

Globalization comes to Main St, USA

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- ▶ Context
- ▶ Globalization & competence-based approaches
- ▶ Three instances of regulators dealing with a globalized profession:
 - ▶ Qualifying Lawyer's Transfer Scheme (QLTS) – England & Wales
 - ▶ Professionalism in Scottish legal education (Law Society of Scotland)
 - ▶ Legal Education & Training Review (LETR) – England & Wales







globalization...?

Eight broadly agreed social trends, leading to an increase in:

- ▶ People
- ▶ Environmental pressure
- ▶ Scarcity
- ▶ Security
- ▶ Economic globalization (ie international flows of capital, labour, goods; increase in regional & sub-regional economic co-operation agreements)
- ▶ Diffuse power constellations (at international, regional, national, local levels, and between public & private)
- ▶ Information.

Thanx to *Law Scenarios to 2030:
Signposting the Legal Space of the Future*
@ www.lawofthefuture.org

key issues

- ▶ Uniformity – mobility
- ▶ Unitary profession – multi-disciplinary practices / ABSs
- ▶ Proportionality
- ▶ Harmonization
- ▶ Knowledge, skills, attitudes, values

is competence the standards answer...?

Proponents say it gives:

- ▶ public confidence in the profession
- ▶ homogeneity and normatization within the profession
- ▶ clarity and transparency of standards.

is competence the answer...?

Critics say of competence frameworks that they:

- ▶ Inhibit performance or creativity at a level above that stated in the framework
- ▶ Encourage a mechanistic approach to learning and evaluation
- ▶ Don't provide an adequate conceptual structure for understanding or for personal/professional self-development
- ▶ Cannot represent professional work adequately in a pre-determined framework because it's too complex & creative, and therefore one struggles to incorporate meaningful assessment of values and attitudes
- ▶ Create problems with snapshot evaluation of competence.

alternative evaluation...?

- ▶ Experiential approaches, eg Qualifying Lawyers' Transfer Scheme -- <http://www.sra.org.uk/qlts/>
- ▶ The assessment is in three parts:
 - ▶ Part 1 is a multiple-choice test that evaluates Day One Outcomes.
 - ▶ Part 2 is a practical examination that evaluates interviewing and advocacy skills in the context of three areas of practice—business, civil and criminal litigation, and property and probate.
 - ▶ Part 3 is a technical legal skills assessment that tests the skills of legal research, drafting and writing.

interesting features & questions of QLTS

Use of:

- ▶ Attempt to move beyond knowledge & basic skills
- ▶ Standardized clients (SCs)
- ▶ Objective Structured Clinical Examination (OSCE)
- ▶ Sophisticated statistical tools (Cronbach's alpha for reliability, SEM for accuracy)
- ▶ Some integration of knowledge, skills, attitudes.

But:

- ▶ Ethical dimensions? SCs may provide data, but not on legal professional issues.
- ▶ Professionalism?

professionalism...?

Key description:

‘a dynamic, contingent and contested *practice*, responsive to a range of ideological, economic and situational factors’

moral

New

Webb, J. (2008). The dynamics of professionalism: The economy of English legal practice – and some lessons for Zealand? *Waikato Law Review*, 16, 21-45 at 22.

the regulatory perspective in Scotland: core professionalism values



<http://www.lawscot.org.uk/becomingasolicitor>

Law Society of Scotland: professionalism learning outcomes

Throughout the programme a student should demonstrate a commitment to:

1. The interests of justice and democracy in society
2. Effective and competent legal services on behalf of a client
3. Continuing professional education and personal development
4. Diversity and public service
5. **Personal integrity and civility towards colleagues, clients and the courts**

Law Society of Scotland: indicators for professionalism outcome

Outcome	Positive indicator	Negative indicator
5. Personal integrity and civility towards colleagues, clients and the courts	Is honest with all others on the course; relates to colleagues on the programme with civility; treats tutors, administrative staff and others with respect.	Exhibits traits of arrogance, intemperate behaviour, mismanagement of own affairs; lies to colleagues or programme personnel; plagiarises work; adopts the work of others as own work; is abusive or contemptuous towards colleagues or programme personnel.

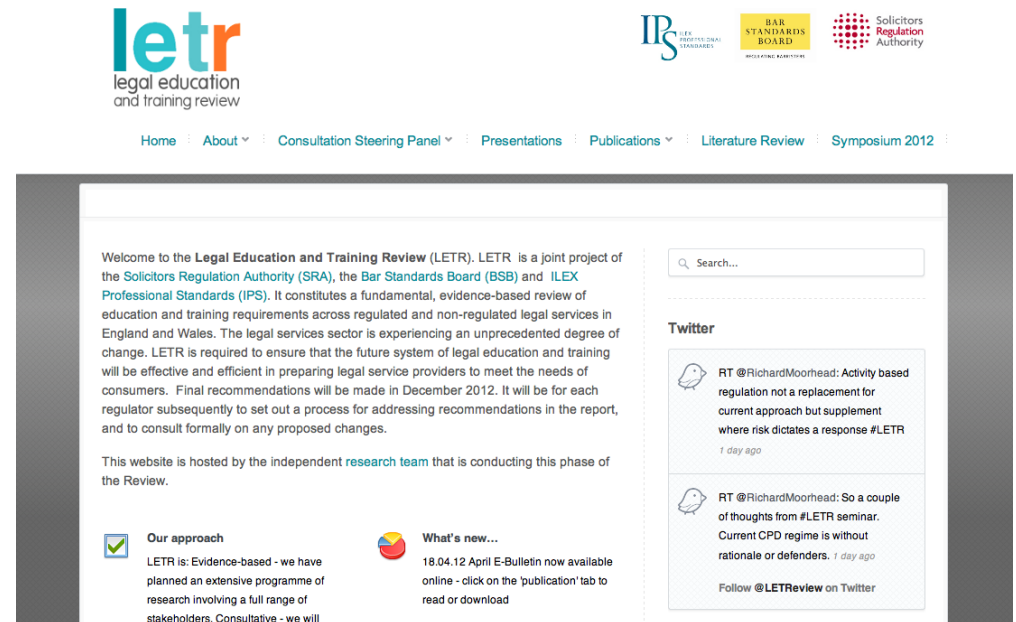
evidence on professionalism from medical education

‘We found that UCSF, School of Medicine students who received comments regarding unprofessional behaviour were more than twice as likely to be disciplined by the Medical Board of California when they become practicing physicians than were students without such comments. The more traditional measures of medical school performance, such as grades and passing scores on national standardized tests, did not identify students who later had disciplinary problems as practicing physicians’.

Papadakis, M. *et al* (2004) Unprofessional behaviour in medical school is associated with subsequent disciplinary action by a state medical board, *Academic Medicine*, 79, 244-79

Legal Education & Training Review (LETR)

- ▶ Joint project of BSB, IPS, SRA
- ▶ Sector-wide review
- ▶ Commenced in May 2011; due to report in December 2012
- ▶ Evidence-based approach



LETR: phases and outputs

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- Literature review
 - 'Contextual analysis'
 - Workforce projection and training needs (to 2020)
 - Recommendations

Interim outputs:

- Briefing/Headline/Discussion papers
- Literature Review (draft - Jan 12)
- First 'Issues' Discussion Paper (March)
- Second 'Issues' Discussion Paper (July)
- Equality and Diversity Discussion Paper (April)

Final report and recommendations (Dec 2012)

The primary focus is on:

- ▶ The role of LET itself as a regulatory tool for assuring competence
- ▶ The appropriate form(s) such regulation should take (particularly the balance between specific training regulation and the use of conduct of business rules and entity regulation as drivers of LET compliance)
- ▶ The scope and reach of regulation – eg, whether reach should be extended into currently unregulated areas of work; whether it is appropriate to move away from the dominance of regulation by title to greater emphasis on activity-based authorization and, possibly, regulation.

key issues emerging in LETR

- ▶ What structure(s) will increase choice over the processes of qualification, whilst delivering greater certainty to consumers/the professions as to the quality of outcomes achieved?
- ▶ Flexibility and diversity – facilitate common training and cross-qualification across broader range of regulators
- ▶ Activity-based authorisation/regulation
 - ▶ Linkage to ‘partial access’ to reserved activities
 - ▶ New (para-)professions – eg ‘personal injury attorney’, ‘probate attorney’ etc
- ▶ National standards for sector?
- ▶ Is this now the tiebreak question: *what policy and regulatory choices are most likely to maximize net consumer welfare?* (cf s.1(1)(d) LSA 2007).

where are we now?

- ▶ Project team and infrastructure – including website at <http://letr.org.uk>
- ▶ Published draft literature review
- ▶ Published survey of cross-section of existing competence frameworks in the sector.
- ▶ Completing review of approved regulators' current training regulations
- ▶ Empirical work for Phases 2 and 3 ongoing – qualitative and quantitative
- ▶ Too soon to talk in any depth about findings.
- ▶ Full listing of events and publications on the LETR website

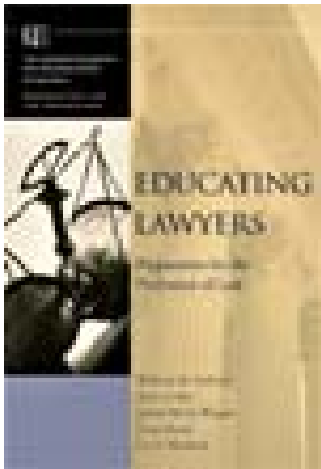
options for discussion?

- ▶ Abolition of the concept of a qualifying law degree;
- ▶ The introduction of national assessments at point of entry to the profession;
- ▶ Specification of sector-wide national standards for key areas of work, and a move to greater activity-based authorization/regulation;
- ▶ Removal of at least some of the linear breaks and distinctions between 'vocational courses' and work-based learning, whether through the training contract, pupillage or paralegal experience;

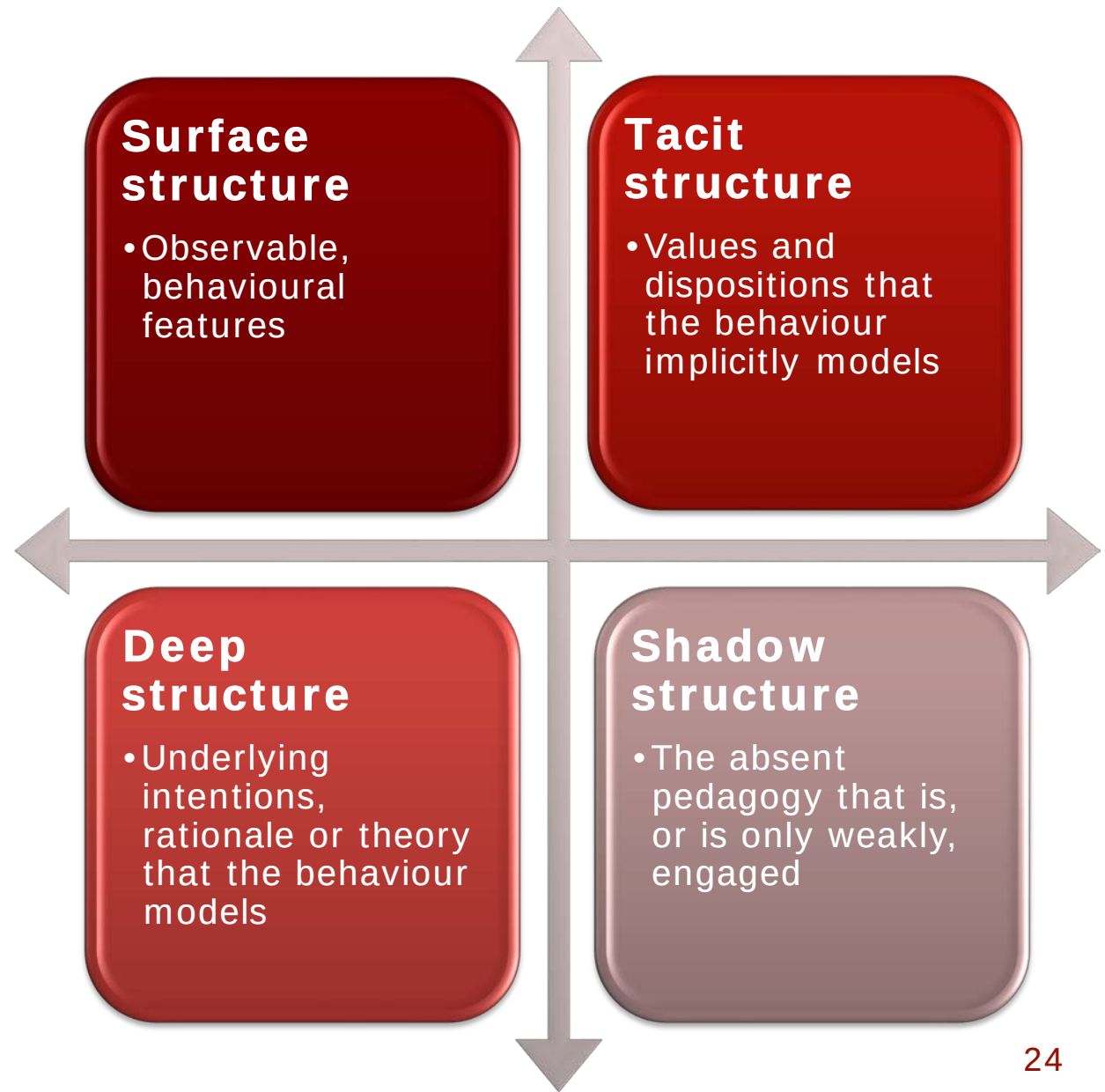
options for discussion?

- ▶ Facilitation of greater common training between regulated occupations, both course-based and work-based (insofar as that distinction is retained);
- ▶ Replacement of the pupillage/training contract with a more flexible period of 'supervised practice';
- ▶ Development of a sector-wide CPD scheme or alignment of schemes

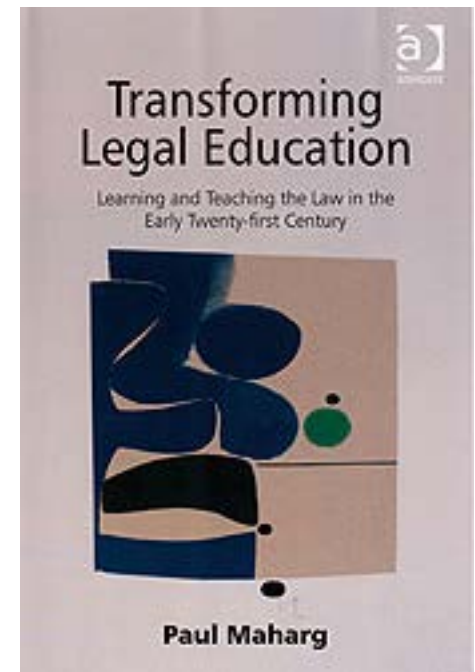
signature pedagogies (Lee Shulman)



Sullivan, W.M., Colby, A., Wegner, J.W., Bond, L., Shulman, L.S. (2007) *Educating Lawyers. Preparation for the Profession of Law*, Jossey-Bass, p. 24



critical thinking requires us to transform the pedagogy...?



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