28

Integrating indigenous knowledge systems and interdisciplinary perspectives into legal curricula and legal education– constitutional values, ubuntu, and professional signature

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1 Introduction

To various degrees, the arena of law is an arena of conflict – as law is an argumentative study, and peoples' interests and views often collide. In principle, this observation presents no inherent challenges. However, its validity is complicated by the tendency for conflicts within and between societies to escalate. Since the legal profession is fundamentally concerned with managing, if not resolving, conflict, lawyers should be well-equipped to fulfil this role – now more than ever. However, it is not lawyers but rather anthropologists who have been more effective in bridging divides. Disciplines that focus on communication, motivation, behaviour, culture, and belief systems provide students with a deeper understanding of conflict, including its underlying causes and motivations.

A well-known example of success in this field are the methods used by the anthropologist, William Ury, who successfully resolved numerous

* Dr Irene Hutten-Broekhuijse has developed and discussed the overall argument of this chapter. Prof Laubscher kindly assumed responsibility for the discussion of ubuntu and thoughtfully annotated the penultimate version of this chapter.

conflicts through mediation and negotiation techniques. Notably, the department he co-founded is housed within Harvard Law School. The methods he advocates, first introduced in the 'Harvard Negotiation Project',[1] are highly valuable for lawyers seeking to resolve disputes without resorting to litigation, thereby avoiding judicial rulings that may sever relationships. Furthermore, in his publications, Ury outlines strategies for maintaining professional detachment from conflict, which helps prevent its escalation.

While these techniques are not the sole determinant of success, they are undoubtedly essential for lawyers. In his fourth book, *Getting to Yes with Yourself*,[2] Ury expands on the importance of professional attitude. He reflects on how he initially took his own approach to negotiation for granted, only later realising that his ability to persuade others depended on first being convinced of his own positions and conduct, an introspective process that is not necessarily common among others.[3] He argues that this self-preparation is the crucial missing link to success.[4] Ultimately, his work highlights that introspection and authenticity are just as important as the skills of negotiation and mediation themselves.

Ury's contributions are extensive, and while each of his findings offers valuable insights into teaching law students how to build bridges, a comprehensive analysis of his entire body of work falls beyond the scope of this chapter. Given the breadth of his lifelong career, this discussion focuses on a selected aspect, specifically his fourth book, *Getting to Yes with Yourself*, which Ury regarded as a foundational prerequisite and the work that should serve as the guiding principle. While this book provides valuable inspiration for legal professionals, its approach remains somewhat constrained, necessitating engagement with additional literature on behavioural sciences and professional identity to further develop Ury's argument. Moreover, another crucial source of knowledge must be considered in discussions on how law schools can better prepare

1 See https://www.pon.harvard.edu/tag/the-harvard-negotiation-project/ (accessed 28 January 2025); R Fisher, W Ury & B Patton *Excellent onderhandelen (English title: Getting to Yes)* (2019; first published in 1981).
2 W Ury *Persoonlijk onderhandelen; jezelf overtuigen als voorwaarde voor succes (English title: Getting to Yes with Yourself* (2015).
3 Ury (n 2) 9.
4 Ury (n 2) 8-9.

students for a legal career that fosters dialogue and minimises conflict: the indigenous philosophy of ubuntu.

Ubuntu is not only a philosophy that promotes peace but also a foundational principle of the South African legal system, as the 1994 Constitution is both morally and ethically rooted in this rich tradition. It serves as a vital source of knowledge and inspiration, fostering a cooperative approach to law – one that views law as a means to achieve justice and social harmony rather than as an end in itself. By grounding students in this perspective, the concept of ubuntu empowers them to develop a legal mindset centred on collaboration and reconciliation.

At first glance, ubuntu and Ury's negotiation-based framework may appear too distinct to be seamlessly integrated into legal education. However, within the framework of our proposed teaching method, integrative teaching,[5] they complement each other naturally. Our approach advocates for a unified perspective on law and legal education that aligns with key constitutional values. It incorporates ubuntu, as a substantive (shared) paradigm, and professional identity, as a procedural (interpersonal) paradigm, drawing from Ury's argument that legal professionals must first cultivate self-awareness and conviction. Given the diversity in students' behaviours and professional styles, fostering a cohesive professional identity is essential. Together, ubuntu and professional identity form the foundation of what we term 'professional development', which encourages both respectful and confident legal practice.

This chapter is structured as follows: first, we outline the challenges that the proposed integrative teaching method seeks to address, as a clear understanding of these issues sharpens the discussion on the suitability of our approach. We then present our proposal for incorporating 'professional development' into the legal curriculum through integrative teaching. For clarity, we examine the shared paradigm (ubuntu) and the interpersonal paradigm (professional identity) separately before

5 For a definition of integrative teaching view JM Jovanov and others 'Is the integrative teaching approach beneficial for learning?' (2022) 10 *International Journal of Cognitive Research in Science, Engineering and Education (IJCRSEE)* 173 183, 173: 'Integrative learning can be defined as the process of making connections between skills and knowledge from teaching sources and experiences. It connects theory and practice, and uses different perspectives to help students understand issues. Integrative learning suggests that student connect previous knowledge with the newly acquired and see connections in the curriculum.'

demonstrating how they interconnect within the integrative teaching framework. While these paradigms naturally complement one another, they remain conceptually distinct and thus warrant individual discussion. Finally, we conclude this chapter with a summary of our main thesis, namely: 'How our proposed integrative teaching method promotes respectful and confident legal practice, in line with constitutional values'.

Two fundamental challenges are addressed by this proposal. Although academic convention typically discourages the inclusion of personal experiences in scholarly writing, the following two widely acknowledged observations are critical to identifying the problem this proposal seeks to address. The first challenge is a well-documented and pressing societal issue: the increasing polarisation of contemporary society. This growing divide fuels the escalation of conflict, creating 'unsafe' conditions – whether physical, economic, or social. Given its prevalence, this issue requires little elaboration to be understood. The second challenge is more subtle yet equally significant: in nearly every classroom, there are students who adhere strictly to instructions and write what they believe their teachers expect, rather than critically engaging with the material. This behaviour is not a reflection of the students' shortcomings; rather, it is a natural part of their learning process. However, an over-reliance on external validation and instructor feedback prevents students from developing the ability to take ownership of their work and confidently articulate their own positions.

While it may seem harmless to allow students to defer responsibility for their academic work during their studies, given that they are still in the process of learning and require guidance, the long-term consequences of this approach must be considered. Once they enter the legal profession, will they have developed the confidence and independence necessary to practice law effectively? Or will they continue to rely on external directives rather than exercising their own professional judgement? Addressing this issue is essential in preparing law students for a career that demands both critical thinking and self-assured decision-making.

A newly qualified lawyer cannot justify their actions before a judge by stating that they pursued litigation solely on the advice of a senior colleague, only to later realise, when held accountable, that the decision was neither constructive nor legally sound. While the senior colleague's guidance may not have been intentionally flawed (though in competitive legal settings, such a possibility cannot be ruled out), it is also possible

that the advice was based on incomplete or evolving information. At the point where the course of action appeared questionable, it was the junior lawyer's responsibility to critically assess alternative solutions to the dispute. Ultimately, having signed the legal documents, they bore full responsibility, regardless of whether they had consciously assumed it.

This example illustrates how a lack of responsibility can jeopardize professional relationships, negatively impact others,[6] and even undermine the credibility of the legal practitioner. The lawyer in question suffers direct harm to their reputation, as their professional competence is called into question, and indirect harm by making themselves vulnerable to external judgment. Excessive reliance on external validation can lead to a perception of insecurity, which, in high-conflict settings, may increase the likelihood of becoming a target for professional aggression. In the

6 In the given example, the harm is caused through a court procedure, by one identifiable act and actor. However, harm can also be inflicted by employees of organizations or civil servants of regimes who take orders. Civil servants particularly who act under the umbrella of 'ministerial responsibility', walk a fine line. On the one hand, the minister is responsible, and thus should in principle be obeyed (*cf* s 197(1) of the Constitution of the Republic of South Africa, 1996: Within public administration there is a public service for the Republic, which must function, and be structured, in terms of national legislation, and which must loyally execute the lawful policies of the government of the day); however, what if the consequences of you obeying the orders are potentially harmful. Can one hide behind the orders and maintain that the part they play is not *in itself* violent? When do you stop participating, and refuse the order? In her analysis of the case against Eichmann, who was responsible for the transport of Jews during the Holocaust; an act which in itself did not directly kill them, but which inevitably led to the death of many, Arendt explains that when actors are 'cogs' of a violent system, the question should no longer be: 'Why did you obey?', but 'Why did you *support*?'. Involvement in the regime makes responsible. H Arendt 'Personal responsibility under dictatorship' in H Arendt (J Kohn ed) *Responsibility and Judgment* (2003), 47 48. Earlier, in *Eichmann in Jerusalem: A report on the Banality of Evil*, Arendt noted that it was difficult to exactly formulate the legal question of guilt, although it was clear that the crimes he committed with others were against humanity. Ultimately this is how Eichmann was convicted: 'together with others'; as Arendt cites the judgment: '*in such an enormous and complicated crime as the one we are considering, wherein many people participated, on various levels and in various modes of activity – the planners, the organizers, and those executing the deeds, according to their own various ranks – there is not much point in using the ordinary concepts of counselling and soliciting to commit a crime. For these crimes were committed en masse, not only in regard to the number of victims, but also in regard to the numbers of those who perpetrated the crime, and to the extent to which any one of the many criminals was close to or remote from the actual killer of the victim means nothing, as far as the measure of his responsibility is concerned.*' H Arendt *Eichmann in Jerusalem: A report on the banality of evil* (2022) 243, 245-246, first published in 1963)

legal profession, particularly in adversarial or contentious situations, such insecurity is profoundly detrimental.[7]

Thus, it is essential that law students are actively trained to cultivate the judgment, communication skills, and sense of professional responsibility necessary to uphold their legal and ethical obligations. Since they are bound both morally and legally by constitutional principles, they must also acquire the practical skills required to apply these values effectively. While law schools already teach the importance of constitutional values, there is a crucial distinction between presenting them with abstract moral and legal imperatives and equipping students with the practical competencies to uphold them – particularly in complex, high-stakes, or conflict-driven environments.[8] This is where an integrative approach to legal education, grounded in both ubuntu and Ury's negotiation strategies, becomes particularly relevant.

Encouraging students to critically reflect on their personal behavioural styles, perspectives, and convictions, within the framework of shared cultural and professional values, enables them to develop a professional identity[9] that cannot simply be learned or replicated from a textbook.

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7 In T Erikson *Omringd door idioten; Inzicht in de vier gedragstypes (of: Hoe hen te begrijpen die niet begrepen kunnen worden)* (2022), 215, Erikson explains which conflictual situations one should not even enter with people with the red-behavioural style, unless one is feeling absolutely confident in that very moment. For more on vulnerability and power balance see: https://hbr.org/2022/04/how-to-confront-a-bully-at-work (2 February 2025). In this article in the *Harvard Business Review* it is held that '[i]n a recent study measuring bullying among 4143 German employees, mental health expert Stefanie Lange, along with her colleagues, observed the prevalence of severe bullying at work, with junior employees being more susceptible to intimidation than their superiors. The researchers found that power imbalances between experienced and newer workers can create an authority gap that has the potential to generate abusive and intimidating behaviours from those who have higher status.' Therefore, as young professionals are vulnerable, their confidence is of the utmost importance.

8 To provide them with techniques to discern whether there is still a genuine conversation, trying to understand one another, without adopting the other's view (*cf.* H-G Gadamer *Waarheid en Methode (in English: Truth and Method)* (2014) 291, or whether their conversation has ended, as they simply talk past each other.

9 Of course, identities can develop, especially in a fast-moving world, with the means to assume new identities, Bauman argues. However, he also warns against the shallowness of easily adopted identities; identity is a serious matter (Bauman *Identity* (2006) 86). Likewise, he warns against shallowness of relationships. Bauman argues that identities cannot exist without stable long-term relationships, and he observes that meaningful relationships diminish (in Western societies), and are being replaced with shallow contacts. "We need them [relationships, added IH-B] nonetheless, we need them badly, and not only because of moral concern for the well-being of others, but also for our own sake, for the sake of the cohesion

The integrative teaching method directly addresses key challenges in legal education: fostering accountability, building professional confidence, and developing communication skills that facilitate conflict de-escalation.

2 A didactic intermezzo: Additional justifications for integrative teaching

Beyond its substantive merits, the integrative teaching method also presents practical advantages. By embedding professional development within substantive law courses, it effectively addresses the constraints of limited instructional time without compromising the depth of legal education. Given the complexity of the law, instructional hours are a scarce resource, and law schools cannot afford to allocate significant portions of their curriculum to additional training in professional skills at the expense of doctrinal knowledge.[10] Unlike alternative approaches, such as integrating law into interdisciplinary programs or dividing the curriculum into legal and extra-legal courses, the integrative method does not require dedicated instructional time for professional development.

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and logic of our own being" (Bauman *Identity* (2006) 68 69). It is thus helpful for young lawyers that they make career choices that benefit them as a long-term investment; in order to do so, it is crucial to understand who their identity group is and to how that affects their choice of working environment after law school.

10 JM Jovanov et al (n 5); Including their self-knowledge; to help students in their self-reflection and how they relate to others, it can be useful to recommend a book such as *Omringd door Idioten* (Dutch)/*Surrounded by Idiots* (English) (n 8). As it is a popular book on understanding behavioural styles based on the *DISC*-model, it is an accessible book to lawyers. In this book, Thomas Erikson shares in an easily understandable manner relevant insights on how to (1) understand one's own behaviour and how that can be interpreted by others, and (2) how to respond to different types of behaviour adequately, that may otherwise not have reached (young) lawyers; lest it becomes a study in itself. As argued previously, in order to integrate prior knowledge in teaching, one must not first have to teach it, and therefore this book fits the purpose to integrate in the teaching and how to practically engage with opposition. In fact, as the popularity of *DISC* and similar models grows, it is increasingly useful to have a basic notion of its content. Especially since Erikson wrote sequences to it, in which he urged for awareness of manipulation with the knowledge he provided in *Surrounded by Idiots*. Self-awareness is a powerful tool against being subjected to manipulation; if knowledge is power than knowledge about oneself is the greatest power to exercise. Whereas the book (series) is popular, the *DISC* model that is used, in itself is accepted in academia as a model is demonstrated by the number of articles that include the model.

Instead, it enhances the way law is taught by leveraging students' prior knowledge and lived experiences.

In the South African context, the decision to incorporate ubuntu into legal education is particularly compelling for two key reasons: ubuntu embodies an inclusive, bridge-building philosophy that aligns with the constitutional values underpinning South Africa's legal system; and students relate to ubuntu not merely as an intellectual framework but as a lived reality, making it an organic and culturally resonant foundation for legal training.

If a professional attitude must first be taught as an abstract concept, its effectiveness is significantly diminished. First, a purely theoretical approach risks alienating students, as it may not reflect the social norms of the communities in which they were raised and to which they will return after graduation. A legal education that imposes attitudes disconnected from societal realities creates a communication barrier between graduates and the communities they serve. Second, even when philosophically sound, an externally imposed conceptual framework adds unnecessary complexity to an already demanding legal curriculum. To maximize comprehension and applicability, students should be able to draw on prior knowledge wherever possible.[11]

For similar reasons, the proposed interpersonal paradigm within integrative teaching encourages students to apply their existing self-knowledge when analysing legal questions and formulating problem-solving strategies. Rather than being confined to a binary framework of 'correct' and 'incorrect' legal problem-solving approaches, students are encouraged to operate within a professional space that accommodates diverse styles. For example, some legal practitioners naturally adopt a people-oriented approach, prioritising client perspectives and interests, while others take a more task-oriented approach, focusing on legal norms and their application.[12] Both approaches are professionally valid,[13] yet they present distinct challenges. Training students to recognise and refine their personal professional styles during their legal education

11 Jovanov and others (n 5) 173 174.

12 See Erikson (n 7) 27 on behavioural styles: 'red and blue' being more task-oriented, 'yellow and green' being more people-oriented.

13 Behavioural styles naturally influence the use of professional discretion, and whereas these priorities and choices can differ, these are acceptable within the bandwidth. See below, para 4.2.2.

enhances their communication skills, fosters confidence, and ensures they are prepared to navigate opposition effectively in practice.

3 The integrative teaching method: Part I – The shared paradigm

3.1 Introduction

Before discussing the 'shared paradigm', an important distinction must be made. The shared paradigm in this context refers to a common attitude toward law and dispute resolution, rather than a prescriptive interpretation of law through the lens of ubuntu. While extensive debates exist regarding the relationship between law and morality, this chapter does not seek to intervene in that discourse. In fact, caution is warranted when advocating for the integration of a specific moral framework into legal education, particularly if it implies that one set of moral principles should take precedence over others. Even the most well-intentioned moral framework risks unintentionally establishing a normative monopoly that could exclude alternative legal interpretations, an outcome that would contradict democratic principles and, paradoxically, the very essence of ubuntu, which embraces diversity and inclusion.

Thus, the focus remains on cultivating a shared, inclusive approach to law – one that is both constitutionally grounded and relatable to students. Rather than prescribing a singular moral framework, the integrative teaching method seeks to foster an adaptable professional identity that enables students to engage meaningfully with legal challenges while remaining anchored in the principles of justice, dialogue, and reconciliation.

3.2 The concept of ubuntu and its relevance in legal education

Ubuntu is an indigenous law concept in sub-Saharan Africa. Although not easily definable, the concept may be described as a "moral theory"[14]

14 T Metz 'Ubuntu as a moral theory and human rights in South Africa' (2011) *African Human Rights Law Journal* 532 535; also see EJ Marais 'Human dignity and ubuntu in eviction law' in S Arel, L Cooper & V Hellmann (eds) *Probing human dignity: Exploring thresholds from an interdisciplinary perspective* (2024) 263 272.

and an "ethical value".[15] The concept finds expression in the saying *umuntu ngumuntu ngabantu*, which may be translated as "a person is a person [through] other people".[16] Although ubuntu is often equated with the constitutional value of human dignity, it more specifically focuses on dignity as a communal concept, in other words, protecting communal rights and interests.[17] According to Kamga, ubuntu played an integral role in South Africa's peaceful transition from apartheid to our new democratic dispensation,[18] including the reconciliatory approach which South Africa chose to implement rather than one of retribution.[19] Langa J, in the *Makwanyane* judgment, referred to the role of ubuntu in our newly established democratic society, namely a "change in mental attitude from vengeance to an appreciation of the need for understanding, from retaliation to reparation and from victimisation to ubuntu".[20] Regarding ubuntu and relationships between individuals in society, Mohammed J in the *Makwanyane* judgment likened ubuntu with:

> 'the ethos of an instinctive capacity for and enjoyment of love toward our fellow men and women; the joy and the fulfilment involved in recognizing their innate humanity; the reciprocity this generates in interaction within the collective community; the richness of the creative emotions which it engenders and the moral energies which it releases both in the givers and the society which they serve and are served by.'[21]

15 See YM Mokgoro 'Ubuntu and the law in South Africa' (1998) *Buffalo Human Rights Law Review* 15 17-18; see Marais (n 14) 272.

16 Marais (n 14) 272; also see *Dawood v Minister of Home Affairs* 2000 (3) SA 936 (CC) para 30 fn 42; SD Kamga 'Cultural values as a source of law: Emerging trends of ubuntu jurisprudence in South Africa' (2018) *African Human Rights Law Journal* 625 626; WT Bennett, AR Munro & PJ Jacobs *Ubuntu: An African Jurisprudence* (2018) 28 33; S Nkosi 'Ubuntu and South African law: its juridical transformative impact' (2018) *South African Public Law* 1 3-6.

17 R Venter 'Dignity, freedom of expression and the battle over hate speech: a case study in post-apartheid South Africa' in S Arel, L Cooper & V Hellmann (eds) *Probing human dignity: Exploring thresholds from an interdisciplinary perspective* (2024) 289 293; see the separate judgments in *S v Makwanyane* 1995 (3) SA 391 (CC) paras 224, 263 and 308; S Cowen 'Can dignity guide South Africa's equality jurisprudence?' (2001) *South African Journal on Human Rights* 34 50–51; D Cornell & K Van Marle 'Exploring ubuntu: tentative reflections' (2005) *African Human Rights Law Journal* 195 205; see generally Kamga (n 17) 627–635.

18 Kamga (n 17) 634; Venter (n 18) 293.

19 *S v Makwanyane* (n 17) para 131.

20 *S v Makwanyane* (n 17) para 223.

21 *S v Makwanyane* (n 17) para 263.

As ubuntu is a value that underlies the South African constitutional order, as well as an indigenous concept that is familiar to most of South African society – the concept is therefore constitutionally grounded and relatable to students. We argue that ubuntu as a concept and as a value may also be helpful in teaching critical skills for conflict resolution in legal education. We therefore propose that incorporating the fundamental tenets of ubuntu in conflict resolution skills training, would be very helpful to students to eventually navigate interpersonal relationships between colleagues, opposing counsel, and clients in practice. Recognising and internalising the inherent worth and interrelatedness of all individuals, as well as applying this knowledge in real scenarios, is key to reaching peaceful solutions and 'bridge-building' in conflict management scenarios but does not necessarily come easily to everyone. It is therefore essential that these skills be honed among law students by means of repetition and simulated scenarios in legal education by, for example, role playing, AI simulations and games,[22] and evaluating and questioning a given factual scenario. It is by means of these types of teaching methods that we can cultivate a common attitude toward law and dispute resolution among our future legal professionals.

4 The integrative teaching method part II: The interpersonal paradigm

4.1 Introduction

Ubuntu's philosophy, encapsulated in the idea of 'I am, because you are', promotes inclusivity and acceptance of differences. Just as people differ, so do legal professionals. While clichéd, the notion of a 'yes' (as in *Getting to Yes with Yourself*, discussed below) being unique yet equally valid for each individual underscores this diversity. From both an ubuntu

22 The University of Johannesburg has recently launched a 'Virtual Reality Courtroom Game' as part of its legal training which allows students to interact with virtual clients, opposing counsel, and other characters in a virtual courtroom setting in order to practice critical legal skills – which may also include consultation, conflict resolution and communication skills, see https://news.uj.ac.za/news/a-first-in-africa-uj-set-to-transform-legal-education-with-a-virtual-reality-courtroom/ (accessed 30 January 2025).

and professional standpoint, such differences should be embraced if they align with ethical and professional standards.

As noted in the introduction, Ury emphasises first convincing oneself of a solution that accommodates all parties' interests to act confidently and constructively. This article adds an essential preliminary step: raising law students' awareness that professional behaviour, and thus Ury's first step, varies among professionals and is fundamentally acceptable. Experienced lawyers may find these self-evident, young professionals who are still navigating their careers can benefit from this awareness, particularly when challenged. A vocal senior colleague, opponent, or client may express strong opinions about a young lawyer's performance, but recognising that such feedback is subjective helps maintain confidence. Unless behaviour is blatantly unacceptable, a mere difference in opinion does not render one's stance wrong. Understanding this allows young lawyers to remain resilient and continue forward.

This insight is especially valuable for law students, who often think in binary terms: just versus unjust, legal versus illegal – believing that if one is right, the other must be wrong. This mindset can be detrimental. Insecurity about their lack of experience may lead them to uncritically adopt others' opinions. While humility and openness to correction are essential, deferring responsibility entirely is different from seeking a second opinion. Conversely, excessive confidence may lead young professionals to assume authority inappropriately. Striking a balance between confidence, overconfidence, and lack of confidence is crucial, as the consequences impact conflict resolution.

4.2 Professional signature

The concept of 'professional signature' is an integrated idea, integrating personal conviction and behavioural style within the boundaries of ethical and legal norms. This means professionals neither have unfettered freedom to act on personal beliefs, nor should they conform to rigid, black-and-white standards. While the book, *Getting to Yes with Yourself*, focuses on the 'signature' aspect, the concept of 'discretionary space'

concerns acceptable behaviour within professional norms.[23] Ury applies these principles to Mandela's life, making them tangible for students.

4.2.1 Developing a professional signature

Ury's six-step method for confidence and constructive compromise begins with self-awareness: understanding desires, needs, interests, priorities, and emotions without judgment. He urges professionals to 'look from the balcony', breaking reactive fight-or-flight patterns.[24] Recognising emotional triggers is the first step toward constructive responses that serve clients' interests. Although observing oneself objectively is easier said than done, practice makes this skill second nature. For students, routinely scrutinising their emotions during debates fosters controlled, constructive responses.

The second step is developing one's 'Best Alternative to a Negotiated Agreement' (BATNA)[25] – knowing when walking away is better than reaching a costly agreement. In legal negotiations, this could mean preparing for litigation rather than compromising unfavourably.[26] BATNA also applies beyond negotiations: if trust is lost, a lawyer may decide not to represent a client, or a professional may recognize the need for a career change. Understanding one's BATNA fosters confidence and autonomy.

Ury's third step revisits perceptions and inner contentment. He observes that people who rely less on external validation handle conflict better and are more creative in finding mutually beneficial solutions.[27] Law Students should reflect on their career choices, ensuring alignment with their strengths and values for optimal professional fulfillment.

Steps four through six revolve around acceptance. First, Ury advocates accepting past experiences and their impact. In the South African context, Nelson Mandela exemplified this by letting go of hatred toward his captors to achieve true freedom, for example. Next, Ury

23 It falls outside the scope of this chapter to discuss *what* the norms that set the boundaries of accepted conduct are.
24 Ury (n 2) 23. Term was first used in the Harvard Negotiation Project. The meaning of the expression is that one is to examine the situation from a point of view that captures the whole picture.
25 Fisher, Ury and Patton (n 1) 151 and further.
26 Ury (n 2) 55.
27 Ury (n 2) 79.

stresses respect for others, even those who exclude you. Breaking cycles of rejection and distinguishing actions foster professional maturity. Finally, Ury emphasises the power of giving, citing Adam Grant's *Give and Take*, which demonstrates that the most successful people are generous but discerning. Meeting one's own deeper needs makes accommodating others easier, reinforcing the importance of career alignment. Ury applies

4.2.2 Discretionary space

Beyond internal self-awareness, professionals operate within an external framework of legal and ethical norms. This 'discretionary space' allows flexibility within professional boundaries. This framework is a very helpful tool to guide students toward accepting responsibility; on the one hand it sets the legal and ethical boundaries of naturally inclined behaviour (par. 4.2.1), while on the other hand it prevents students from focusing on the 'black-and-white'-question of 'what is right?' in a given situation. Instead, by discussing the legal and ethical norms by which legal professionals are bound, they are required to make choices on how to act professionally. By remaining true to themselves, which is what Ury argues, they can act with confidence. Ury mentioned that he took for granted that one should be convinced about the correctness of one's conduct and convictions first. Ostensibly, Ury also assumes that one is to adhere to law and professional ethics. It is therefore helpful to integrate this framework of norms that constitute the students' discretionary space in curriculum.[28]

Wallander and Molander, in 'Disentangling professional discretion: A conceptual and methodological approach', describe discretion as integral

28 In addition to clinics that focus on communicational skills *supra*, it is helpful to facilitate class discussions on resolving legal problems (problems to which students can relate, lest it becomes difficult to invoke prior knowledge): how they are going to establish the facts, in which cases they require evidence, what legal norms apply to the situation, which other circumstances might be relevant to the case and what solutions can be offered to resolve the situation, how are they going to take account of respective interests, etc. Through integrating new knowledge (about law), in existing knowledge (e.g. about the factual problem (facts), as well as their attitude (ubuntu and self-knowledge)), students can further develop firmer layers of 'understanding and applying knowledge' in the taxonomy.

to professional judgment, akin to Dworkin's 'hole in the doughnut' – a space within legal restrictions:[29]

> In the literature on professions, *discretion* is frequently portrayed as lying at the heart of professional work. As expressed by Lipsky, "for some analysts [,] the defining characteristic of professionalism is simply the discretion to make decisions about clients". This view of the significance of discretion is based upon the assumption that discretion is an unavoidable aspect of the application of general knowledge, embedded in "if-then"-rules, to particular cases. All professions engage in the application of such knowledge in one form or another, and what is more they are authorized to do so. However, when general rules do not determine unambiguous conclusions about what ought to be done in particular cases, there is a space for discretion, or a "space of autonomy", in professional judgment and decision-making.'

Wallander and Molander, both with backgrounds in social work, discuss a concept that has been widely recognised and applied within healthcare and welfare (social work) studies.[30] However, while they reference legal studies in their work, this concept has not been extensively explored within this discipline. In fact, Wallander and Molander, continuing from the citation above, refer to Ronald Dworkin's analogy:

> 'In the words of Ronald Dworkin, discretion is like the 'hole in a doughnut,' where the circle of the doughnut comprises the "belt of restriction" (comprising standards set by various authorities), and where the hole in the middle may be larger or smaller.'[31]

This passage originates from the well-known Hart-Dworkin debate and is drawn from Dworkin's seminal work, *Taking Rights Seriously*.

While a detailed examination of the Hart-Dworkin debate and the prevailing views on discretion fall outside the scope of this chapter, it is noteworthy that legal studies have been aware of this concept for

29 L Wallander & A Molander 'Disentangling professional discretion: A conceptual and methodological approach' (2014) *Professions and Professionalism* 1.

30 For example: 'The emergence of discretionary space in social work practice Reconstructing interactive dimensions of professional judgment in case conference', as well as the report of the limited assessment of Windesheim University of Applied Sciences' Healthcare and Social Studies: https://publicaties.nvao.net/5bdc6e18059f2_006778%20rapport%20Windesheim%20hbo-ba%20Social%20Work.pdf at 14 (13 February 2025). Anja Bunthof incorporated this concept in her classes on Health Care Law for nurses and social workers at Windesheim University.

31 R Dworkin *Taking rights seriously* (1978) 31 the full passage reads: 'Discretion, like the hole in a doughnut, does not exist except as an area left open by surrounding belt of restriction. It is therefore a relative concept.'

nearly half a century. Despite its clear relevance to legal practitioners, the primary focus within legal education has traditionally remained on the interpretation of law. If there is any academic discipline in which discourse on discretion should be well-established, it is legal studies – not only in relation to legal interpretation but, given the context of Dworkin's argument, also in the practice of law. The central question, which aligns with the theme of this chapter, is how discretion can be effectively incorporated into legal education to benefit future legal practitioners. Before addressing the application of discretion in legal practice, it is first necessary to delineate the scope and nature of legal professions.

Legal professions encompass a wide array of roles, often with distinct responsibilities and requirements. A career as a criminal defence lawyer or advocate differs significantly from that of a family law mediator or a public law civil servant. However, despite the diversity within the legal profession, certain fundamental characteristics remain consistent. These professions entail a significant degree of responsibility, directly impacting individuals' lives; they invariably involve conflict (even if only a conflict of interests); they often necessitate engagement with emotionally charged situations; and they frequently require the resolution of complex legal and factual issues. Consequently, regardless of their chosen specialisation, law graduates must develop essential skills, including the ability to comprehend and analyse both factual and moral dimensions of a case, interpret relevant legal norms, navigate competing perspectives effectively, and devise solutions that are acceptable to stakeholders – resorting to litigation or the exercise of authoritative power only when necessary.

These competencies extend beyond the mere resolution of legal interpretive questions. To illustrate this point, consider Hart's well-known example of the 'vehicle in the park' scenario.[32] In legal practice, the pertinent questions do not solely concern the interpretive issue of what qualifies as a vehicle. Rather, they may involve factual inquiries, such as whether a vehicle (or a toy vehicle) was present in the park at all, and if so, how this can be substantiated in the event of a dispute. In legal proceedings, both legal norms and facts may be subject to ambiguity and

32 HLA Hart *The concept of law* (1997) 126 129.

contention. If it is established that a vehicle was indeed present in the park, further questions arise: Why did this constitute a problem? Does the issue necessitate resolution, and if so, in what manner? Should the dispute be settled through negotiation, or does it warrant adjudication in court? These considerations underscore the necessity of training lawyers not only in legal interpretation but also in factual analysis and problem-solving.

Discretionary space, therefore, applies to all these dimensions, as legal practitioners frequently make decisions beyond the scope of statutory interpretation during their problem-solving endeavours. Consequently, legal education must prepare students to exercise discretion across multiple areas, including: the interpretation of legal norms; the interpretation and establishment of facts; the strategic approach to case management; and the resolution of conflicting perspectives, including their own. Teaching law as an argumentative discipline, in other words, entails a discipline that acknowledges the interpretive nature of legal norms, factual evidence, and acceptable solutions, cultivates an awareness of these complexities and equips students with the necessary decision-making skills.

As previously noted, discretionary space is defined by its constraints – the 'belt of restriction' comprising legal and professional ethical norms. Due to limitations of scope, this chapter focuses on selected fundamental aspects of law that shape these boundaries: the management of conflicting perspectives; the interpretation and establishment of facts; the interpretation of legal norms; and strategic decision-making in case management. These elements will be examined in succession, though not exhaustively. The discussion begins with the management of conflicting perspectives, as this is central to legal studies, forming the foundation for peaceful dispute resolution and representing a subject to which students can readily relate. From this starting point, students can then develop the other competencies referred to above, constructing a comprehensive framework for legal practice. To ensure that students assume ownership of their professional responsibilities, it is imperative that they receive this instruction and training during their legal education.

5 Conclusion

The holistic approach advocated in this chapter benefits students in three ways. First, the integrative teaching method addresses two fundamental

requirements essential to fostering a respectable and confident legal practice. The first requirement is, as previously discussed, equipping students with the skills necessary to assume responsibility for their work. The second, closely related requirement is to cultivate active listening and creative thinking skills, and enabling students to resolve conflicts in ways that promote peace wherever possible – a particularly relevant skill in increasingly polarised societies. The ability to take responsibility is, in fact, a prerequisite for the capacity to listen to differing, even opposing, perspectives and to develop solutions that serve the interests of all parties involved. Embedding this approach within legal education provides students with more realistic preparation for the challenges they will inevitably face in professional practice, such as emotional disputes and contentious disagreements. Rather than offering courses that merely examine legal norms in specific areas, this method encourages students to critically engage with legal concepts, fostering debate and discussion. Students must not only be trained to develop their own reasoned stances but also to confidently and respectfully articulate and defend them.

The integrative teaching method enhances both confidence and self-awareness by building upon students' self-knowledge and encouraging them to develop their professional identities, both in terms of legal skills and substantive expertise. The objective is to ensure that students feel assured in their professional capabilities so that when they encounter opposition, they are prepared to engage constructively and assume responsibility for their views and decisions. By fostering this process, law educators can leverage their own strengths to guide students in understanding the boundaries of their professional discretion and ethical responsibilities.