The educator's role in Higher Education: position papers from a project of the Special Interest Group Higher Education of the Worshipful Company of Educators

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The Special Interest Group Higher Education (SIGHE) of the Worshipful Company of Educators was set up in the year 2017 and currently has over thirty members who are Freemen and Liverymen of the company interested in Higher Education, Higher Education policy, research, and research training. Topics of interest include educational methods and concepts for universities, training of doctoral students, training of skills relevant for higher education; mentoring and career development of junior academics. The group is chaired by Benedikt Löwe.

So far, the SIGHE had two meetings, one at Christ's College, Cambridge, on 3 November 2017 and one at New College, Oxford, on 20 January 2018. During these meetings, SIGHE decided on a number of projects that would define and inform the discussion of the members of the group.

The first project, entitled *The educator's role in Higher Education: What distinguishes it from other educational sectors?*, is coordinated by James Crabbe and Max Weaver. The two coordinators have produced two position papers that constitute this document. The position papers are to be seen as personal statements of their respective authors rather than a description of the position of the SIGHE, let alone the company. They are supposed to provoke useful reflection and discussion. The authors of the papers encourage readers to contact them directly and discuss the content of the papers.

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How might differences in kind and degree between the two principal forms of tertiary education (Further Education, FE and Higher Education, HE) affect the responsibilities and demands of the educators' role?

by *M. James C. Crabbe*

A key difference between teaching in HE and FE is the role of research. Currently, research is not a criterion for being an FE lecturer. At 'research-intensive' universities, research is predominant in the 'lecturer' or 'associate professor' role, although teaching is seen as increasingly important. At 'teaching-intensive' universities, particularly post-1992 universities, research can still be important, but it can be more pedagogical research than subject-specific research.

Further education (FE) teachers teach a range of subjects in one of three main areas:

vocational training (including apprenticeships)–preparing students for work and making sure they have up-to-date skills;

academic teaching–teaching a range of academic qualifications mainly at GCSE and A-level;

basic skills–teaching basic skills in areas such as numeracy, literacy and ESOL (English for Speakers of Other Languages).

They may also teach recreational courses that support personal interests, such as local history or watercolours. Although they work mainly with post-16 and/or adult learners, they can also work with students aged 14 to 19 who are studying vocational subjects. Work can take place in any of the following settings:

i. a general or specialist FE college,
ii. sixth form colleges,
iii. adult and community education centres,
iv. universities,
v. prisons and youth offender organisations,
vi. voluntary and charity organisations,
vii. work-based learning.

Like teachers in primary, secondary and university education, they need to

- plan and prepare lessons,
- teach across a range of qualification types and levels, in day or evening classes or open access workshops,
- research and develop new topics, courses and teaching materials, including online resources,
- teach large and small groups of learners from a range of backgrounds, abilities and ages,

- monitor, assess and mark students' work,
- maintain accurate records and monitor students' progress,
- set and oversee examinations and liaise with awarding bodies to ensure quality standards are met,
- carry out a pastoral role as a personal tutor to students,
- conduct tutorials on a one-to-one basis with learners,
- plan additional support for students,
- contribute to course team meetings to monitor, review and evaluate relevant courses,
- represent the college at parents' evenings, taster days, open days and careers or education conventions,
- keep up to date with, and implement, college policies,
- interview prospective students,
- liaise with other educational professionals and organisations,
- organise work experience and carry out learner assessments in the workplace,
- undertake a range of administrative tasks.

Many FE teachers work part time or on a sessional basis and may supplement their income through private tuition, evening classes, national examination marking, teaching on residential courses, external consultancy work or writing textbooks. A growth in partnership working between organisations has resulted in FE teachers moving between institutions, e.g. schools, sixth-form colleges, higher education and community-based learning centres.

Qualifications for Teachers. Teaching in an HE institution has classically been 'training for future professors', i.e. by researchers who did not have a formal teaching qualification. However, now training for teaching is now usually operated 'in house', with criteria and qualifications (Fellowship, Senior Fellowship, and Principal Fellowship) provided by the Higher Education Academy (HEA). Assessment of HE teaching is currently by HEFCE through the Teaching Excellence Framework (TEF).

Assessment of FE teaching is by the Office for Standards in Education (Ofsted).

It is possible to become a further education (FE) teacher without a teaching qualification, although such teachers will be expected to study for one. This will increase the chances of getting a job and receiving further promotion. Individual institutions set their own requirements and some may have their own in-house training programmes.

Qualifications for FE teachers are available at various levels:
- Level 3 Award in Education and Training: an introductory, knowledge-based course, which doesn't have a placement and you can complete before being in a teaching role.
- Level 4 Certificate in Education and Training: develops practical teaching skills and requires you to have at least 30 hours of teaching

practice.

- Level 5 Diploma in Education and Training: this is the recognised, full teaching qualification for the sector and you   must have at least 100 hours of teaching practice. You can choose to take a specialist pathway at this level in literacy, ESOL, mathematics or special educational needs (SEN).

One can go straight into the Level 5 qualification without having completed the other levels. If you've completed a Level 3 or 4 qualification, you may be able to achieve recognition for prior learning.

Qualifications are generally offered by FE colleges, universities and other training providers on a full or part-time basis. However, for part-time level 4 and 5 qualifications, one will usually need to organise your own teaching practice placement. One can also apply to do a postgraduate PGCE in Further Education or Post-Compulsory Education.

To teach an academic course, for example, one will typically need a degree. For vocational subjects, one will need an appropriate vocational qualification (usually minimum Level 3) and professional experience.

Higher Education in Further Education. As of 13 March 2017, there were 241 FE Colleges (FECs) delivering higher education. This includes providers that are directly funded by HEFCE (Higher Education Funding Council) and those that deliver higher education through a sub-contractual arrangement.

A majority of students at FECs are registered on undergraduate courses other than first degrees, such as foundation degrees, HNDs (Higher National Diplomas) and HNCs (Higher National Certificates). In 2016-17 this was more than three-quarters of all undergraduate students taught at FECs.

There have been increases in the number of students starting courses at all levels at FECs in the past decade, but the relative increase has been greatest for foundation degrees (cf. Fig. 1). The number of students starting these courses was 75 per cent higher in 2016-17 than in 2007-08.

There has also been a large increase in entrants to HND courses. The number of students starting HNDs increased by 10 per cent in 2016-17 compared with the previous year, and the number of entrants has more than doubled since 2010-11.

The scale of provision of higher education at FECs varies across regions. Accounting for population size, roughly three times as many students register on higher education courses in FECs in the North East, North West and Yorkshire and the Humber than in the London, South East and East of England regions.

A study by the Centre for Global Higher Education at University College London Institute of Education (Dougherty & Callender, 2017) highlighted the inequalities in access to HE, graduation from HE and economic success post-graduation. It pointed out the FECs account for 8.5 % of HE students, but were at risk of being ignored in policy discussions, which focused on getting disadvantaged students into selective universities.

Entrants to higher education courses in further education colleges

Number of students — Academic year

Source: Higher Education in Further Education: Student Survey (HEIFES)
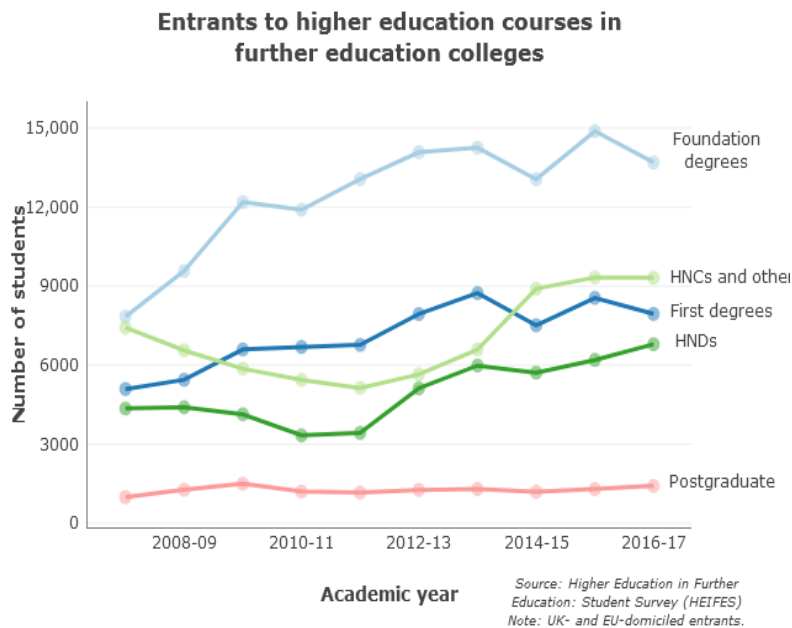Note: UK- and EU-domiciled entrants.

Fig. 1.

In order to play a key part in policy discussions, FECs need a mission to unite around, which will enable the sector to regain ownership of what it stands for nationally, regionally, and locally (Hadawi & Crabbe, 2018). Such a vision is needed to create a TVET (Technical and Vocational Education and Training) sector that is targeted to develop an effective shared culture, close skills shortages and skills gaps in education, enhance community cohesion and improve productivity and inclusive growth.

Some concluding questions.

1. Where should skills in arts and humanities be taught?
2. Should research now be part of Further Education?
3. Where does learning skills and employability merge into creativity, and can one teach–or indeed learn–to be creative?

References.

Dougherty, K.J. and Callender, C. (2017) 'English and American higher education access and completion policy regimes: similarities, differences and possible lessons.' Centre for Global HE working paper no. 24.

Hadawi, A. & Crabbe, M.J.C. (2018) Developing a Mission for Further Education: Changing Culture using non-financial and intangible value. *Research in Post-Compulsory Education*. In the Press.

Pegging Levels

by *Max Weaver*

Preamble. This paper was written to introduce the first project undertaken by the Special Interest Group on Higher Education.[1] The Group decided in January 2018 that a consideration of the differences between Higher Education (HE) and Further Education (FE) might prove both useful and stimulating. Because we have each been involved with both HE and FE, James Crabbe and I volunteered to coordinate 'SIGHE Project 1'. Our hope is that our initial papers will stimulate further contributions from SIGHE members and, perhaps, from members of the newly-formed SIG on Music Education.

Any serious discussion of policy—say of further and higher education—is unlikely to progress far without someone asking, 'What do you mean by...?' or saying, 'We need some definitions for our report'. Indeed, without some degree of agreement about what an item under discussion is, the discussion is unlikely to be productive. It will miss issues—or fudge them. This paper begins with some reasons why.

Defying Definition. I throw a ball to you. We can pretty well guarantee that, if it was a 'tennis ball' when I threw it, it will be a 'tennis ball' when you catch it.

But words are not like that. If I say to you, 'I tend to keep to the right', you might 'hear-me-to-say' that: (i) I hog the motorway fast lane; or (ii) I ignore the signs on Tube staircases enjoining me to 'keep left'; or (iii) 'I favour Tory candidates when I vote'. As it happens, I don't do any of these. What I 'meant-to-say' is that (iv) I think seriously about justice and that, if that thinking leads me to a conclusion or—in Kantian terms—a 'maxim'[2] about what is the right thing to do, I tend to follow that maxim.

Analogue and binary. I doubt that we can 'define our way out' of the problem just put. We know that both FE and HE are somehow *additional* to some earlier education but, beyond that, we struggle for precision in definition and consistency of practice. Here's why.

These terms—*further*, *advanced*, *higher, general, vocational*—are 'analogue' (rather than 'binary'). Think of the on/off switch as 'binary' and the volume control as 'analogue'.

They are open-textured or, in W. B. Gallie's phrase, 'essentially-con-

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1   It draws on papers I have prepared for presentations at conferences of the Society of Legal Scholars in 2015, 2016 and 2018.

2   Mary Gregor (ed), Immanuel Kant, *Groundwork of the Metaphysics of Morals* (Cambridge UK: Cambridge University Press, 1998, original 1785) 31, note, 'A *maxim* is the subjective principle of acting, and must be distinguished from the *objective* principle, namely the practical law.' (emphases in the original).

tested'.[3] We see examples in the work of Ludwig Wittgenstein,[4] Ronald Dworkin,[5] Daniel Dennett,[6] David Miller,[7] and many others. Think of voting 'leave', or of demanding 'social justice'.

Dworkin's explanation of kindness and honesty illuminates the notion,

'Kindness and honesty [two principles that often conflict] cannot *just* have one content or another, because moral claims cannot be barely true… No moral particles fix what these virtues just are…**[They] are *interpretive concepts*: their correct use is a matter of interpretation, and people who use them disagree about what the best interpretation is.'**

Similarly, if a sergeant is told, 'Choose the best soldier for the mission!' what is meant (or understood) by 'best'? The fastest runner? The soldier with the most stamina? Or who can lift the greatest weight? Or who is the strongest-minded and most resilient?[8]

Jonathan Haidt identifies a dual-process or two-stage approach to such judgement-making:

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3   W B Gallie, 'Essentially Contested Concepts', (1965) 56 *Proceedings of the Aristotelian Society* 167-198.

4   Ludwig Wittgenstein, *Philosophical Investigations* (Oxford: Blackwell, 1953 and 1958): *cf.* especially 33e. Ludwig Wittgenstein (trs. GEM Anscombe), Philosophical Investigations (Oxford: Blackwell, 1963) at 33e: 'Someone says to me "shew the children a game." I teach them gaming with dice, and the other says "I didn't mean that sort of game." Must the exclusion of the game of dice have come before [the speaker's] mind when he gave me the order?' And, I would add, to the hearer when hearing it?

5   *Cf.* Ronald Dworkin, *Justice for Hedgehogs* (Cambridge MA: Belknap Press, 2011) [*JfH*] 123-188 and, at 120, (emphases added). Dworkin's approach draws on a strong philosophical tradition. In *Taking Rights Seriously* (London: Duckworth, 1977) 103, he cites Gallie, note 2 above. In *JfH* at 60, 124 and 160 there are explicit references to Wittgenstein, note 3 above.

6   '[T]here is no such thing as philosophy-free science; there is only science whose philosophical baggage is taken on board without examination.' Daniel Dennett, *Darwin's Dangerous Idea*. New York: Simon & Schuster (1995) 21. *Cf.* also Daniel Dennett, 'The Interpretation of Texts, People and Other Artifacts' *Philosophy and Phenomenological Research*, Vol. 50, Supplement (Autumn, 1990), pp. 177-194.

7   David Miller, *Social Justice* (Oxford: OUP, 1979), explores three *contesting* conceptions of the concept of social justice: (property) rights-based; desert-based; and needs-based.

8   This all begins with Hume: 'Reason is, and ought only to be the slave of the passions, and can never pretend to any other office that to serve and obey them', David Hume (ed. L A Selby-Bigge and P H Nidditch), *A Treatise of Human Nature*, (Oxford: OUP, 1978), 415. A J Ayer, *Hume* (Oxford: Oxford University Press, 1980) 19, comments that this 'celebrated dictum…was intended…to apply not merely to judgements of value but to all the formal exercises of our understanding.'

      Cf. also, Joseph Hutcheson, 'The Judgment Intuitive: The Function of the "Hunch" in Judicial Decision' (1929) 14 *Cornell Law Quarterly* 274-88. John Bargh and Melissa Ferguson, 'Beyond behaviorism: On the automaticity of higher mental processes' (2000) 126(6) *Psychological Bulletin* 925-945 suggest that there is a good deal of automaticity in what we take to be effortful reflection. *Cf.* also Joshua Shepherd, 'Deciding as Intentional Action: Control over Decisions' (2015) 93(2) *Australasian Journal of Philosophy* 335-351.

(1) '[M]oral judgment is caused by quick moral intuitions and is followed (when needed) by slow, ex post facto moral reasoning'.[9] Some of our intuitions are 'directly shaped' by social pressures. '[T]he mere fact that friends, allies, and acquaintances have made a moral judgment exerts a direct influence on others', although sometimes that might 'elicit only outward conformity'.[10]

(2) Our brains are machines used mostly for winning the argument that our intuitions are right[11] and only exceptionally for reflective review—and perhaps a change of mind. 'The final judgment may be determined either by going with the strongest intuition or by allowing reason to choose among the alternatives on the basis of the conscious application of a rule or principle.'[12] '[C]onscious verbal reasoning [does not] command...our actions [but]...is rather more like a press secretary, whose job is to offer convincing explanations for whatever the person happens to do.'[13]

The 'definitions' of FE and HE (indeed of what counts as E) leave matters wide open to *ex post* rationalisations of hunches and prejudices. Their interpretation is a form of moral judgement—a plumping or preference for one set of outcomes as better than others. Policy decisions are not pure science. They are not Popperian falsifiable hypotheses as to what in fact is the case[14] but contestable value-judgements.

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9   Jonathan Haidt, 'Intuition and Moral Judgment' (2001) 108(4) *Psychological Review* 814-834, 817. *Cf.* also Daniel Kahneman, *Thinking—Fast and Slow* (London: Penguin, 2012) for an influential account of 'dual process' theory. For a perspicacious review of other broadly similar accounts, *cf.* Keith Frankish, 'Dennett's Dual Process Theory of Reasoning' in Carlos Muñoz-Suárez and Felipe De Brigard (eds.), *Content and Consciousness Revisited, with Replies by Daniel Dennett* (Cham: Springer, 2015) 73-92.

10   *Ibid*.

11   Jonathan Haidt & Fredrik Bjorklund, 'Social intuitionists answer six questions about morality' in Walter Sinnott-Armstrong (ed.), *Moral psychology, Vol. 2: The cognitive science of morality* (Cambridge, MA: MIT Press, 2007) 181-217, 191, citing Robert Wright, *The Moral Animal* (New York: Pantheon, 1994) 280, 'The brain is like a good lawyer: given any set of interests to defend, it sets about convincing the world of their moral and logical worth, regardless of whether they in fact have any of either. Like a lawyer, the human brain wants victory, not truth.'

     Marc Hauser, Fiery Cushman, Liane Young,cR. Kang-Xing Jin and John Mikhail, 'A Dissociation Between Moral Judgments and Justifications' (2007) 22(1) *Mind & Language* 1–21, 15, conclude: (1)...all of the demographically defined groups tested within our sample showed the same pattern of judgments and (2) subjects generally failed to provide justifications that could account for the pattern of their judgments.' And, at 17, 'under the conditions employed, intuition drives subjects ' judgments, and with little or no conscious access to the principles that distinguish between particular moral dilemmas.'

12   Haidt, note 5, 819.

13   *Ibid*.

14   Since the very influential work of Karl Popper (cf. Stephen Thornton, Karl Popper, Edward N. Zalta (ed.), *The Stanford Encyclopedia of Philosophy,* Fall 2018 Edition for a review of his work), scientific method has been thought to depend on (i) the formation and then (ii) the testing of what are known as *falsifiable hypotheses*. The hypothesis 'the moon is made of cheese' Has been tested and falsified by visiting the moon, digging beneath its surface and finding rock but no cheese.

Context and Consensus. Mostly, the context helps to keep speaker-meaning and hearer-meaning within touching distance of each other.[15] In our scenario, if we were talking generally about motorway driving, you would probably be right to take meaning (i): or, if tube travel, (ii); or, if politics, (iii); or, if ethics, pragmatism, utilitarianism; or, if Immanuel Kant and John Rawls, (iv).

But there is a further factor: *viz*. shared experience. If you say to me that you enjoy classical music, I might take you to mean the whole range of serious music from Palestrina to Stockhausen. But, if we are both musicologists, I might—probably correctly—take you to mean the music of the time and style of Bach, Handel and Mozart and not the more romantic music of Brahms, Wagner, Mahler or Richard Strauss. Given our shared experience, you would not have to explain all this to me.

The key mechanism at work in such situations is 'lexical priming', of which Jenny Kemp gives this example.

'[L]exical priming will vary between different communities of practice, as the usage of words varies in different communities. If I, as a corpus linguist, use the word 'corpus', I am using it to mean 'a collection of texts, nowadays stored electronically'; I would use it in chunks such as 'building a corpus', 'the corpus was analysed', 'corpus linguistics', 'parallel corpora'. However, to a medical professional, 'corpus femoris' or 'corpus adiposum' would be more familiar; and to a law academic, the chunks 'a writ of habeas corpus', 'the Habeas Corpus Act', 'the corpus of the asset' or 'Corpus Juris Secundum' would be much more likely to spring to mind.'[16]

Shared experience—and the lexical priming it entails—is crucial to what we understand by 'higher education' and by 'further education'. The words themselves—'higher' and 'further'—'don't do it for us.' Neither is it a matter of lexicography. Dictionaries do not dictate meaning. The terms 'define' and 'definition' are misleading. They cannot make meaning unambiguously definite. The 'finite' is too fluid for that. All a dictionary can do is capture usages—as those usages persist or change.

It is tempting to think of definitional difficulties as 'core-and-penumbra' problems. That makes good sense when we are rounding fractions up or down to the nearest whole number or classifying the risks in our risk register as high, medium or low. However, when we are dealing with open-textured language—with what W B Gallie called 'essentially contested concepts'[17]—core-penumbra thinking is mistaken. We struggle to find a

However, the seemingly less probable hypothesis that the moon has cheese at its centre has not yet been falsified.

15 Peter Strawson, 'Freedom and Resentment' (1962) 48 *Proc. British Academy* 1–25, underlines the differences between the perspectives of: a first party (*cf*. speaker); a second party (*cf*. addressee-hearer); and a third party (*cf*. overhearer, witness, adjudicator).

16 Kemp, J. (2018) 'A rosy-fingered dawn for legal education? Insights from a corpus linguistic perspective on text'. *Nottingham Law Journal*, 27(2) 82-94.

17 *Cf.* Ronald Dworkin, *Justice for Hedgehogs* (Cambridge MA: Belknap Press, 2011) [*JfH*] 123-188 and, at 120, 'Kindness and honesty [two principles that often conflict] cannot *just* have one content or another, because moral claims cannot be

'core'.[18]

We might agree that we want a 'just result' but might disagree as to whether justice is based on property rights, human rights, desert or need. But, in the seventeenth and eighteenth centuries, the property-owning classes would think the preservation of property rights fundamental to their conception of a 'just result'. Then, the apparent so-called 'core' simply reflected a wide consensus of that particular usage. But such a consensus can break down—usually gradually. Whilst nowadays even the economically privileged do not think of 'rights' as necessarily property-based, there is great dispute over the extent of the 'right to respect for one's private and family life...home and...correspondence' and what restrictions are 'necessary in a democratic society'.[19] That dispute is not about lexicological correctness but about ethical values.

Praxis. Discrepancies between speaker-meaning and hearer-meaning will be rare if (i) the concepts are 'mathematical' (two-ness, triangularity) or 'binary' (think of the on/off switch) and/or (ii) the speaker and hearer are in shared experiential territory (went to the same kinds of schools and universities, *etc*). By contrast, where (iii) the concepts are essentially contested concepts, open-textured or 'analogue' (think of the continuously variable volume control) and/or (iv) the speaker's and hearer's experiential backgrounds diverge, there can be latent or patent miscommunication and disagreement.

Open-texture is sometimes obvious and the contestants for particular conceptions of the concept are alerted. But at other times it is latent and the tension between competing conceptions will go unnoticed as the conversationalist happily 'talk past each other'.

Furthermore, a word that seems 'binary' can be put under pressure and found to be 'analogue'. For example, we might take the meaning of 'instantly' for granted. Apparently, we mostly automatically but unmathematically conceptualise 'instants' as 'intervals' of some three seconds—roughly the time it takes to shake hands.[20] However, in a scientific

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barely true...No moral particles fix what these virtues just are...[They] are *interpretive concepts*: their correct use is a matter of interpretation, and people who use them disagree about what the best interpretation is' (emphasis added). Dworkin's approach draws on a strong philosophical tradition. In *Taking Rights Seriously* (London: Duckworth, 1977) 103, he cites W B Gallie 'Essentially Contested Concepts', (1965) 56 *Proceedings of the Aristotelian Society* 167-198. In *JfH* at 60, 124 and 160 there are explicit references to Ludwig Wittgenstein, *Philosophical Investigations* (Oxford: Blackwell, 1953 and 1958).

18   *Cf.* note 3 above.

19   Article 8, European Convention on Human Rights provides, '(1) Everyone has the right to respect for his private and family life, his home and his correspondence. (2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is *necessary* in a *democratic* society in the *interests of national security*, *public safety* or the *economic well-being of the country*, for the prevention of *disorder* or crime, for the protection of *health* or *morals,* or for the protection of the *rights and freedoms of others*.' Note the italicised open-textured words and phrases.

20   Pinker, Stephen, *The Stuff of Thought: Language as a Window into Human Nature*. (New York: Penguin. 2008) 64-72 and 188-189.

experiment, three seconds might well not count as 'instant' and there might be a dispute as to how to operationalise the concept. That dispute might be resolved pragmatically by eventually agreeing that the effect is 'instant' only where the time taken for it to be manifested is immeasurably small.

Many of the vogue phrases and definitions used in the discussion of educational strategy are essentially contested. But, too often, meetings proceed with ritual incantations of the current buzz phrases—drawn from the latest report—that have caught the attention of government and its agents. The participants might feel better for speaking and hearing the uplifting phrases but clear agreement on values and action might well be absent.

Here, think of phrases such as 'inclusive education'. There is widespread if not universal agreement that certain kinds of exclusion—on grounds, say, of ethnicity or gender—are unacceptable. However, who exactly has a right to be included in exactly what? What, for example, are 'reasonable adjustments for persons with disabilities? Skoogmusic and Yamaha developed an instrument so that Clarence Adoo—a trumpet player so badly injured in a road accident that he is quadriplegic—can participate in musical ensembles.[21] But what adjustments is it reasonable to make for, say, a partially deaf teacher? In addressing that problem Sections 20-22 Disability Act 2010 make liberal[22] use of open-textured terms ('reasonable adjustments', 'substantial disadvantage', 'relevant matter'). Furthermore, the Guidance issued by the Equality and Human Rights Commission invokes such 'essentially contestable' concepts as 'proportionate means' and 'legitimate aim'.

Giving practical meaning to these open-textured terms is fundamentally a matter of valuing the interests that compete for recognition and primacy. Ultimately, we have to answer questions like 'how much do we care about that?' or 'do we esteem this more than that?' Our answers to such question will be intuitive and our intuitions will be informed by our life experiences, many of which have been shared with those others who are of 'like mind'. The reasons tend to come *ex post* not *ex ante*.

In disconnecting verdicts from motives and justifications, I follow David Hume,

'Reason is, and ought only to be the slave of the passions, and can never pretend to any other office than to serve and obey them',[23]

and Thomas Scanlon,

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21   https://www.youtube.com/watch?reload=9&v=MEk7CeKGai0

22   Now there's another word!

23   David Hume (ed. L. A. Selby-Bigge & P. H. Nidditch), *A Treatise of Human Nature*, (Oxford: Oxford University Press, 1978) 415. *Cf.* also Chris and Uta Frith, 'Implicit and Explicit Processes in Social Cognition' (2008) 60(3) *Neuron* 503-510; Marc Hauser *et al.*, 'A Dissociation Between Moral Judgments and Justifications' (2007) 22(1) *Mind & Language* 1–21; and the work of the social intuitionist, Jonathan Haidt (e.g.). 'The emotional dog and its rational tail: A social intuitionist approach to moral judgment' (2001) 108 *Psychological Review* 814-834.

'Desires come to us "unbidden" and we may feel that they "impel" us to action.'[24]

Or, as the US humourist, journalist, novelist, poet, newspaper columnist, and playwright, Don Marquis (1878-1937), put it,

'Ideas pull the trigger, but instinct loads the gun.'

Having made up our minds, we choose our words to *justify* our decisions. As Robert Wright puts it,

'The brain is like a good lawyer: given any set of interests to defend, it sets about convincing the world of their moral and logical worth, regardless of whether they in fact have any of either. Like a lawyer, the human brain wants victory, not truth.' [25]

Where does this leave us? We can look to Parliament for 'definitions' of 'further education' and 'higher education', but—given the foregoing—we might well be disappointed. Nevertheless, it is to statutory provisions that I now turn.

Official Definitions. Decades ago, government decreed that post-school college education is divided into two parts. Hence, we confront exercitive ('official')[26] verdicts that some education is 'higher' and some, merely, 'further'. But verdicts—even official ones—are conclusory. They can tell us nothing about (i) the motives that cause them or (ii) the reasoning by which they are rationalised, explained and 'justified' *ex post.*[27]

The Higher Education Council's website gives the following definitions, which we can take to be in tune with the law and official practice,

'Further education is for people over compulsory school age (currently 16 in England) which does not take place in a secondary school. Further education courses are generally up to the standard of GCE A-level or NVQ Level 3.

Higher education courses are programmes leading to qualifications, or credits which can be counted towards qualifications, which are above the standard of GCE A-levels or other Level 3 qualifications. They include degree courses, postgraduate courses and sub-degree courses such as those leading to HNCs or HNDs.'

Section 28(1) Further and Higher Education Act 1992 provides that a Further Education Institution is,

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24   *Cf.* the third of Scanlon's John Locke Lectures on *Being Realistic about Reasons*, given at Oxford in 2009, available online.

25   New York: Pantheon, 1994, 280.

26   J.L. Austin (eds. J.O. Urmson & Marina Sbisà), *How to do Things with Words* (1975, 2nd edn.: Cambridge MS, Harvard University Press). I can name my car 'Ferrari' but at DVLC it remains officially a Mini. I have no name-changing power to 'exercise'.

27   'I'll have a cappuccino'. Although that's my verdict, it says nothing about why? My usual? For a change? Because you are having one? Because I've read in the newspaper that milk helps to avoid brittle bones?

'any educational institution principally concerned with the provision of one or both of the following—

(a) full-time education suitable to the requirements of persons over compulsory school age who have not attained the age of nineteen years, and

(b) courses of further or higher education.'

By virtue of Education Reform Act 1988 Section 129 (as amended by Section 72(1) of the 1992 Act) to be eligible to receive funding for higher education courses an institution must have 'full-time equivalent enrolment number for courses of higher education exceed[ing] 55 *per cent* of its total full-time equivalent enrolment number.'

Thus far, we have learned only that:

- further education institutions do further education;

- higher education institutions do higher education; and

- higher education and further education are defined by the level of the qualifications to which their courses lead, which is taken as Level 4 or above.[28]

Seemingly, the touchstone characteristic of HE must be substantially present in Level 4 courses and only trivially present at Level 3 or below. It follows that we must look at the definition of Level 4. Paragraph 4.10, The UK Quality Code for Higher Education[29] provides that, to be awarded a Level 4 qualification, a candidate must have:

- 'knowledge of the underlying concepts and principles associated with their area(s) of study, and an ability to evaluate and interpret these within the context of that area of study; [and]

- an ability to present, evaluate and interpret qualitative and quantitative data, in order to develop lines of argument and make sound judgements in accordance with basic theories and concepts of their subject(s) of study.'

'Typically', holders of these Level 4 'higher educational' qualifications 'will be able to:

- evaluate the appropriateness of different approaches to solving problems related to their area(s) of study and/or work;

- communicate the results of their study/work accurately and reliably, and with structured and coherent arguments; and

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28   Level 4 includes: certificate of higher education (CertHE); higher apprenticeship; higher national certificate (HNC); level 4 award; level 4 certificate; level 4 diploma; level 4 NVQ.

29   Part A: Setting and Maintaining Academic Standards, The Frameworks for Higher Education Qualifications of UK Degree-Awarding Bodies, October 2014, available online.

- undertake further training and develop new skills within a structured and managed environment.'

Here too we see open-textured, contestable terms: evaluate, interpret, appropriate, structured, coherent.

Vocationality. Nevertheless, Level 4 is not 'ivory tower'.

- Holders of a Level 4 qualification will have 'the qualities and transferable skills necessary for employment requiring the exercise of some personal responsibility';

- Level 4 qualifications can be work-based; and

- Level 4 qualifications, which are HE, include 'higher apprenticeships' and higher national certificates (HNC) and Level 3 qualifications, which are FE, include 'advanced apprenticeships'.

We should also note that many qualifications at Level 6 or beyond are strongly work-related and constitute steps towards professional recognition.

OFQUAL's writ runs to 'general' as well as 'vocational' qualifications.[30] Here, as examples, are a couple of questions from the specimen A2 AQA paper in 'Ethics and Philosophy of Mind';

- Explain the difference between cognitivist and non-cognitivist theories of ethics.

- How might a utilitarian attempt to justify preventative imprisonment (imprisoning someone to prevent them from committing a crime, rather than because they have committed a crime)?[31]

The second of these shows traces of vocationality, but I doubt that the issues raised by the first would be probed in many job interviews. However, it is imaginable that they would be probed in an Oxbridge entry interview.

Blooming concepts. Jeremy Bentham thought the children's game of push-pin valuable because it increased human happiness. He went as far as to say that, 'Prejudice apart, the game of push-pin is of equal value with the arts and sciences of music and poetry.'[32] We might grant that those that disagree are prejudiced to some extent. That would be the natural result of experience. But that does not disprove the thesis that some skills are of a higher order than others are. There could be some foundation beside the prejudice.

Are there 'higher order' skills? Is philosophical competence of a higher order than musical competence? The skills of a master craftsperson or of an

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30   *Cf.* the OFQUAL webpage.

31   *Cf.* AQA General Certificate of Education, Advanced Level Examination. Philosophy. Ethics and Philosophy of Mind, AQA-2175-ETHICS-SQP-2014, available online.

32   Jeremy Bentham, *The Rationale of Reward* (London: Robert Heward, 1830, 1st edition) 206.

expert classical singer are clearly different to those of a lawyer or a physicist, but is there any touchstone that renders the latter two of a 'higher' order than the former two? Is the third-rate philosophising of an art historian or critic of a 'higher' order than the first-rate professional practice of a skilled artist—just because it is 'philosophising' rather than 'painting'?

It is tempting to find, in Benjamin Bloom's well-known taxonomy,[33] a spurious certainty and a rationale for opinions that might well be tainted by prejudice. Bloom arranged classes of skills in linear ascension: from (i) knowing; to (ii) comprehending; to (iii) applying; to (iv) analysing; to (v) synthesising; to (vi) evaluating. It is tempting to imagine that the essence of FE lies in (i), (ii) and (iii) whereas the essence of HE lies in (iv), (v) and (vi).[34]

But (i) to (vi) are open-textured. Can I *know* 'my way to the Elephant and Castle' without *comprehending* the roads and trainlines? And do I not *apply* that knowledge when I form the *Gestalt* of 'my way to the Elephant and Castle. 'Ah!' you might say, 'we concede that the relationship (i) to (iii) is not linear, but your example demonstrates that (i)-(iii) are a group that does not involve (iv) to (vi)—just like FE.'

Acceptance of the non-linearity of (i)-(iii) recognises that 'knowing', 'comprehending' and 'applying' are open-textured, interpretive concepts of which there can be several competing conceptions. Furthermore, it implies that we shall get a range of answers if we ask, 'What am I *doing*:[35]...when I *know* that a zebra is an animal?'; or '...when I *understand* that a zebra is an animal?'; or '...when I *apply* my knowledge and understanding in order to explain to my granddaughter that a zebra is an animal?'

But consider an FE course in Plumbing. We imagine that the well-trained plumber will be able to do more than install, repair and replace by knowing, comprehending and applying instructions. We expect her to be able to: diagnose faults; install domestic central heating; advise on whether a combination boiler will be best. And could she possibly complete such tasks competently without—in addition to knowing, understanding and applying—*analysing*, *synthesising* and *evaluating*?

The concepts in Bloom's taxonomy are meaningful, but they are not separated from each other in the way that the elements in the Periodic Table are. They are essentially contested concepts. When they are applied to categories of activities or usages, their interpretive nature is easily revealed.

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33   Benjamin Bloom, *Taxonomy of Educational Objectives: Book 1 Cognitive Domain —the Classification of Educational Goals* (New York: Longmans, Green & Co., 1956).

34   Brenda Sugrue provides a brief but useful critique of the received version of Bloom's taxonomy; *cf.* Problems with Bloom's Taxonomy, October 2002, available online. In addition to pointing out that the taxonomy is 'not supported by any research on learning', she comments that, 'The distinctions in Bloom's taxonomy make no practical difference in diagnosing and treating learning and performance gaps. Everything above the "knowledge" level is usually treated as "higher order thinking" anyway, effectively reducing the taxonomy to two levels.' That draws the line in a different place to that which I suggest in the text here. But, my point, as I now go on to try to explain, is that line-drawing is inappropriate.

35   *Cf.* note 22 above.

I do not mean to negate or to make redundant any of the concepts under discussion here. For example, 'justice' is undoubtedly a value to be cherished even though there are deep disagreements as to its basis and extent. Just consider the notion of 'justice for the families of murder victims'. Some will feel that only the death penalty is sufficient. Others will say that life imprisonment should be for life. Others might accept the current custodial practices.

So too with 'reasonable', which oftentimes serves as a synonym for the more obviously interpretive 'sufficiently' (Is the radio loud enough for you, dear?). 'What', we have to ask, 'is sufficient/just?'; and 'in whose eyes?'. 'Justice' is not rendered meaningless by such questions. The questions it begs are worth the begging.

To be clear, my argument is not that open-textured words are without meaning. Rather, it is simply that their meanings are contestable and—from time to time when consensus breaks down as experiences diverge and new attitudes and expectations emerge—contested.

My argument is semiotic in that it is about the vagaries of some of the signs that we use—and too easily take for granted—in our efforts to communicate. It amounts to a plea for deeper, more careful, conversations amongst and between practitioners and policymakers. But to address this communication problem lexically is simply to move the value bubbles around under a wallpaper of words. The solution, I suggest, is to look at usage—at 'usage → meaning', rather than at 'definition/meaning → usage'. The direction of fit is not word → world, but world → word.

Application. Day-to-day undergraduate HE teaching is—at least in my experience as a student and teacher of law—often dominated by a pedestrian version of Bloom (i) to (iii), with only a leavening of Bloom (iv) to (vi). A large proportion of time is spent in setting out and learning 'what is the case.' Furthermore and increasingly, to secure their entry qualifications for HE, some students have been 'taught to the test'. 'A' level has not set these students free intellectually. They learn 'facts' and 'criticisms'—for recall when prompted by signals that are also taught—much as they learned about Santa Claus and about the Tooth Fairy. That 'facts' are falsifiable by counter-evidence—whereas 'criticisms' are not—goes largely unnoticed. Hence, teachers in the first year of higher education in law face the problem of whether to expose their students to inconvenient and unsettling uncertainties or, for the time being, to meet their exaggerated expectations of certainty and wait for much longer processes of realisation to take place.

Arguably, even at the beginning of higher education or in some at least of further education, students should begin to confront Cicero's seven questions. As John Mikhail argues, Cicero's questions[36]—Who? What? Where? By what aids? Why? How? When?—'can transform one description of an action into another'.[37]

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36   Cicero, Marcus Tullius. 84BC. *De Inventione.*

37   John Mikhail, *Elements of Moral Cognition* (New York: Cambridge University Press, 2011) 126.

Of course, we need to master some information and skills so as to free mental space for using them in more demanding problem-solving and decision-making. But 'teaching to the test' oversimplifies too often. Rules come from cases and are used to decide other cases. The process is dynamic. Rather than take snap shots, students need to make a movie—and remember that we shall never get to the end of some of the movies.

Clinical legal education steers around this 'Santa Claus Syndrome'. Being un-didactic and un-expository, it can greatly hasten the realisation process. Faced with clients and their problems, students cannot help but see for themselves that:

- 'law in action' is very different from 'law in the books';

- real world problems involve evidence and proof, documents, procedure, financial and intellectual resources;

- the relevant law is to be found from a range of sources, rather than neatly packaged in one text book;

- law is operational and argumentative;

- not all of the law works well; and

- inequalities of resources, both economic and financial, have profound effects on the way the law works, or does not work, for the clients that they see.

Evidence and procedure appear immediately as crucial factors. Whilst there might be a contractual aspect to the dispute, the finer points of the postal rule about offer and acceptance are far less likely to be relevant than 'Can the client find that document?' or 'Can the other party can be persuaded to answer letters or is insured?'

Furthermore, the business of advising clients involves choosing—often from a number of alternatives—a plan of action. That polycentric or many-bodied problem probably uses all six of the Bloomean skills. The challenge lies in bringing many things together for consideration.

The contrast between the clinical model and the Mrs Beeton-style approach to the law of contract formation—which, for most students, constitutes the most common induction into common law method—is stark. The books tell students that contracts are made by assembling the ingredients—bargained exchange of x for y, evidenced by offer, acceptance, intention to create legal relations. That the contractual cake made by this mixing of ingredients often fails to cover all eventualities, or that many contracts are on take-it-or leave-it terms, or that contracts modify other—non-contractual—rights and duties is, of course, made clear eventually. But I fear that the 'assemble the ingredients, mix together and cook until done' model has a narrowing effect on students' appreciation of how law works—and hence of what law is like.[38]

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38   In the mid 1970s, the Law Division (which I was privileged to head) of the then Polytechnic of the South Bank began to draw on the clinical experiments that had

Legal certainty—the predictability of litigation outcomes that litigants and potential litigants crave, and the economy needs—is often a function of a normative consensus amongst those who have the (often covert) power to shape the law. But the literature and students' conditioning conjures up the misleading notion that certainty is only a matter of using clear words when articulating the rule. Of course, whilst the consensus is settled, the contest of meaning and morals is postponed.

I draw from this experience the more general notion that we might be well-advised to identify three standpoints or ideal types:

- the non-reflective practitioner—easily conflated with 'teach me to the test';

- the reflective non-practitioner—the inconvenient critic; and

- the reflective practitioner—to be valued particularly.

But, I hope I have convinced readers that it would be a mistake to assume that FE students are to be trained to be totally unreflective practitioners.

Soft and hard. In a recent letter to *The Times* newspaper, Adam Pettitt, the Head of the independent Highgate School, said,

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emerged in the USA. In the UK, only Warwick University shared that interest with us. Our 1979 submission to the Council of Academic Awards for revision and continuation of our Ll B course mainstreamed clinic. We used: taster exposures to real clients: simulations; and, for some students, a final year option in Welfare Law that assessed students' handling (under professionally qualified supervision) at real cases.

However, it is important to note that we did not see ourselves a starting a 'trade school' or as heavily vocational. The submission document stated clearly that, '[t]he clinical element has not been introduced with the primary objective of enhancing the student's professional competence although we believe this to be an important and worthwhile by-product. Instead, it is our aim to complete (or to provide additional perspectives) on the picture painted by the more conventional taught elements of the course. To put it shortly, we intend that students should learn 'by doing', and are not primarily concerned they should learn 'to do'.

In the 1980s, I wrote some theoretical pieces about this development: *cf.* my 'Clinical Legal Education: Competing Perspectives' (1983) 17 *The Law Teacher* 1 and 'Ignoring Complexity: Law, Law Schools and the Public Interest' (1985) 19 *The Law Teacher* 3.

London South Bank University is still very much in the game, but so too, it is pleasing to say, are many others. *Cf.* further, amongst many other items: the webpage of the Global Alliance for Justice Education; Evans, Adrian, *et al*. *Australian Clinical Legal Education: Designing and Operating a Best Practice Clinical Program in an Australian Law School*. ANU Press, 2017; the webpage of the European Network for Clinical Legal Education, which has started STARS— Skills Transfer in Academia: A Renewed Strategy Enhancing Legal Clinics in the EU. In the USA, the American Bar association now requires that US law degrees should contain at least six credits of experiential learning.

Clinical legal education is widely thought to be beneficial, but its causative mechanisms have not been thoroughly researched. It works, but we are not quite sure how and why it does.

'Since the introduction of the EBacc and Progress 8 measure, young people have fled subjects such as the creative arts in *the belief that there is a hierarchy of subjects that will make them more employable*. Yet the UK's creative industries contribute an estimated £92 billion to the economy. To make the necessary changes that will leave early learners with the widest pallet of opportunity, we need a mature, sustained political dialogue about curriculum reform with a longer time frame than that allowed by electioneering.'[39]

Which of the subjects is the higher? Is there a 1, 2, 3, *etc.* order? Or, 1= ,1=, 2, *etc.*? Or 1, 2=, 2=, etc.? Again, we struggle for precision about 'higher' and our prejudices can run riot.

Conclusion. Practically, pragmatically, organisationally, we need Levels, or something like them. Without them, the academy would probably be chaos except at very low student: staff ratios. Hence, my purpose in this piece has not been to sweep away all boundaries and categories. Rather, it has been to alert us to their inevitable arbitrariness and to encourage thinking that might be clothed and labelled but is not straight-jacketed, literally or by overweening fashion.

Hopefully, other SIGHE members will be encouraged, stimulated or provoked to contribute reflective experiences from a wider subject range. Might we manage to cover the subject spectrum from STEM to creative arts?

In the hope that other SIGHE members might rise to the bait, I conclude with some questions:

- Do we appreciate and value craft skills sufficiently? Karl Llewellyn regarded lawyering as a 'craft' that could appropriately be taught at postgraduate level in US law schools.[40]

To illuminate his conception of craft, consider this telling passage from an address Llewellyn gave at a banquet in the early 1940s.

'We have fooled ourselves, we have fooled our law professors, we have fooled the whole bewildered public, into the idea that the essence of our craft lies in our knowledge of the law…

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39   *The Times*, 5 June 2018, emphasis added.

40   Karl Llewellyn, 'The Craft of Law Re-valued' (1942) Rocky Mountain Law Review 1, reprinted in Karl Llewellyn, Jurisprudence (Chicago: CUP, 1962) 316-322, 317-8. 'We have fooled ourselves, we have fooled law professors, we have fooled the whole bewildered public, into the idea that the essence of our craft lies in our knowledge of the law…

The essence of our craftsmanship lies in skills, and in wisdoms; in practical, effective, persuasive, inventive wisdom and judgment in selecting things to get done; in skills for moving men into desired action, any kind of man, in any field; and then in skills for *regularising* the results, for building into controlled large-scale action such doing things and such moving of men. Our game is essentially the game of planning and organising management (not of running it), except that we concentrate on the areas of conflict, tension, friction, trouble, doubt—and in those areas we have the skills for working out results.'

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- What are we to make of the atelier and conservatoire models of teaching?

- Is what artists *say* about their work a true account of the creative process?

- And what about critics' opinions?

And there must be many, many more.