Preface

This is an unusual book in legal education literature. It is at once a homage to and critique of another book written quarter of a century ago, and which has been influential on the thinking around legal education since then. That book was entitled *Pressing Problems in the Law. Volume 2, What are Law Schools For?* (henceforth, 'Birks' collection') – a collection of chapters largely on legal education, edited by Peter Birks.[1] The arresting title gives a sense of the book's ambition to seek answers to one of the most fundamental questions that we can ask about our lives as legal academics. 25 years later, we are seeking answers to the same question, and our book comprises one set of responses.

In this introduction we shall set out some of the context of Birks' collection, describe some of the methodology of our own text, and preview the shape and content of this book.

Publication context

Its publication context and history is important to understanding the purpose and content of Birks' collection. Two years before, Birks had edited an earlier book, entitled *Reviewing Legal Education*,[2] published also by OUP and in the same A4 softback format as the later collection. Published in July 1994, this earlier book arose from a Society of Public Teachers of Law (SPTL) seminar held at All Souls College in April 1994. The seminar papers were published as a response to the Lord Chancellor's Advisory Committee on Legal Education and Conduct (ACLEC). The first publication of ACLEC in June 1994 was a 49-question consultation paper on 'The Initial Stage' of legal education. [3] The earlier edited collection

[1] Peter Birks (ed), *Pressing Problems in the Law, Volume 2: What are Law Schools For?* (OUP 1996: 2003 reprint). It was preceded by the earlier *Pressing Problems in the Law. Volume 1, Criminal Justice & Human Rights: Reshaping the Criminal Justice System, Fraud and the Criminal Law, Freedom of Expression* (OUP 1995). Both were published in a plain black cover, softback, A4 two-column format more commonly used for conference proceedings. The titles and formats express the sense of urgency and crisis in the domains of criminal justice and legal education that is part of content of the volumes.
Birks (1941-2004) was Regius Professor of Civil Law at the University of Oxford and Fellow of All Souls College. His principal area of scholarship was in the English law of restitution, but his interests extended to many other topics, including legal education.

[2] Peter B H Birks, Reviewing Legal Education (OUP 1994)

[3] Lord Chancellor's Advisory Committee on Legal Education and Conduct (ACLEC), *First Report on Legal Education and Training* (1996). Available at: https://ials.sas.ac.uk/ukcle/78.158.56.101/archive/law/files/downloads/407/165.c7e69e8a.aclec.pdf accessed 7 January 2022

thus did not take the form of a learned society's report. Instead, it is a gathering of articles on aspects of legal education arising from the SPTL seminar.

The later collection, published by Birks and which went to press just before publication of the ACLEC report, takes a similar approach. As Birks himself points out in the Preface, the aims of both collections were 'to provide a forum in which to air a series of personal views as to the nature and purpose of some or all of the functions of a modern law school.'[4] There are strategic differences however between the two books. The later collection, it is made plain, while arising out of the efforts by the SPTL to engage with ACLEC's process, are 'personal insights into the life and purposes of law schools set out with the intention of enriching the debate as it enters the crucial stage *after* the publication of the ACLEC report'.[5] In other words, the earlier volume was designed to influence ACLEC while it was gathering information – hence the first word of the title, which sought to establish perspectives on law school history and context which Birks (and he was probably not alone in this amongst the contributors) was certain would not be properly understood by regulators.[6] The later volume sought to influence developments after the publication of what was seen at the time as an important milestone in the history of law schools in England & Wales.

The difference is significant, for it is clear that Birks, who was the driving force behind both books, had learned the lesson from the Ormrod Report. He regarded the *post*-Report period as being at least as important as the consultation leading up to the composition of that Report. In this he was undoubtedly right. The post-report period of any significant report is the stage when public perception of the report is formed, when regulatory responses are made and become policy; and in many respects that period *post*-Ormrod Report was a lost opportunity.[7]

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[4] Peter Birks (ed), *Pressing Problems in the Law, Volume 2: What are Law Schools For?* (OUP 1996: 2003 reprint), vi. We should note that while Birks intended to widen the focus of the later collection, he does not achieve this aim. The titles are revealing in this respect. The second volume asks the question 'what are law schools for' rather than stating, as does the first volume, that the book will review legal education. In this respect Birks opens up for debate many of the functions of a law school, not just legal education. It is fair to say, however, that the chapters in the later volume still deal overwhelmingly with legal education as its subject. In shaping our own responses to Birks' question in this book we have taken the same approach – a wide-angled focus, but our subject is still largely legal education – and our title reflects that.

[5] Ibid, our emphasis

[6] Birks' Preface was finished on 12 July 1994; respondents to the 49 questions of ACLEC's consultation paper had till the end of that year to respond. As Birks acknowledges in his Preface the SPTL seminar contributions which gave rise to the book were never intended as direct answers to the 49 ACLEC questions, for the questions had still to be formulated at the time the seminar was held (April 1994) [p.iii]. As a result of this timing, the purpose of *Reviewing Legal Education* to influence ACLEC was diluted.

[7] We might compare that moment with the period *post*-LETR, where the responses from the regulatory stakeholders involved in that report (LSB, BSB, SRA, CILEX) effectively and relatively swiftly set the tone and

While *Reviewing Legal Education* was cited in ACLEC, it is doubtful if it had much influence (ACLEC's committee already had academic representation well able to articulate many of the views of the edited collection).[8] Nor is it clear that the later Birks' collection had any influence on the agenda-setting post-ACLEC. It appeared just prior to the publication of the ACLEC report, whose recommendations were not implemented but which, like Birks' collection, became regarded as touchstone for a vision of university legal education founded upon liberal principles. Indeed ACLEC was radical amongst legal education reports in that it was the first to present a vision at all. Its critique took in the whole spectrum of legal education.[9] As was noted in LETR, it advocated liberalisation of the academic curriculum, which found voice in the Joint Statement. Flexibility was key:

> In shaping its proposals for legal education and training ACLEC […] asserted that 'the growing variety of practice settings, the need to respond to rapid changes and to take opportunities as they arise […] suggest that a pluralistic approach should be encouraged, with providers of legal education and training having greater discretion than they are currently allowed'.[10]

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direction of their legal educational agendas for the foreseeable future. The LETR Report authors noted this point more generally: 'The relative failure of previous reports to make substantial changes to LSET [legal services education and training] has often reflected an inability to mobilise the support of key stakeholders, despite the excellence of many of those reports and no lack of endeavour in the attempts to institute reforms.' Webb J, et al, *Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales (The Legal Education and Training Review (LETR)* (2013). SRA, London. Para 7.3. Available at: https://letr.org.uk/the-report/chapter-5/competence-and-flexibility/index.html accessed 7 January 2022.

[8] Birks himself (ACLEC p.23); Robert Stevens, *Law School: Legal Education in America from the 1850s to the 1980s* (University of North Carolina Press, 1987) Dawn Oliver, 'Teaching and Learning Law: Pressures on the Liberal Law Degree' in Peter Birks (ed) *Reviewing Legal Education* (OUP 1994), at p.44 ACLEC) were cited.

[9] It is interesting to note that in his article on the Benson Report, (Sir H Benson, *Royal Commission on Legal Services* (Cmnd 7648, 1979)) Alan Paterson criticised the report for being 'not so much a blueprint for the future as a snapshot of the status quo' (Alan Paterson, 'Legal Services for all?' (1980) 2(6) *The Journal of Social Welfare Law* 321-329, 321). He drew the contrast with the Royal Commission on Legal Services in Scotland (Cmnd 7846), known as the Hughes Report after its Chair, which took a 'more visionary stance' that was more social, looking beyond the profession to provide 'guidelines for progress rather than stagnation' (321). The Hughes Report in many respects prefigures the ACLEC Report in this regard. ACLEC focused on the changing needs of legal practice, the need for a new vision of legal education in the context of HE in England & Wales, access and funding, the qualifying law degree, professional legal studies practice courses for barristers and solicitors, and quality assurance. Being a unitary report rather than a collection of academic voices in an edited book, it has had as much if not more influence on subsequent legal education literatures as Birks'collection.

[10] Julian Webb, et al, *Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales (The Legal Education and Training Review (LETR)* (2013)). SRA, London. Para 5.45. Available at: https://letr.org.uk/the-report/chapter-5/competence-and-flexibility/index.html accessed 7 January 2022

This liberalising pluralism was adopted by Birks, too, and contributed to his editorial methods. Neither of the volumes he edited states any methodology. Birks' later collection itself has no programmatic intent: it does not take an explicitly specific line on education or jurisprudential educational analysis, for example. If its stated aim was to present the thoughts of 'leading experts' on legal education, there is no description of how 'leading' is defined in the editorial choice of authors, a number of whom espouse views similar to those of Birks. Given the lack of information about methodology, we must look to Birks' Preface to fill the gap. There he outlines the background of English law schools in recent decades in the form of an extended essay on the place, activities and cultures of law schools.[11]

In focusing thus on the social milieux of law schools, ACLEC and Birks' collection were part of a growing literature on the gathering pace of significant changes in HE. Developments have been fast paced.[12] They include the massive increase in student numbers, the creation of new universities from polytechnics and colleges, the gradual erosion of fiscal resources provided by the state, the rise of neoliberalist New Public Management, entrepreneurialism and corporatised approaches to knowledge, learning and the university, and the increase of both governmental and professional regulatory intervention. Birks' collection also deals with the rolling impact of globalisation[13]; technological disruption;[14] and the balance of the competing interests of teaching, research, administration and research funding.[15]

In this sense Birks helped to define a generation of research directions about the shifting identity of law schools. Since his collection, for example, commentators have identified how the law school has become a commercial corporation, highlighting how we are compelled to

[11] *Reviewing Legal Education* contained a similar piece entitled 'The Historical Context' (Peter Birks, 'The Historical Context' in Peter B H Birks (ed), Reviewing Legal Education (OUP 1994) 1-9) which deals with some of the pre-twentieth century background. Birks' Preface serves to update this chapter in Peter Birks (ed), *Pressing Problems in the Law, Volume 2: What are Law Schools For?* (OUP 1996: 2003 reprint). It is written in the form of a general introduction, with no footnotes or references – clearly it is meant to be read as a personal statement upon recent law school history in England. It is an interesting rhetorical device – more below on why he may have adopted it.

[12] Twining stated in his 2018 Upjohn Lecture that he had "underestimated the acceleration of the pace of change in education, legal services, information technology, globalisation and so on". William Twining, 'Rethinking legal education' (2018) 52(3) The Law Teacher 241, 250. The extent to which law schools have, under huge pressure, struggled to create online digital versions of study programmes during the lockdowns and closures of the Covid-19 pandemic is a particularly salient contemporary example.

[13] See for example the discussion in Eugene Clark and Martin Tsamenyi, 'Legal Education in the Twenty-First Century: A Time of Challenge' in Peter Birks (ed), *What Are Law Schools For?* (OUP 1996: 2003 reprint).

[14] *Ibid.*

[15] Peter Birks, *Pressing Problems in the Law, Volume 2: What are Law Schools For?* (OUP,1996: 2003 reprint) vi.

entrepreneurialism, forced to seek private funding in the form of fee-paying postgraduate programmes, undergoing deep restructuring in our undergraduate programmes. In the UK we are now measured in ever more granularized detail in our research, teaching and knowledge exchange performances.[16] International commentators such as Thornton have shown how the massification and the corporatisation of higher education has, 'helped shift the orientation and purpose of universities generally from intellectual inquiry to instrumentalism and vocationalism', and how that has affected legal education.[17] Indeed the lasting influence of Birks' book was to be within the late-twentieth and early-twenty-first century development of law schools in England where it became a key statement of a liberal law school values framework in a period when those values were under pressure. To that extent Birks' authors presaged many of the future challenges for law schools. It was a powerful warning to law schools of their future in the new century.

Yet Birks' collection misses some things, too. The role of wellbeing, of emotion or affect; the status of gender and ethnicity; the relation of legal education to education itself in other places and times; the jurisdictional differentials of legal education in what, since Birks' collection, have become the devolved polities of Northern Ireland, Wales and Scotland – these issues and many more are absent from what appears to be the research agenda of the book.[18] Further, law schools are no longer, 'isolated from other parts of the university. Virtually every department in the social sciences and the humanities has been raided or visited by those in law schools'.[19] We have also seen the rise of movements, such as socio-legal studies, empirical studies, critical legal studies, and other unique legal research areas, a

[16] Richard Collier, 'The Liberal Law School, the Restructured University and the Paradox of Socio-Legal Studies' (2005) 68(3) Modern Law Review 475.
[17] Margaret Thornton, 'The Demise of Diversity in Legal Education: Globalisation and the New Knowledge Economy' (2001) 8(1) International Journal of the Legal Profession 37, 43.
[18] Birks takes a peculiarly English-centred approach to the other jurisdictions of these isles. He attributes, for example (Peter Birks, *Pressing Problems in the Law, Volume 2: What are Law Schools For?* (OUP 1996: 2003 reprint), v), the formation in Scotland of the Diploma in Legal Practice in the 1980s to the influence of the English Ormrod Report (*Report of the Committee on Legal Education* (Cmnd 4595 (1971)), when in fact there were many other local pressures and drivers from Scots legal culture and society for the development of the course, not least the Royal Commission of 1980 (Lord Hughes of Hawkhill, *Royal Commission on Legal Services in Scotland* (Cmnd 7846, 1980) Hughes Report). As Michael Zander pointed out in his comparison of this Report with the English Royal Commission that reported the previous year (Sir H Benson, *Royal Commission on Legal Services* (Cmnd 7648, 1979) Benson Report), 'the Scots [were] considerably more radical than the English'. The Scots report was also the more warmly welcomed, and arguably implemented more than the proposals of the Benson Report [Michael Zander, 'Scottish Royal Commission on Legal Services Report' (1980) 66 *American Bar Association Journal* 1092-95, 1092].
[19] Anthony Bradney, *Conversations, Choices and Chances: The Liberal Law School in the Twenty-First Century* (Bloomsbury Publishing, 2003) 10.

diversity which was present to some degree in the mid-nineties, and which Birks himself was keen to encourage.[20]

Today, we view Birks' collection across a very changed landscape: extensive growth in the indicia of neoliberalism, a global financial crisis, Brexit, fresh regulatory interventions such as the SRA's Solicitors Qualifying Examination (SQE), growing environmental crises, the transformative effects of digital upon whole industries, the effects of viral epidemics such as Covid-19 upon universities worldwide, unfolding as our own edited collection was being written. In 1996 Birks was keen to stress the importance of comparative research within Europe given the UK's status a member state,[21] yet today legal researchers are dismayed at the possibility of losing valuable EU research funding as a result of the UK leaving the EU. The passage of time and the force of history create their own ironies. In 1996 Birks was highlighting the inflexibility created by stringent commands of the regulating bodies as to what a law degree should include,[22] whilst more than two decades later we are adjusting to a future where solicitors in England and Wales will not be required to have any formal legal education at all.[23]

In the face of all this, Birks' fundamental question remains as relevant as ever: what are law schools *for*? As law schools approach an existential crossroads *post*-Covid, it seems timely to revisit the question, not least because, as Clark and Tsamenyi observe in the Birks collection, "like it or not *all* law academics are involved and affected by such issues".[24] This book contains both our answers and more questions.

Methodology of our book

[20] Peter Birks, *Pressing Problems in the Law, Volume 2: What are Law Schools For?* (OUP 1996: 2003 reprint), viii.
[21] Ibid.
[22] Ibid xvii.
[23] Under the SRA's proposals solicitors will be required to have a degree (but not necessarily a law degree) and to have passed the Solicitors Qualifying Examination (SQE) but the mode of preparing for the SQE is not prescribed – Solicitors Regulation Authority, Draft Authorisation of Individuals Regulations Post Consultation, Regulation 2.1. Available at https://www.sra.org.uk/solicitors/standards-regulations/authorisation-individuals-regulations/ accessed 7 January 2022.
[24] Eugene Clark and Martin Tsamenyi, 'Legal Education in the Twenty-First Century: A Time of Challenge' in Peter Birks (ed), *What Are Law Schools For?* (OUP 1996: 2003 reprint) 44.

We start from the position that legal education is a socially complex phenomenon. This is hardly a novel approach, but it is as well to state it from the start. Moreover, and drawing from the work of a risk analyst, Sydney Dekker, we would draw a distinction between a complicated object and a complex object. Dekker uses the example of a jet liner. It is a hugely complicated object with its assemblage of hundreds of thousands of parts, but can be disassembled and reassembled from its component parts because 'understandable and describable in principle'.[25] By contrast, a complex system works in real time, with components working in local relation only, and the manufacturer would be unaware of the behaviour of other components in real-time action, in multiple, complex environmental contexts.[26] When the jet liner is in operation, the complicated object becomes a complex object. The same is true of legal education in law schools. Described as curricula, syllabi, modules with learning outcomes and assessment criteria, knowledge and skills components, it is a complicated artefact. When performed and operated in real time, however, it becomes a much more complex object, where (for example) module descriptors are only a small part of a much larger experiential whole, for students as well as academic staff. Indeed, like music, we must experience it in real-time performance for its dense, woven complexity to be revealed; and every experience of it is different: in every iteration we step into Heraclitus' river anew.

If complexity theory matters significantly in legal education, then the form of inquiry is almost as important. There is a variety of methods by which we can understand social complexity and intellectual changes in law schools. One is the general history – Robert Steven's history of US legal education is one such example.[27] Or a history of concepts or *begriffgeschichte* – curriculum, for example, or assessment;[28] or a history of the development of areas of law such as Twining's *Theories of Evidence: Bentham and Wigmore.*[29] We might undertake a review of the research findings of a topic in a particular period.[30] Another

[25] Sidney Dekker, et al. 'The complexity of failure: Implications of complexity theory for safety investigations' (2011) 49 *Safety Science* 939. Quoted in Paul Maharg 'The Gordian Knot: Regulatory relationship and legal education' (2017) 4(2) *Asian Journal of Legal Education* 79-94, 82
[26] Ibid.
[27] Robert Stevens, *Law School: Legal Education in America from the 1850s to the 1980s* (North Carolina Press 1987)
[28] Alison Bone and Paul Maharg, (eds), *Assessment and Legal Education: Critical Perspectives on the Scholarship of Learning and Assessment in Law*, volume one: England (ANU Press 2019)
[29] William L. Twining, *Theories of Evidence: Bentham and Wigmore* (Weidenfeld & Nicolson 1985).
[30] Paul Maharg and Emma Nicol, 'Simulation and technology in legal education: A systematic review and future research programme' in Caroline Strevens, Richard Grimes, Edward Phillips (eds), *Legal Education: Simulation in Theory and Practice* (Emerging Legal Education series, Ashgate Publishing 2014)

method is through the history of our institutions – Cownie & Cock's history of the SPTL / Society of Legal Scholars is an example.[31] Yet another approach is to track specific changes in detail over a span of time, empirically examining their aetiologies of change, their causes, symptoms and effects – the many studies carried out on the case method in US legal education is an example of such historical educational literatures. Or we can undertake a detailed anthropological study of aspects of law school culture, rather as Beth Mertz does in her study of the case method in US legal education, using sociolinguistic studies of the discourses used in legal classrooms.[32]

Another method involves the study of a prior text that is recognised as being influential in the discipline. It employs historical approaches that are well understood in the canons of Arts disciplines, in literary analysis or historiography for instance. Augustine's *Confessions* is often seen as an *ur*- or meta-text for northern and western autobiography, and a study of its interpretation can tell us much about the genre and its place in literary canons. In genre studies, Scott's *Waverley* has been raided endlessly by critics as a source of both historical fiction and fictional history. It has been studied for its Europe-wide influence on the genre of historical novels and the part that such narratives can play, for example, in the development of nationalist movements.[33] In history, historiographers have noted how the nineteenth century histories of Ranke, Michelet and Burckhardt, those *grands récits* that wove claims of the arcs of social progress and decline around great events, persuaded contemporary readers by creating historical spaces and characters that spoke not just of their own historical time, but to the time and place of the reader, too.[34] In the field of literary criticism itself a major work such as Erich Auerbach's *Mimesis: The Representation of Reality in Western Thought* has become the focus of critical analysis, and the subject of symposia and conferences.[35] In

[31] Fiona Cownie, Raymond Cocks, *A Great and Noble Occupation! The History of the Society of Legal Scholars* (Hart Publishing 2009).
[32] Elizabeth Mertz, *The Language of Law School: Learning to 'Think Like a Lawyer'* (OUP 2007).
[33] See for example Karen O'Brien and Susan Manning 'Historiography, Biography and Identity' in Susan Mannin, Ian Brown, Thomas Owen Clancy and Murray Pittock (eds), *The Edinburgh History of Scottish Literature: Enlightenment, Britain and Empire (1707-1918),* volume two (Edinburgh University Press 2007).
[34] Hayden White, *Metahistory: The Historical Imagination in Nineteenth Century Europ* (Fortieth Anniversary Edition, Johns Hopkins University Press1973: 2014 reprint); Hayden White 'The fictions of factual representation' in Donald Preziosi and Claire Farago, *Grasping the World: The Idea of the Museum* (London, Routledge 2004)
[35] The text was written by Auerbach in Istanbul while in exile from Nazi Germany between May 1942 and April 1945. It was first published in German in Berne, Switzerland in 1946 by A. Francke Ltd Co. The English translation, by Willard Trask, appeared in 1953, published by Princeton University Press. The best current edition is that containing Edward Said's extensive Introduction to the fiftieth anniversary edition of Auerbach's work – an edition that also included Auerbach's own responses to his critics. See Erich Auerbach, *Mimesis: The Representation of Reality in Western Thought* (Princeton University Press 2003: reprinted First Princeton

the canon of literary criticism, its hegemonic status stimulates critical reflection upon its method and its influences.

Our method follows this critical tradition. It involves the re-interpretation of Birks' collection – effectively a recognition of Birks' achievement and a celebration by critique. It is a form that is relatively rare in legal education. We have chosen this text not just because in England Birks' collection is still cited in publications in legal education, not just because it addresses critical issues that are, hauntingly, still present for us now, albeit in forms and shapes that the original authors may not have envisaged, but also because the method of re-reading a text tells us much about our own times as well as the time of the original authors. Indeed, we cannot but read Birks' collection except with twenty-first century eyes: we can only, in Harold Bloom's terms, 'misread' Birks' collection, even over the relatively short passage of time since its publication. Such a process of misreading, though, is creative: in re-reading, remembering and interpreting Birks' collection we can re-interpret anew our own particular stances in legal education theory and practice, and with regard not just to our present, but to the pasts and futures of legal education. Above all, it is a methodology that acknowledges and explores the essential effects of time and change within a research domain.

A good example of this is the question of technology in law schools. Digital technology was the focus of a chapter by Hugh Collins in *Reviewing Legal Education*, and was discussed in a section in Clark and Tsamenyi's overview of Australian legal education in Birk's collection.[36] The focus was limited to applications and their integration with prior legal education pedagogies. The larger questions of the effects of digital on education and knowledge were not raised. As an example of these larger questions we might take one of the fundamental paradoxes of the internet whereby it makes visible the *centrality* of knowledge (as well as raising questions about how we access it, verify it, and who owns it). But it also *de-centres* the university and its scholarly communities as the once-privileged sites

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Classics Edition, 2013). See also Hyeryung Hwang, *Said and the Mythmaking of Auerbach's Mimesis*. CLCWeb: Comparative Literature and Culture 18.1 (2016): https://doi.org/10.7771/1481-4374.2776 access 7 January 2022. See also William Calin, Erich Auerbach, 'Mimesis – 'Tis fifty years since: A reassessment' (1999) 33(3) *Style* 463-74 (and note how Calin nods to the title of Scott's *Waverley* in the title of his own article, implying the status of Auerbach's text in criticism is equivalent to the status of Scott's novel in nineteenth century historical fiction). All this and much else illustrates the creative, interpretative work that can surround a classic in the canon.

[36] Eugene Clark and Martin Tsamenyi, 'Legal Education in the Twenty-First Century: A Time of Challenge' in Peter Birks (ed), *Pressing Problems in the Law, Volume 2: What are Law Schools For?* (OUP 1996: 2003 reprint) 29-32

of knowledge production and dissemination. As Weinberger pointed out, the vast expansion of access to knowledge that the internet entails reveals much more the actual extent of contestation about knowledge claims than the shared truths of insight, overturning Enlightenment claims to knowledge as the basis of shared understanding.[37] These and similar processes were already being observed and theorised by the mid-nineties.[38] But it is only by looking back at their absence in Birks' collection that we can begin to appreciate the immense changes we have experienced since 1997, and how those changes will affect our law school futures, our law school purposes.

Birks' blunt title question therefore is a constant challenge to all generations of teachers and learners. Our response, arguing from a view of legal education as contingent and socially complex, cannot hope to capture the huge complexity of law school cultures within our volume; but we can begin to unpack the deceptive simplicity of Birks' title and recognise that the question may be cast differently. Or that it contains, like a *matryoshka* doll, many other questions: *who* are law schools for? *Where* are law schools? *What* is learned in law schools? *How* do we learn and teach in law schools? Indeed, what is there of value in the wider fields of education – kindergarten, primary school, secondary school, college, other disciplines in HE e.g., medical education, adult and lifelong education – that we can draw upon? *When* are law schools? The last is especially resonant. What were law schools like in the past and what might we see of value in them for our present reflection and practices? This includes unearthing the forgotten, almost invisible 'shadow' pedagogies of the past that can be recast, re-formed for the future.

It is a methodology that also, with its background in the Arts, pays special attention to what is unsaid as well as what is said in Birks; who is missing from among the list of authors (especially as regards gender and ethnic diversity) as well as who was chosen to be present; and what could have been written instead of what was written. In this regard the concept of the 'implied narrative' in textual theory is important to our project in this book. Just as there can be an implied audience, an implied author, so can there be an implied narrative – one that is not made overt or *ad longam* but which is implied or hinted at through various devices

[37] David Weinberger, *Too Big to Know* (Basic Books 2012) 174-5.
[38] See for instance New London Group, 'A pedagogy of multiliteracies: Designing social futures' (1996) 66(1) *Harvard Educational Review* 60-92; Cliff McKnight, Andrew Dillon, John Richardson, *Hypertext in Context*, (CUP 1991); Manuel Castells, *The Rise of the Network Society*, *Volume 1 of The Information Age: Economy, Society and Culture* (Blackwells 1996).

within a text. Where narratives often link past, present and future in conclusive causation, implied narratives present a single instance or event that gestures to the existence of an event before or after (or both) the one that is described.[39]

In our interpretation, the implied narrative of Birks' text is the emergence and ethical presence of the liberal law school. It cannot be made programmatic in his text largely because his authors disagree about the nature of the concept. Compare, for instance, the views on law schools that Goodrich held over against Toddington or any other author, and you begin to see the problem that Birks faced as the editor of his authors. It is for this reason that Birks eschews explicit programmatic intent, but uses implied narratives throughout the Preface to signal the book's allegiances. That subtle Preface, which manages to be stylistically both a careful summary of selected aspects of the recent history of law schools and an apparently bluff personal opinion piece, lays down the markers of such an approach for the book.[40] Arguing from a substructure of implied beliefs about law school, the Preface's structure inhibits counter-arguing; and it creates the space for Birks to tell a story about the liberal law school which is by no means applicable to all but with many recognisably visible traits in actual law schools. In its way, the Preface is both a powerful vision for law schools, imaginative, creative, and complex; and a strategy in which Birks attempts to influence the direction of law schools' future *post*-ACLEC and the practical implementation of that future. [41]

We would argue that it is one of the rhetorical strengths of Birks' collection, and which sustained it as a key text for the development of the liberal law school framework of values. Our book, in a variety of ways and in a number of chapters (see below) questions that implied narrative.

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[39] See for example Sky Marsen, *Narrative Dimensions of Philosophy: A Semiotic Exploration in the Work of Merleau-Ponty, Kierkegaard and Austin*, chapter 2, *passim,* (Palgrave Macmillan 2006). Twitter is an example of a text genre that thrives on implication and implied narratives. See Laila Al Sharaqi, Irum Abbasi, 'Twitter Fiction: A New Creative Literary Landscape' (2016) 7(4) *Advances in Language and Literary Studies* 16-19.

[40] Peter Birks (ed), *Pressing Problems in the Law, Volume 2: What are Law Schools For?* (OUP, 1996: 2003 reprint).

[41] For a discussion of this narrative strategy see for example Sonya Dal Cin, Mark P. Zanna, Geoffrey T. Fong, 'Narrative Persuasion and Overcoming Resistance' in Eric S. Knowles, Jay A. Linn (eds), *Resistance and Persuasion* (Routledge 2013, first published Lawrence Erlbaum Associates 2004) 175-92.

After his untimely death in 2004, Birks was the subject of two *festschriften* in his memory.[42] Neither dealt with legal education. In a sense this is appropriate: Birks himself was not an original contributor to the literature, or much of an innovator in educational practices. Birks' collection, however, is a watershed, bringing together as it did a range of important critiques of legal education, and an important text in the canon. Our methodology accords the passage of time and change a central role. Understandings of the past and visions for the future are intimately bound up each with the other. As Maharg and others point out, though, too many aspects of legal education remain undocumented, historyless, forgotten.[43] This book is therefore a rescue archaeology where we understand the past by critiquing Birks' collection and its place in our discipline's canon. But it also asks Birks' question anew: what are law schools for, today, in the first quarter of the twenty-first century, and for the foreseeable future? What visions do we have for our law schools and our legal educations?

Above all, our chapters question the constructions we form of the past and future of legal education that depend upon our multiple identities as academics, and the tensions that arise from those roles. If legal education is a complex object, it is so partly because of three general characteristics that operate simultaneously in real-time. First, the many roles that academics can play: tutor, lecturer, facilitator, assessor, designer, learner, manager, leader, administrator, team-player, consultant, discipline expert, researcher, writer, disciplinary (inter)national collaborator, funding-seeker and more; and often playing several roles simultaneously. Second, law schools are conservative institutions in a number of ways, not least in that they are conservationist: part of their essential role is to conserve and pass on legal academic cultures, ways of thinking and modes of being. Third, they are also committed to critique, to changing the way we think about law and justice, and striving to achieve that change.

Legal education can be in the forefront of such change, with experimental experiential forms of learning, radical initiatives, collaborations beyond the law school, and much else; but legal

[42] Charles Rickett and Ross Grantham, *Structure and Justification in Private Law: Essays for Peter Birks (*Hart Publishing 2008); Andrew Burrows and Alan Rodger, *Mapping the Law: Essays in Memory of Peter Birks* (OUP 2006).

[43] Paul Maharg, 'Prometheus, Sisyphus, Themis: Three futures for legal education research' in Ben Golder, Marina Nehme, Alex Steel, Prue Vines (eds) *Imperatives for Legal Education Research: Then, Now and Tomorrow.* (Routledge 2020, Emerging Legal Education Book Series) 271-88. See also Webb J, et al, *Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales (The Legal Education and Training Review (LETR)* (2013)). SRA, London. Paras 1.30, 1.46. Available at: https://letr.org.uk/the-report/chapter-5/competence-and-flexibility/index.html accessed 7 January 2022.

education is also highly conservative too, strongly attracted by the gravitational pull of the *status quo*. [44] Many of the narratives of change and innovation in the modern period reveal how difficult it is to bring about sustainable change in legal education when conservation and critique are prioritised within the law school; and when our roles are so kaleidoscopically fractured. As a result it is difficult to discern the purposes of our legal educations. How we resolve those tensions and uncertainties each for ourselves and also for our legal education communities, and shape our purposes, is also part of this book's project.

Chapter overviews

Our book grew out of a funded *Modern Law Review* seminar held at Northumbria University Law School, in collaboration with Nottingham Trent University Law School, in June 2019. The seminar brought legal academics from different parts of the world, with different perspectives, arguments and experiences.[45] Its focus was wide, and many topics were explored. We organised the day into various streams which had a specific focus on the current landscape of legal education. Margaret Thornton gave the first keynote address, outlining how legal education is becoming increasingly marketized and the impacts this has on institutions and the staff and students who work in them. Among much else there were streams exploring skills and practices in legal education training; exploration of clinical legal education; how law can adapt through globalising the curriculum and becoming more inter-disciplinary; who law schools are for; and the profiles of academics and the loss of law teacher views in regulatory changes brought about by, for example, the Solicitors Qualifying Examination (SQE) and the Teaching Excellence Framework (TEF). Stephen Vaughan explored how we teach core modules in his keynote and whether it was time for law schools to be more creative in their curriculum design. Paul Maharg gave the final keynote, exploring how hermeneutics can help us question how we explore law schools and understand their cultures, histories and epistemologies. He outlined ways we can change this hermeneutic focus. Not all speakers have contributed to this edited collection, though their presentations were invaluable to the seminar. We also recruited some authors to the book who did not

[44] Webb J, et al, *Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales (The Legal Education and Training Review (LETR)* (2013)). SRA, London. Para 1.21. Available at: https://letr.org.uk/the-report/chapter-5/competence-and-flexibility/index.html accessed 7 January 2022.
[45] See Victoria Roper, Rachel Dunn and Samantha Rasiah, 'Revisiting *Pressing Problems in the Law: What is the Law School for?* 20 years on' (2020) 54(3) *The Law Teacher* 455-64.

contribute to the seminar, to provide a holistic overview of the current landscape of legal education and more recent phenomena and issues that were crucial to include.

The book begins with Elaine Hall and Samantha Rasiah's chapter that deals with snapshots of the history and evolution of the concept of the law school. Throughout, Hall and Rasiah discuss the place, purpose and attitudes of law schools. They observe for example the effect of a generalising tendency when talking about law schools: 'Talking about "the" law school ignores […] inequalities within and between each law school and is therefore potentially a serious distraction from one of our more pressing problems'. They also question 'who is law school (apparently and actually) for?' and discuss how we might move from a conventional 'replication / application' mode of learning and teaching to a more radical 'interpretation / association' mode. They draw striking parallels between the Berytus law school foundation in the second century CE and contemporary law schools, particularly in the idea of plurality within unitary foundation, and the relations between law school and government, both local and imperial. The result is an overview that helps us to think beyond the parochial boundary issues of our law school thinking about purpose.

The theme of governmental pressure upon law schools is continued in Maribel Canto-Lopez's retrospective on the place and effect of the Teaching Excellence Framework (TEF) in law schools in England. As her title suggests the model for TEF was the Research Excellence Framework (REF), and Canto-Lopez tracks in detail the origins and the implementation and effects of TEF. She reveals the relations between governmental policy and the marketisation of HE and the employability agendas that are a key focus of such market-based pivots in HE. Canto-Lopez is unsparing in her analysis: TEF creates busyness around education; it increases stress levels across the board; it creates more 'administrative bureaucracy'; it endorses the concept of students as consumers. She also observes TEF as a silencing intervention: how law teachers' voices have been silenced or unheard in the introduction of the TEF. She notes this as a theme in Birks' collection and investigates closely why this has happened much more so since the mid-1990s. She notes the need for less management and more leadership, management based on trust not power relations, the lack of real consultation, and much else. She ends by emphasising the need for staff to regain their identities and values that are 'lost to competitiveness and productivity indoctrination'.

Internationalisation of law and legal education was discussed in Birks' collection, though not necessarily the versions of it that we encounter today. Chapters by Grief, and Clark and Tsamenyi made arguments and predictions for a more international focus of legal education and scholarship. Chloe Wallace outlines the need for a more internationalised legal curriculum, not just because of the exigencies of the global legal labour market, but also because *au fond,* the purpose of higher education should be to create good citizens. In order to do this, Wallace argues, we should be moving towards a curriculum that builds in legal systems and rules from other jurisdictions, in order for our students to understand why our system is the way it is. In so doing our students can better understand any particular jurisdiction's imperfections and the alternatives that may be available elsewhere. This chapter complements arguments made by Adebisi and Bales, below, in holding that it is only by understanding our own legal system alongside others that we can create graduates who are global citizens, with potentially decolonising and anti-racist attitudes.

The racialisation of law schools is discussed in more depth in the chapter by Foluke Adebisi and Katie Bales. Birks' authors were writing at a time when Scarman's report on the Brixton riots[46] was still relatively fresh in memory, and the Macpherson Report[47] was ongoing. Yet there is little or no mention of the effects of race from most of the authors in his collection. More recently, racialisation has become a current pressing issue following the growth of the Black Lives Matter movement. Adebisi and Bales present the reader with a history and overview of how law and legal structures have impacted on racialised groups, the prior lack of acknowledgement of this in legal education, and why it is imperative that we include colonial histories, antiracist and decolonial discourses within law school curricula. They provide practical examples of modules that do this at Bristol Law School to allow students to reflect upon the racialising consequences of our legal systems and to give them 'tools to properly understand their social realities'.

Neither class nor gender were explicitly discussed in Birks' collection to any great extent. Some of our authors have framed their chapters around this, questioning *who* law schools are for, as well as how this impacts *what* they do in legal education. Jessica Guth and Doug Morrison analyse class, gender and race, using an autoethnographic methodology. They

[46] The Scarman Report into *The Brixton Disorders 10-12 April 1981* (1981) (Cmnd. 8427)
[47] *The Stephen Lawrence Inquiry: Report of an Inquiry by Sir William Macpherson of Cluny* (1999) (Cmnd. 4262)

begin by highlighting that no women contributed to Birks' collection in 1996. In asking *who* are law schools for, Guth and Morrison explore the law school beyond the physical space and instead focus on the people who inhabit them. Their chapter argues that the superficial differences between our contemporary law schools and those of the mid-nineties belie the underlying continuity that who law schools are for has not really changed since the publication of Birks' collection.

Since Birks' collection, one element of law school educational discourse that has substantially increased is the literature on skills. That this was already happening in the 1990s is evident in Birks' collection, with Toddington's chapter in particular focusing on legal skills. Emma Jones draws upon this chapter and how skills are currently characterised and used within legal education, and questions the nature of authentic legal skills. Where Thornton highlights in her chapter that higher education has moved towards marketisation, Jones analyses a particular example of this in the relation between skills and employability. She argues that the perception of legal skills has significantly changed since Toddington's chapter was written. She argues for a different conceptualisation of legal skills, one that has a greater focus on emotional and social competencies, with a shift towards online, blended and flipped models of teaching.

Paul Maharg makes a case for the 'originary intimacy' between legal method and educational method to be revived. He claims that the uneasy status of legal education stems not just from its multidisciplinary origins but from it having no apparent place in the foundational methods and knowledge structures within the legal academy, and he advocates for the reclamation of legal education as a core jurisprudential activity. To explore this, he carries out a thought experiment. Taking a legal realist approach, he constructs an argument for his claim from the materials and debates historically available to Birks' authors, exploring the relations between jurisprudential and educational debates, and demonstrating the epistemic cross-overs between the two.

Digital technology was the focus of a chapter in *Reviewing Legal Education*, and was discussed in a section in Clark and Tsamenyi's overview of Australian legal education in

Birks' later collection.[48] While both Birks' collections acknowledged that there would be a need to adapt, the extent of the reach and power of the ongoing digital revolution in society at large as well as law schools, was not anticipated in Birks' collection. Lydia Bleasdale, Paul Maharg and Craig Newbery-Jones explore two aspects of recent developments, namely the spatio-temporal challenges to legal education embodied in Bakhtin's concept of the chronotope, and the problems of creating and sustaining identity and community within a curriculum that is powerfully bounded by digital technologies. Both topics are of key interest to the post-pandemic law school. In the third section of the chapter, they use a lecture as a case study, in both its analogue and digital formats, and conclude with an analysis of the future of digital within our law schools.

Margaret Thornton ends our edited collection by outlining how law schools have been 'beset with a sense of schizophrenia', with their identities even more uncertain in light of the neoliberal turn. Though authors in Birks' collection did discuss the marketisation and corporatisation of legal education, the full impacts on law schools had yet to manifest themselves. Drawing upon her recent work Thornton depicts the current situation law schools find themselves in – for instance state disinvestment in public education, more pressure on income generation, increasing governmental regulation, the creation of consumerist cultures, league tables driving the operation of universities, and the commercialisation of research and the disappearing space for higher education to act and be perceived as a public good. With such constraints, she questions whether law schools have a choice as to what they are for. Drawing upon the work of Foucault, Thornton analyses the 'contemporary role of both law students and legal academics'. In spite of all the challenges to their cultures and practices, legal academics are praised for their commitment to creating new legal scholarship and inspiring generations of law students.

Assembled in this way, there are many adjacencies and comparisons between the chapters. For example, the first chapter deals in part with the distant past of law school, while the last, chapter nine, with the future, i.e. post-pandemic, institution; but both are grounded in a critique of present law schools and their cultural contexts. The next five

[48] Eugene Clark and Martin Tsamenyi, 'Legal Education in the Twenty-First Century: A Time of Challenge' in Peter Birks (ed), *Pressing Problems in the Law, Volume 2: What are Law Schools For?* (OUP 1996: 2003 reprint) 29-32.

(chapters two to six: Canto-Lopez, Wallace, Adebisi & Bales, Guth & Morrison, Jones) are fascinating comparisons in change cultures. All are critical about the changes that have or have not taken place since Birks' collection. There are contrasts in these chapters, too – the absence of voice in the narrative around the TEF (Canto-Lopez) over against the place of voice in global education (Wallace), for example. Chapters five and seven (Guth & Morrison, Maharg), though very different in topic, have similar yet contrasting methodologies. Chapters seven and eight (Maharg, and Bleasdale, Maharg, Newbery-Jones) deal with interdisciplinarity in different ways; but are similar in that they engage in close readings of specific forms of legal education – scholarly writing and lectures, respectively. Throughout all chapters, there are also general themes, e.g., neoliberalist infiltration into legal education. The structure makes the book more powerful between the book-ends of chapters one and eight, allowing us to use the sociolegal cultural & linguistic turns of our method as a set of tools in order to understand the social complexity of legal education.

There is no conclusion to our book because it seemed to us that no conclusion could encompass the varied sophistication of our authors' contributions. Birks' collection's structure, too, leaves us with the authorial kaleidoscope of views: he made it clear in his Preface that that was the aim of his book. We seem to have replicated the Birks' collection structure in leaving the last word to all our authors. And yet, however brilliant the individual critiques in Birks' collection may be – and in truth they are a mixed bag – there is no meta-critique of the law school, or legal education and its purpose in Birks' collection. Goodrich's chapter, a profoundly critical reading of Twining's *Blackstone's Tower*, comes closest to performing this function in Birks' collection:

> As to the teaching relation and the institutional development of the law school, the absence of any history or even mention of class, gender, race or oppression reflects an altogether more immediate isolation and arrogance on the part of the academy and its historians.[49]

As editors, we feel a responsibility to address this in our relation to Birks' challenging question. It seemed to us as the book was taking shape that if there were a single theme

[49] Peter Goodrich, "Of Blackstone's tower: metaphors of distance and histories of the English law school" in Peter Birks (ed), *What are law schools for?* (OUP, 1996) 67

weaving itself throughout our book, it is that the liberal law school framework of values is an *essential but insufficient foundation* for the contemporary law school in the first half of the twenty-first century. That framework emerged from and described a moment in law school history in England, post-WWII to the late twentieth-century. In the quarter century since the publication of Birks' collection, law schools have changed significantly, and the speed of transformation is not showing signs of slowing down. If anything, law schools have become more fragile and precarious places, post-Covid19. In our view, the *post*-liberal law school, whose cultures, problems and opportunities are outlined in part in this book, in addition to acknowledging the achievements of the liberal framework, has to recognise how little progress has been made by law school since Birks' collection. The *post*-liberal law school needs to become more transgressive, more relational with regard to students, more dynamic in its collaborations, more porous in its interdisciplinarities, more global in its outlooks.

This of course still leaves us all with the final question as to what an essential *and* sufficient structure may look like for each of us, in our individual law school, regardless of what roles and positions we hold within it. Our book presents versions, imaginings, wireframes, fragmentary narratives – in effect, and in Dekker's sense, visions of complex law schools that move beyond the 'culture and non-relation of law school'.[50] But on the shaping detail of those versions and their working out in your lives and careers – over to you, dear reader.

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[50] Ibid

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