is also needed is a cultivation of a legal cultural consciousness when studying and practising substantive law in globalised era. In fact, the promulgation of a kaleidoscope of unenforceable soft law in transnational legal ethics has been cogently critiqued by leaders within the field of international arbitration itself, as being inflexible; confusing; uncertain; and unaccommodating of the diverse legal cultures and autonomous domestic legal traditions that comprise international legal practice.¹⁵⁰

For example when the IBA released its 2013 guidelines for lawyers representing parties in international arbitration, the London Court of International Arbitration simultaneously released its own draft guidelines for discussion.¹⁵¹ Although calls for certainty in the form of uniform transnational legal ethics codes and rules have been

¹⁴⁷ See <<http://www.surveygizmo.com/s3/331908/IBA-Arbitration-Committee-Counsel-Ethics-in-International-Arbitration-Survey>>.

¹⁴⁸ For commentary on some of the IBA's guidelines see Peter Ashford, *The IBA Rules on the Taking of Evidence in International Arbitration* (Cambridge University Press, 2013).

¹⁴⁹ David Rivkin, 'The Impact of International Arbitration and the Rule of Law' (International Arbitration Lecture, University of Sydney and Clayton Utz, Supreme Court of New South Wales, Sydney, 13 November 2012).

¹⁵⁰ Toby Landau and J Romesh Weeramantry, 'The Relationships Between International Arbitration and the Regulators: A Pause For Thought' (Paper Presented to the International Council for Commercial Arbitration Conference in Singapore, Session C3, Tuesday 12 June 2012), 9.

¹⁵¹ These guidelines are not in public circulation at the time of writing.

urged, these variations of legal ethics pluralism at the international level arguably demonstrate the emergence of a substantive *legal ethics market* as new competing legal services networks grow whilst more and more private regional arbitral institutions emerge around the world.¹⁵² As Meason and Smith have said:

[T]he current institutional arbitral system reflects two things. First, it is ... the Western World's answer to commercial disputes... Second, when one notes ... the many arbitration centers that have hung out their shingles in many developing countries, one is faced with recognising the lack of uniformity that exists... It has been argued that an essential element in the increased resort to arbitration has been the emergence of general international consensus regarding applicable substantive law ... But such a statement could not be further from the truth. The 'consensus' really only reflects the imposition of Western values ... showing our ignorance of ... cultural differences.¹⁵³

The proliferation of transnational soft law legal ethics in international arbitration without due regard for diverse legal ethical cultures demonstrates why legal ethics might need to become an area of substantive legal knowledge in the law degree curriculum — that goes beyond rules-based regulation of vocational legal practice. While transnational legal ethics rules and norms are being widely promulgated by international legal profession bodies, there is simultaneous concern about the legitimacy, impact and ineffectiveness of such promulgation.¹⁵⁴ The transnational legal ethics regulation of lawyer conduct is seen by some as superfluous, a condition that Landau and Weeramantry wittily refer to as *legislitis*: 'if it moves, codify it'.¹⁵⁵ Others regard legal ethics codification as necessary due to a perceived need to curb uncertainty and unpredictability arising from the global convergence of legal cultures without legal ethical homogeneity.¹⁵⁶

Does ignorance of diverse legal ethical cultures arise from the lack of a legal ethics mindset in the substantive study of doctrinal law? This is possible if we regard the transnational legal ethics debate in international arbitration as reflecting the patterns identified by socio-legal scholars at a broader level:

¹⁵² Ogus, above n 79, 434.

¹⁵³ James E Meason and Alison G Smith, 'Non-lawyers in International Commercial Arbitration: Gathering Splinters on the Bench' (1991) 12 *Northwestern Journal of International Law and Business* 24, 28–9.

¹⁵⁴ Landau and Weeramantry, above n 150.

¹⁵⁵ Landau and Weeramantry, above n 150, 4.

¹⁵⁶ Generally consider Cyrus Benson, 'Can Professional Ethics Wait? The Need for Transparency in International Arbitration' (2009) 3(1) *Dispute Resolution Journal* 78; Edna Sussman, 'All's Fair In Love and War — Or Is it? The Call for Ethical Standards for Counsel in International Arbitration' (2010) 7(2) *Transnational Dispute Management* 1, 8; Catherine Rogers, 'The Ethics of International Arbitrators', Pennsylvania State University Dickinson School of Law Legal Studies Research Paper No. 18-2010 <2-8 <http://ssrn.com/abstract=1559012>>.

While the international field formerly was a closed, exclusive club of state experts, who adopted a dilettante approach to their international activities or viewed them as a matter of *noblesse oblige*, the acceleration of both economic and symbolic trading has led to significant investment in international institutions. What simply used to be the hobby of these 'notables-generalists' has become a full-time vocation for a whole array of professional specialists, competitively trying to construct new international arenas configured around their own specific expertises and values.¹⁵⁷

These developments demonstrate the need to raise broader legal ethics awareness and there is perhaps no better (or other) place for this to occur than at the early legal education stage. This description of an emerging international legal arena could be used to describe a *legal ethics lex mercatoria*. The characterisation supports a transnational legal ethics analysis that can be extended beyond international arbitration. Daly, for example, has already canvassed the ways in which cross-border legal ethics and professional responsibility issues can be integrated into a law school curriculum.¹⁵⁸ This can be done by considering the formal regulation of lawyers and legal services along with the study of professional issues and their philosophical backgrounds, professional norms, and the legal culture that created and supported those norms. Such an approach would allow core ethical issues to be taught and studied at the domestic and international levels. For example, the rules on legal professional privilege and client legal privilege at common law might be studied with regard to their founding values and legal cultural origins. This might be juxtaposed with studying the principles of professional secrecy in civil law jurisdictions and their contrasting legal cultural origins.¹⁵⁹

IV CONCLUSION

Processes of globalisation bring increasing challenges of cultural diversity to legal practice and legal ethics education, and current discourse on whether legal ethics should be introduced into the English law degree presents an opportune platform to discuss a new paradigm for legal ethics education. This is because such challenges present complex future legal ethical dilemmas for law graduates moving into international and transnational careers. International

¹⁵⁷ Mikael R Madsen and Yves Dezalay, 'The Power of the Legal Field: Pierre Bourdieu and the Law' in Mathieu Deflem (ed), *Sociology of Law: Visions of a Scholarly Tradition* (Cambridge University Press, 2008) 201.

¹⁵⁸ Mary C Daly, 'The Ethical Implications of The Globalization of The Legal Profession: A Challenge to the Teaching of Professional Responsibility in The Twenty First Century' (1997) 21(4) *Fordham International Law Journal* 1239, 1257.

¹⁵⁹ D'Silva, above n 45, 12.

arbitration is a useful typology to demonstrate the potential ways in which the internal cultural values of lawyers, coexist with and meet the external legal cultures of the legal profession and then again, other national legal systems and legal ethics traditions in a globalised world. The fact that international legal profession groups are attempting to address concerns about a lack of uniformly enforceable ethical regulation of cross-border transnational lawyering, as a legal ethics market arguably emerges, shows the growing importance of legal ethics education as a necessary adjunct to traditional approaches to the teaching and study of substantive jurisprudence.

Ultimately, the introduction of legal ethics education in the English law degree curriculum is a matter for its legal academy, legal profession and regulatory bodies. To assist that discussion however, this critical analysis of culture and values in international arbitration is offered as a typology for a new legal ethics education paradigm.