Rethinking teaching oral communication skills to undergraduate law students using Cicero and activity theory.

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Abstract

This paper seeks to reassess teaching oral communication skills to undergraduate law students and develop a theoretical framework based on activity theory to help evaluate, design and re-evaluate approaches to the teaching of these skills. It will be argued that skills teaching at undergraduate level should not attempt to offer a version of vocational skills training but should seek to create teaching interventions that reflect the undergraduate social, cultural and historical context and that are based on learning theory appropriate to that context.

Key Words: Activity theory, advocacy, oral communication, legal training

Introduction

In 2013 the Legal Education and Training Review (LETR) acknowledged that oral communication skills (as distinct from advocacy skills) are often taught on undergraduate law programmes but concluded that "they may not be taught well enough" (Webb et al., 2013: 135). The same report only refers to advocacy skills teaching in the context of vocational and early career training (Webb et al., 2013), suggesting that the authors did not consider it to be a significant feature of undergraduate law programmes. It was also reported that the views of both academics and practitioners were divided on whether skills teaching has a place on the undergraduate curriculum as it "threatened to divert attention away from the core job of the law degree" (Webb et al., 2013: 46). These concerns about the place of skills teaching at the undergraduate stage of legal education are part of a wider debate about the shift from a content-focused approach to a competency-focused approach to legal training (Webb et al., 2013: 123). As the LETR reports, this is a debate that is also a feature in other jurisdictions including Australia, Canada and Scotland (Webb et al., 2013: 123). This paper does not

seek to add to the debate on whether it is appropriate to develop oral communication competency at undergraduate level but to consider, if oral communication skills are to be taught, how it can be done effectively.

The focus of this paper is on the developments in legal education in England and Wales. However, the theme of how to develop oral communication skills alongside academic legal education will be relevant to colleagues in other jurisdictions exploring how to balance content and competency in legal education. Indeed, the aim of the paper is to set the teaching of oral communication skills to undergraduate law students in a broader context and present a theoretical framework based on activity theory to support the development of appropriate approaches to teaching these skills. A wide interpretation of oral communication skills will be discussed to reflect the range of skills required across legal practice including explaining skills, persuasive speaking and advocacy. However, the main focus will be on what might broadly be called public speaking skills.

The range of oral communication skills that could potentially be included in an undergraduate law programme and the absence of any settled syllabus present a challenge to curriculum designers. Programmes designed for the vocational stage of training and early career professional development offer possible models for the undergraduate stage. However, it will be argued that the temptation to borrow from vocational and professional legal oral skills training should be resisted. Instead oral communication skills should be viewed in a broader social, historical and cultural context and skills learning should be supported in ways that reflect the context appropriate to undergraduate students. Central to this argument is a connection across nearly 2000 years and a similar number of miles between Marcus Tullius Cicero in Republican Rome and, inspiration to activity theory, Lev Vygotsky in 1930s Moscow.

In 1934 the 37-year-old Vygotsky was admitted to hospital where he died from the tuberculosis that he had suffered through much of his short life. Apparently aware that he would not return from hospital Vygotsky wrote a final justification of his work.

> NB! *Pro domo suo*
>
> This is the final thing I have done in psychology – and I will like Moses die at the summit, having glimpsed the promised land but without setting foot on it. Farewell, dear creations. The rest is silence.
>
> (Yasnitsky & Van der Veer, 2015: 88)

Vygotsky is referencing Cicero's *De Domo Sua* speech where Cicero argued for the return of his home after his exile and, more importantly, the return of his reputation. However, the echoes of Cicero run deeper in this short passage. What Vygotsky presents is a Ciceronian speech in miniature. Cicero's recommended sequence of ethical appeal or *ethos* (reference to Cicero and Moses); appeal to logic or *logos* (his contribution to psychology); and emotional appeal or *pathos* (Hamlet's last words – "the rest is silence"). It is perhaps no surprise that Vygotsky, the one-time law student, seeks help from Cicero in his valedictory. Indeed, Cicero remains an influential figure in legal and political rhetorical discourse and it is submitted that there is good cause to take another look at Cicero's view on the teaching of communication skills. Overt reference to Cicero has become a prominent feature in current political rhetoric with classicist Boris Johnson reportedly favouring Cicero's rhetorical techniques (Moore, 2012) and Donald Trump being labelled the 'Cicero of 2016' by the Washington Post (albeit, according to the article, without Cicero's courtesy) (Zauzmer, 2016). However, to focus on prominent individual politicians who make use of Cicero's rhetorical tools to further their individual goals is to miss the wider application of Cicero's writing. If we look at Cicero more closely we can see that there are elements that he had in common with the work on education of Vygotsky and his pupil Leont'ev. These are elements which perhaps distance Cicero from an individualistic approach to the development of oral

communication skills towards approaches which set skills development in their wider social and cultural context.

Cicero and a social, cultural and historical view of oral communication education

> [A]fter the establishment of our world-wide empire...there was hardly a young man of any ambition who did not think that he ought to put forth all his energy to make himself an orator. At first, indeed, our countrymen in total ignorance of the theory, and believing neither in the virtue of training, nor in the existence of any particular rule of art, attained…what success they could by the help of native wit and invention; subsequently, after they had heard the Greek orators, studied Greek literature, and called in the aid of Greek teachers, they were fired with a really marvellous zeal for learning the art. They were encouraged by the importance, the variety, and the number of causes of every description, to supplement the learning, which they had…gained from private study, by constant practice, and found this better than the instructions of all the professors.
>
> (Cicero, 1892: 6–7)

Cicero's 55 BCE work *De Oratore* (or *On the Orator*) offers a useful insight into how a society that valued oratory in public life perceived the development of those skills. Encoded within Cicero's opinion about young orators in Republican Rome are themes that will be explored in this paper, in particular that developing public speaking skills needs to be set in the social, cultural and historical context of the activity. It should be made clear at the outset that it is not suggested that Cicero would have viewed oral communication skills in anything but individual terms. After all, the whole premise of *De Oratore* is based on why Rome had produced so few great orators (Roman male individuals such as himself). However, Cicero's brief review of the development of presentation skills shows that the men learning presentation skills in Republican Rome faced many of the same issues as modern students of any gender. Indeed, the fact that undergraduate law departments continue to struggle to

find effective ways to develop these skills suggests that we may be looking at the problem in the wrong way by looking at the individual rather than the activity as a whole.

The learner's experience of oral communication skills education

"…total ignorance of the theory" (Cicero, 1892: 6)

Students joining an undergraduate law programme from the English and Welsh education system are unlikely to have extensive experience of formal oral communication skills education. Indeed, in England and Wales from the summer of 2014 (due to concerns about the moderation of assessments) speaking and listening no longer formed a part of the General Certificate of Secondary Education (GCSE) English (Mercer et al., 2017). The climate of accountability of schools and teachers is not one "which encourages teachers to deviate from curriculum emphases which are tested and prescribed" (Jones, 2017: 506). However, the paucity of formal qualifications reflects a deeper lack of oracy skills development (the oral equivalent to literacy and numeracy skills development (Wilkinson, 1965)). Teachers report a lack of confidence in teaching the range of oracy skills (Jones, 2017). This is reflected in a think tank report which found (based on YouGov PLC survey of 906 teachers) that 57% of teachers said that they had not received any training in oracy in the last three years and that 53% would not know where to go to find information about oracy (Millard & Menzies, 2015). While there remains debate about the value of oracy, including presentation skills, in secondary education in England and Wales, the picture is of an education system where such skills are not given a high priority either in terms of assessment or teaching within the broader curriculum. The situation in England and Wales contrasts with secondary education in other jurisdictions such as Scotland, Australia and the USA where, to varying degrees, oracy remains a formal element of the curriculum (Mercer et al., 2017).

At the time of writing the future of legal education and training in England and Wales is being debated with the likelihood of less restricted and less structured routes into the legal professions (Hand & Sparrow, 2016). Indeed, in March 2018 the Solicitors Regulation Authority announced that a single Solicitors Qualifying Examination would be introduced as early as 2020 (Solicitors Regulation Authority, 2018). Currently the main route to becoming a solicitor or a barrister in England and Wales is that which was established after the 1971 Report of the Committee on Legal Education (Committee on Legal Education, 1971) or 'Ormrod Report' after its chair. The Ormrod Report formed the basis for having an academic stage of training followed by a linked but separate professional stage. The academic stage being a qualifying undergraduate law degree or an equivalent conversion degree for graduates with a degree without qualifying law degree status. The focus on the academic stage is on substantive academic legal knowledge rather than practical skills. In particular, a qualifying law degree is based on seven foundation of legal knowledge subjects which focus on substantive law topics (Hand & Sparrow, 2016). Although the makeup of these foundation subjects has changed since 1971, at no point have they included vocational skills such as explaining, oral presentation, negotiation or courtroom advocacy.

The absence of practical skills from the core subjects at the academic stage of legal training does not mean that practical skills such as oral communication skills and advocacy do not feature in undergraduate law programmes in England and Wales. The importance of being able to communicate legal knowledge "both orally and in writing, appropriately to the needs of a variety of audiences" (Bar Standards Board & Solicitors Regulation Authority, 2014: 18) has expressly formed part of the requirements of the academic stage since 1999. This is echoed in the subject benchmark statement for law which requires law graduates to demonstrate the "ability to communicate both orally and in writing, in relation to legal matters" (Quality Assurance Agency for Higher Education, 2015: 7) and anticipates "oral/video presentations; moots; skills-based assessments" (Quality Assurance Agency for Higher Education, 2015: 8) potentially forming part of the assessment strategy at the

academic stage. The direct reference to oral communication skills as part of the benchmark statement is not intended to be read as an indication that a law degree is designed solely to train future lawyers. Rather it is intended as a recognition that law graduates may go into a range of careers equipped "with considerable transferable generic and subject-specific knowledge, skills and attributes" (Quality Assurance Agency for Higher Education, 2015: 4). The suggestion being that the development of lawyer competencies, such as oral communication skills, offers law graduates valuable transferable skills for a range of graduate careers. The role of oral communication as part of overall legal education is also reflected in Recommendation 6 of the LETR which states that legal services education and training schemes should include oral communication skills (Webb et al., 2013: 287) and that there should be a greater emphasis on these skills throughout the training process (Webb et al., 2013: 275). While these skills have been a feature, both formally and informally, at the academic stage of legal education for many years, the LETR recommendation and the QAA Benchmark Statement for Law suggest that the development of oral communication skills should be seen as an important activity throughout the legal education process.

Characteristics of the learner

"…believing neither in the virtue of training, nor in the existence of any particular rule of art, attained…what success they could by the help of native wit and invention" (Cicero, 1892: 6)

It would seem, in England and Wales at least, that students are unlikely to have had formal teaching or assessment in oral presentation skills upon starting the academic stage of legal education. Further, it is by no means certain that they will have such training during the course of the academic stage of legal qualification. Indeed, if they do receive such training, it may well be that the standard is not high. For many students they will need to rely on their 'native wit and invention'. For Cicero these were innate characteristics of the would-be orator. However, Cicero's would-be orator came from a narrow wealthy male section of

Roman society educated in what was expected of their class. The constituency of modern law students is wider today both in terms of gender and socio-economic background. The extent to which this breadth translates into equality of opportunity in the legal profession is a question for another paper. Nevertheless, unfortunately what a wider audience might see as the characteristics of a competent public speaker and advocate risk being the product of a similar narrow social and economic background to the one that Cicero had in mind. This is acknowledged in LETR which cites as a benefit of oral communication teaching the view that it will assist "those entering from a wide range of socio-economic and educational backgrounds." (Webb et al., 2013: 299).

On any view, it is clear that for Cicero 'native wit and invention' were not enough to allow an aspiring orator to succeed and that some formal teaching was also required. However, it was only in 1993 that Mr Justice Hampel felt able to declare that "the myth that advocacy cannot be taught has been finally put to rest" (Mauet & McCrimmon, 1993: xii). This was a conclusion Cicero had reached just over two thousand years earlier. It is tempting to view the persistence of this myth as a product of the belief, to quote one former Lord Justice of Appeal, "that the greatest advocates are simply born that way" (Brooke, 2015). However, the myth's persistence may be due more to the belief that development of effective oral communication skills in a legal context can only truly be developed through practical experience; what Brown describes as "craft-knowledge" (Brown, 2006: 218). Such practice and experience based wisdom has been recognised as a deeply ingrained feature in legal practice (Le Brun & Johnstone, 1994). Certainly it was a feature in Cicero's day. One of the great orators depicted in *De Oratore* declares that "the laws and institutions and ancestral customs of the Roman people were my teacher" (Fantham, 2004: 80) but only to reinforce his belief in the need for formal teaching.

The role of the teacher in oral communications development

"...after they had heard the Greek orators, studied Greek literature, and called in the aid of Greek teachers, they were fired with a really marvellous zeal for learning the art." (Cicero, 1892: 6)

It is argued that there is a place for teaching oral communication skills (including advocacy) in the undergraduate law programme. However, the form and extent of such teaching presents a more challenging question and this turns on how students learn. Vygotsky's theory of the zone of proximal development (ZPD) emphasises the mediating role of other human actors in an activity. As Vygotsky explains the ZPD "is the distance between the actual developmental level as determined by independent problem solving and the level of potential development as determined through problem solving under adult guidance or in collaboration with more capable peers" (Vygotsky & Cole, 1978: 86). So in essence, the role of the teacher is to develop the skill of the learner beyond what can be achieved through 'native wit and invention'.

The idea of mediation in the learning process was developed further by Vygotsky's pupils and offers an insight into both how oral communication skills development operates and what interventions might support this process. For Vygotsky's pupil Leont'ev the focus was on the activity (in this case the skills learning process) rather than on the individual learner. According to activity theory, human activity is mediated by the material and social world in which the activity is situated (Leont'ev, 2009). Engeström (2014) defines this collective activity through an expanded framework that illustrates the interactions between mediated activity and rules, community and division of labour (Figure 1).
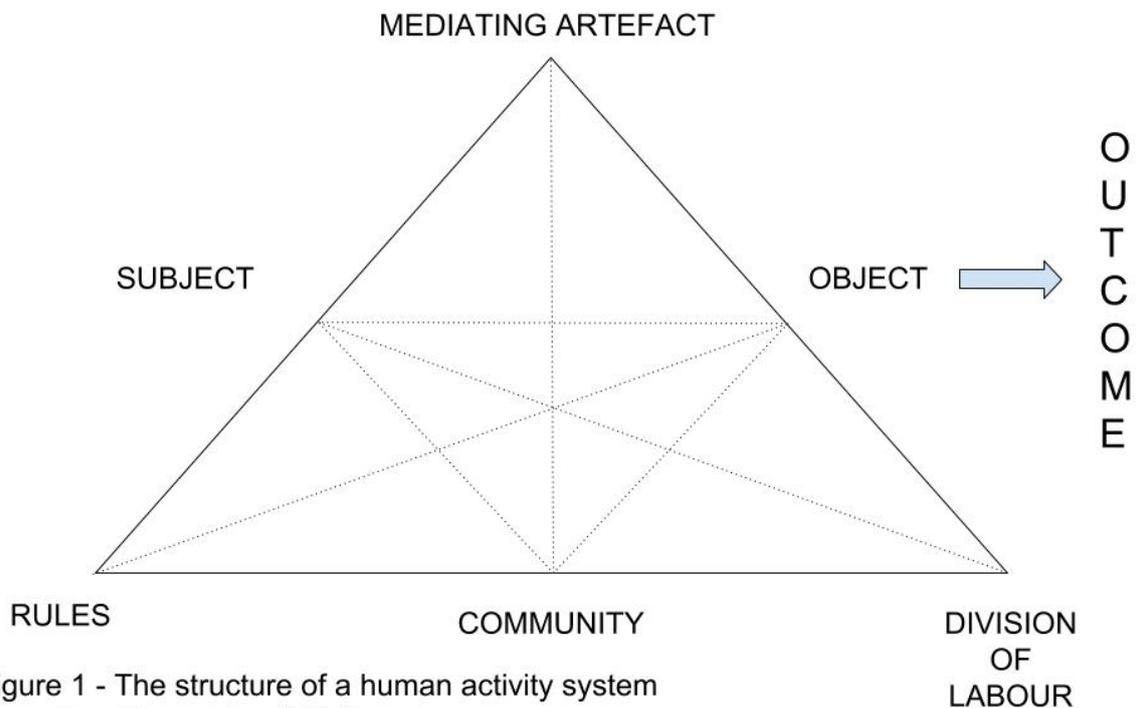
Figure 1 - The structure of a human activity system (based on Engeström, 2014)

This framework is best understood by breaking down its elements. It starts with a basic stimulus and response represented by the single line in Figure 2 between Subject and Object. This depicts basic animal behaviour; for example, the subject sees and eats some food. However, human actions are not normally based on a simple stimulus-response process. Instead humans have developed tools which change the way in which we interact with the world. These tools might be physical (such as a hammer) or psychological (such as language or other signs or symbols) (Kaptelinin & Nardi, 2006). The process by which these tools and signs change the way that humans interact with the world and learn is referred to as mediation. Human activity mediated by tools and signs can be depicted in the triangle in Figure 2. However, this triangle only shows an individual learner. Leont'ev's work emphasises that this individual learning process is part of a wider social, cultural and historical activity (Leont'ev, 2009). Engeström's expanded framework (Figure 1) shows the individual mediated learning process (the triangle at the top) but also draws in the various

facets of the wider activity. This includes the rules which operate in the activity, the community of people involved in the activity and how the tasks within the activity are divided between the members of the community (Engeström, 2014). Changes in the activity, such as a new teaching intervention or a new tool, may lead to a tension or contradiction in the system "where some old element…collides with the new one. Such contradictions generate disturbances and conflicts, but also innovative attempts to change the activity" (Engeström, 2001: 137). Depicting the activity as a framework provides a visual way to explore this process.

MEDIATING ARTEFACT
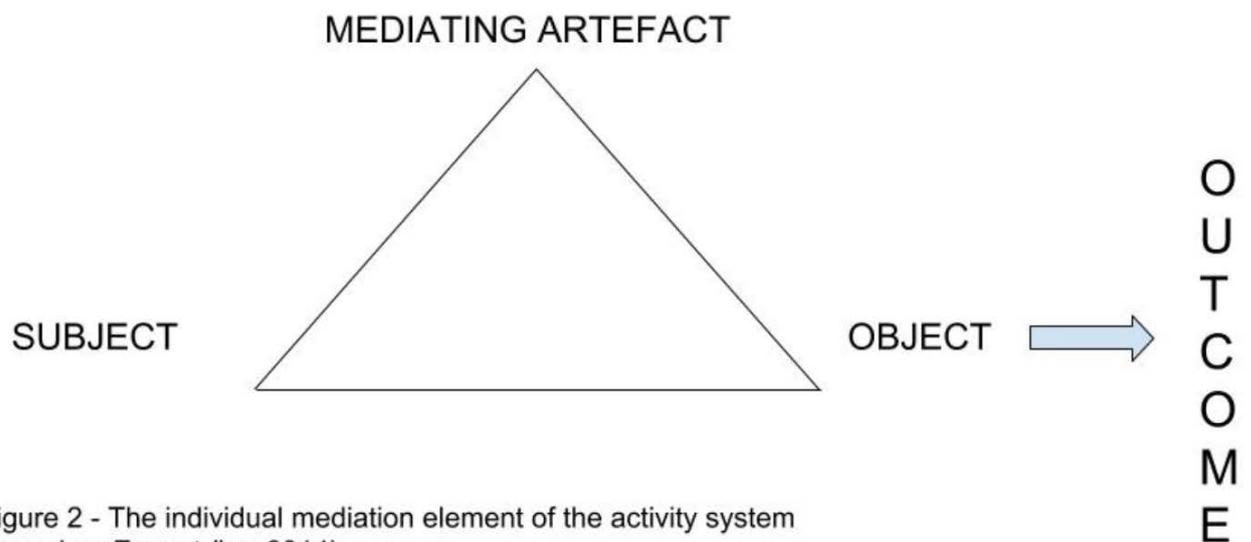
SUBJECT

OBJECT

OUTCOME

Figure 2 - The individual mediation element of the activity system (based on Engeström, 2014)

In the example from Cicero, the Greek teachers and the Greek literature on oratory have had an impact on the skills development of Roman orators. They have played a mediating role which has allowed the learners to develop beyond what could be achieved without their intervention - Vygotsky's ZPD. However, within activity theory the Greek teachers have a role within the wider activity, what Leont'ev would describe as a "double life" (Leont'ev, 2009: 411). They have objective meaning in that they are the product of the cultural, historical and

social development of Roman society as it embraced Greek thinking and approaches to public speaking. They also have subjective meaning in the activity and consciousness of the individual learner but, in becoming subjective and individual, "they do not lose their socio-historical nature, their objectivity" (Leont'ev, 2009: 411). The activity that Cicero describes after the influence of Greek teaching was introduced can be plotted in an expanded activity system (Figure 3). From this it is possible to get a visual representation of how the various elements of the activity interact.
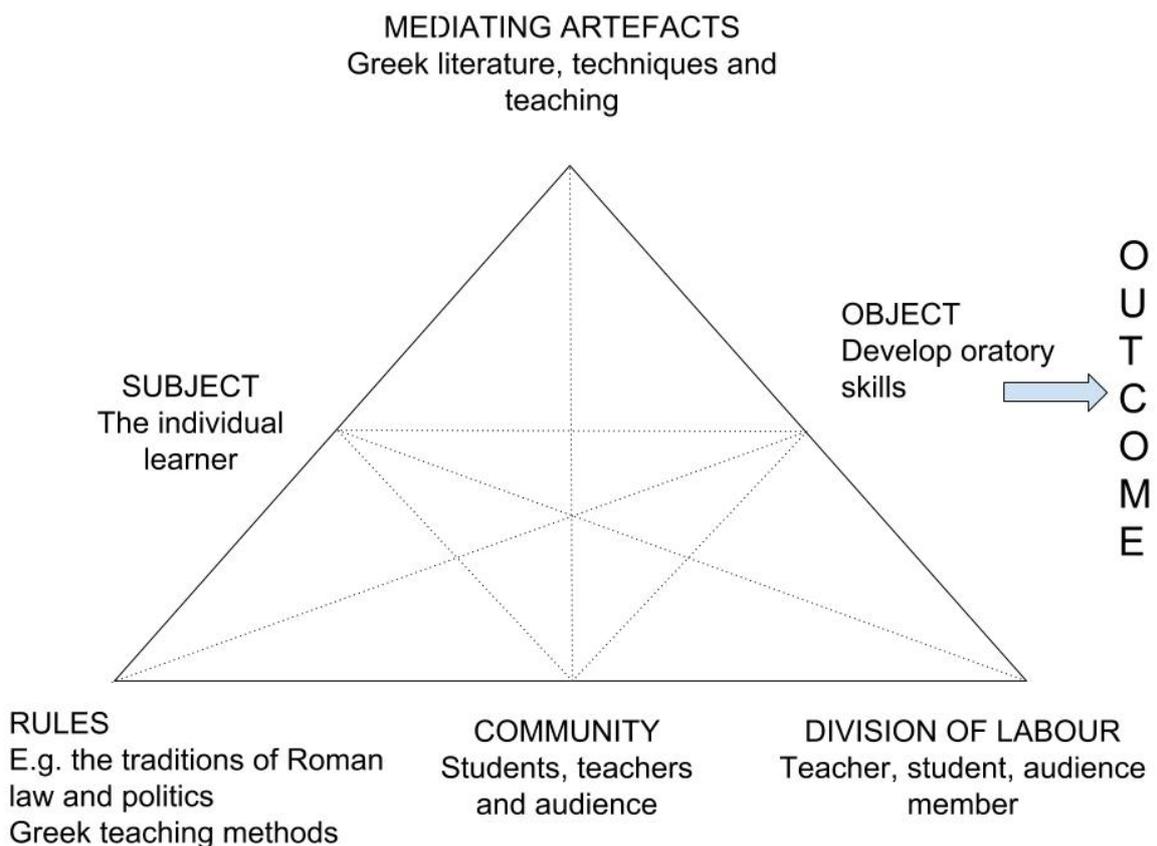
MEDIATING ARTEFACTS
Greek literature, techniques and teaching

OBJECT
Develop oratory skills

OUTCOME

SUBJECT
The individual learner

RULES
E.g. the traditions of Roman law and politics
Greek teaching methods

COMMUNITY
Students, teachers and audience

DIVISION OF LABOUR
Teacher, student, audience member

Figure 3 - Activity system *"after they had heard the Greek orators, studied Greek literature, and called in the aid of Greek teachers"* (based on Engeström, 2014).

When looked at from this perspective, it is possible to see that oral communication skills development is not about the individual but rather the individual learner set in context. In order to understand and support the development of skills our unit of analysis should be "the person-in-the-situation, not the person as a separate entity" (Havnes, 2004: 162). This is

readily observed in our experience of everyday life. We all understand that a speech will be different at a wedding, a retirement event or a university research seminar; even when the people involved as presenter and audience may be the same. We also understand that different individuals will deliver each of these speeches in their own personal style. Each of those speeches is a product both of the individual presenter and the context. We can all cite anecdotes where a speech did not match the context. This might appear to suggest that the individual speaker is merely a slave to context. On the contrary, activity theory recognises that the individual will also operate as a force that helps shape the context itself. As Havnes observes, "the scope of our intention simultaneously goes in two directions; toward the context and toward the participants. Neither can be understood independently. This is a fundamental ideological basis in activity theory" (Havnes: 2004: 163). Viewing a learning activity as part of a unified subjective-objective reality can help to direct the investigation towards the environment in which the learner experiences that learning activity; both in terms of the demands that the environment makes on the learner and what it affords in terms of supporting their learning (Havnes, 2004).

In order to understand the role of the teacher in oral communication skills development we need to step back from the focus on the individual and view the person-in-the-situation and design the teaching intervention accordingly. Interventions by teachers in skills development require the student to gain experience of the activity being developed. Indeed, it might be argued that misunderstandings about how this experience can be obtained lies at the heart of the debate around whether or not oral communication skills can be taught at all. It has already been shown that the legal profession has a tradition of focusing on the importance of craft-knowledge. Certainly Cicero, Vygotsky and Leont'ev well understood the importance of learning through experience. The vital role of the oral communication skills programme designer is to design a programme that offers the opportunities to gain experience of that skill. To do this successfully the programme must set the learner in the appropriate context

(understand the person-in-the-situation) so that the activity offers appropriate challenges and affords appropriate support.

Learning from experience

"They were encouraged by the importance, the variety, and the number of causes of every description, to supplement the learning, which they had…gained from private study, by constant practice, and found this better than the instructions of all the professors." (Cicero, 1892: 6–7)

Experiential learning can be defined as "the process whereby knowledge is created through the transformation of experience. Knowledge results from the combination of grasping and transforming experience" (Kolb, 1984: 41). For Kolb (Kolb, 2014; Kolb, 1984) this involves the now familiar cycle of the learner's concrete experience of a task, followed by reflective observation which leads on to the learner's conceptualisation of the task. The learner then puts their new conceptualisation into operation through active experimentation. This experimentation leads on to further concrete experiences which creates the ongoing cycle. This conception of experiential learning has been prominent in approaches to teaching advocacy skills at the vocational stage of legal education and early career training (Davies & Welsh, 2016). However, it has been argued that Kolb's approach to experiential learning gives too much emphasis to individual cognition and too little emphasis to social, historical and cultural aspects of learning (Holman et al., 1997). An attempt will be made here to consider the experiential learning aspects of oral communication skills development from a social, historical and cultural perspective before considering how such activity theory informed approaches might be put into practice.

If an early career lawyer is faced with the necessity of speaking to clients, speaking in court, negotiating settlements (and observes others doing the same) they are likely to develop the relevant skills through their experiences. Training in the use of skills at the early career stage

has the object of creating better outcomes in the subject's work as a lawyer. A Kolb experiential learning analysis would conclude that the training process allows the learner to develop their skills by gaining additional experience. When viewed through the lens of activity theory the learning can be seen in broader terms where the learner is not simply developing skills through an individual cognitive process of experience, reflection, conception and experimentation. Rather, they are part of a wider activity where their learning is mediated by the material and social world in which the activity is situated. When viewed in these terms it becomes possible to see that the learning process is more complex and is fundamentally social rather than individual. Learner and teacher are engaged in an activity which has the object of developing the learner's skills. However, the actions of the learner may be motivated by goals that do not match the activity as a whole but nevertheless make up a part of the wider activity (Leont'ev, 2009). Leont'ev illustrated this with the example of collaboration in the acquisition of food in a tribal society. Each individual participant "must perform actions that are not directly aimed at obtaining food. For example, one of his goals may be the making of trapping gear" (Leont'ev, 2009: 400) which may be used by others in the community to catch food. The object of the collective activity is to catch food but the action of the individual participant is to make trapping gear.

In the context of skills training in the early years of practice the actions used to help the learner to develop oral communication skills have a very clear connection to the object of making the learner a more effective lawyer. However, the learner's motives may not be as directed to the object as one might expect. For example, a new lawyer at a continuing professional development training event might well be motivated to work hard to demonstrate their competence to their peers at the training event, rather than to become a more effective practitioner. As we move back through the layers of training the goals of the learner may become more ambiguous particularly at undergraduate level where the skills are being assessed as part of the programme of study. As Havnes observes in relation to assessment "it can be questioned if the object of the education practice is learning for future

professional practice or the passing of exams" (Havnes, 2004: 163). On any view, with different career ambitions within an undergraduate student cohort, the object of the activity has to be much more broadly defined. This results in two important consequences for the undergraduate skills learner. First, the actions that the teacher wishes the learner to perform must have a clear goal which that learner can readily recognise and accept. Second, the skills development must give the opportunity for the learner to build their skill and the context in which they learn needs to adapt to support that process. Leont'ev gave examples that illustrate both of these demands.

Leont'ev illustrated the importance and value of having goals that are relevant to the learner with the example of encouraging a school child to do their homework. It may only be possible to induce the child to complete the homework by saying that they will not be able to go out and play until it is finished. As Leont'ev explained:

> The child begins doing its homework conscientiously because it wants to go out quickly and play. In the end this leads to much more; not simply that it will get the chance to go and play but also that it will get a good mark. A new 'objectivation' of its needs comes about, which means that they are understood at a higher level.
> (Leont'ev, 2009: 366)

Applying this to undergraduate skills teaching, attention must be paid to making sure that students are set immediate goals that are relevant but also feed into the wider object of the activity.

An individual cognitive approach to experiential learning recognises that the individual is changed by the learning process. However, the learner must continue to be seen in the social context. As they develop as a learner, this will have an impact on the context itself and the activity as a whole. Leont'ev illustrates the process by which the learner internalises what

they have learned through mediated action by giving the example of learning to shoot a gun (Leont'ev, 2009). Through this example one can see that context changes as the learner develops.

> After the novice has learned, for example, to squeeze the trigger smoothly, he is given a new task, to fire at the target. Now the aim in his consciousness is not 'to squeeze the trigger smoothly' but another one, to 'hit the target'. Smoothness in pressing the trigger is now only one of the conditions of the action required by this goal. (Leont'ev, 2009: 370)

Certainly it is possible to throw the early career lawyer in at the deep end and let them develop their craft knowledge through the experience of working with real clients. Just as it is possible to hand a novice a rifle and ask them to shoot at a target. In both cases this may well result in the development of competent skills. However, in both cases the learner will not have been given sufficient opportunity to incrementally build and internalise the various skills that make up the overall process.

Teaching oral communication skills at undergraduate level – Current Position

Oral communication skills have been taught at the vocational stage of legal education for many years. The introduction of more flexible approaches to qualification as a lawyer such as the Solicitors Qualifying Examination are likely to result in these skills being taught at an earlier stage of the legal education process including at undergraduate level. However, the most widely recognised models of how this teaching might be delivered are those used at the vocational stage of training and in continuing professional development courses. As discussed above, there are many different skills that make up the oral communication skills needed as a lawyer. In order to explore how a social, historical and cultural perspective might affect oral communication skills teaching, this paper will use advocacy training as an example.

The LETR reported that standards of advocacy training on the Bar Professional Training Course and "through the Inns of Court were generally very well regarded" (Webb et al., 2013: 41). Consequently, it is reasonable to conclude that these successful methods will be expanded not only into training for other branches of the legal profession (Webb et al., 2013) but also to earlier points in the legal training process. However, it is argued that if the advocacy training skills process is viewed through the lens of the activity theory framework outlined above it becomes clear that it is not appropriate to attempt to transplant vocational skills to the undergraduate stage of the learning process.

The most prominent approach to legal advocacy training in England and Wales is the Hampel Method. The Bar Standards Board requires that the "students must have been trained in accordance with the Hampel Method so that they are properly prepared when they come to the compulsory advocacy course in the first six months of their pupillage" (Bar Standards Board, 2016: 62). The Hampel Method is the method recommended by the Inns of Court College of Advocacy (ICCA) (Bar Standards Board, 2016) which states that it is a "systematic six-stage method devised by Professor George Hampel QC of the Australian Bar" (Inns of Court College of Advocacy, 2018). The six stages which are to be used by a trainer in an advocacy training session are described as follows:

Headline: Identifying one particular aspect of the performance to be addressed.

Playback: Reproducing verbatim that identified aspect of the performance.

Reason: Explaining why this issue needs to be addressed.

Remedy: Explaining how to improve this aspect of the performance.

Demonstration: Demonstrating how to apply the remedy to the specific problem.

Replay: The pupil performs again, applying the remedy.

(Inns of Court College of Advocacy, 2018)

This approach needs to be viewed in the context of professional training where an experienced practitioner is helping a new practitioner to use the correct technique, perhaps in a single limited session. The learner performs, the practitioner demonstrates what the learner needs to correct and then explains the issue and demonstrates appropriate technique. The learner then has an opportunity to repeat the performance. Although many of the trainers involved in this activity may be experienced educators, the technique does not require teaching experience. Instead it offers the learner the opportunity to get direct access to the knowledge and experience of senior colleagues. In activity theory terms the training session can perhaps be viewed as a limited action in the wider activity of the learner developing their lawyer skills. In the training session the goal is to hone a limited technique mediated by the skill and knowledge of an experienced practitioner.

The Bar Standards Board requires that the Hampel Method be used as part of the Bar Professional Training Course (Bar Standards Board, 2016). Concerns have been expressed about how well a training technique designed for short encounters between a senior practitioner and a junior practitioner translate into a longer vocational course of study (Davies & Welsh, 2016). Davies and Welsh (2016) argue that what they describe as the behaviourist model of the Hampel Method should be replaced, at least in the context of the vocational stage of training, with a more constructivist approach which allows more constructive dialogue between tutor and student and offers a more reflective approach to their skills development (Davies & Welsh, 2016). For Davies and Welsh (2016) this would offer a learning experience more in line with Kolb's experiential learning cycle. To a limited extent the Bar Standards Board recognises that the needs of the vocational stage of study may well require an adjusted version of the Hampel Method to fit with week-by-week teaching and to permit wider feedback and praise (Bar Standards Board, 2016). It is questionable whether these adjustments to a professional training process give sufficient weight to relevant learning theory. If Hampel Method techniques are applied to the context of an undergraduate law programme, it can readily be seen that these concerns are amplified.

In Figure 4 the application of the Hampel Method to an undergraduate law cohort has been plotted on an expanded activity framework. From the suggested example in Figure 4 a number issues become apparent. It is questionable whether there is a clear object to the activity. In particular, it is unclear whether the Hampel Method is suitable for teaching advocacy to undergraduate law students with no existing advocacy knowledge. Further, there is a tension between a technique designed to hone the skills of junior practising advocates and the actual knowledge, experience and judgement that can reasonably be expected of undergraduate law students.
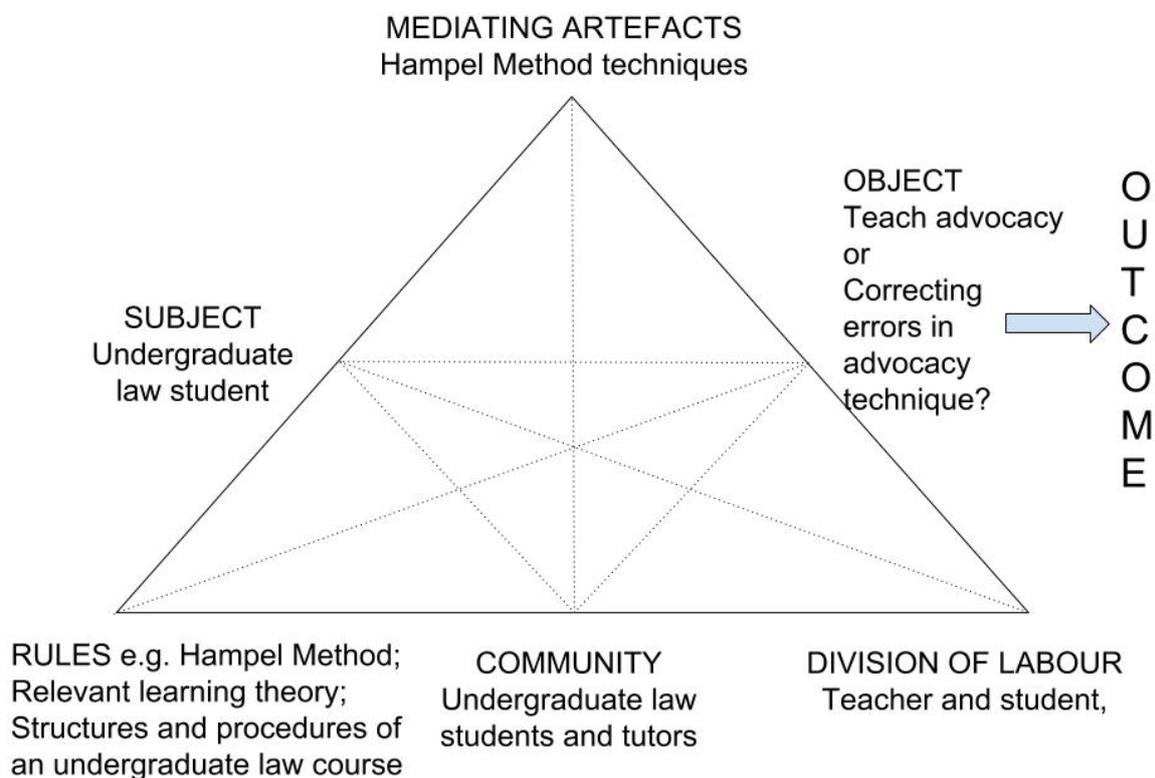

Figure 4 - Activity system showing the Hampel Method in an undergraduate context (based on Engeström 2014)

The role of any intervention at the undergraduate and vocational stage of legal education should not be to try to adapt the Hampel Method but rather to equip students with the necessary knowledge, experience and judgement so that they are ready for the next stage of

their career - whether that be further legal education or another career route. With legal skills development at the undergraduate stage, the key element here is judgement or more specifically evaluative judgement (Tai et al, 2017). Evaluative judgement can be defined as "the capability to make decisions about the quality of work of self and others" (Tai et al, 2017: 5). For the undergraduate new both to law and legal oral communication this involves gaining an understanding of 'quality' in a legal context before they can start to make decisions about their work or the work of others. In terms of evaluative judgement, the junior practitioner being trained using the Hampel Method is in a very different place to the undergraduate law student. For the junior practitioner, like Leont'ev's marksman who has learned to squeeze the trigger smoothly, this decision making process becomes unconscious as they gain "significant experience and expertise in making evaluative judgements in a specific area" (Tai et al, 2017: 6). For the undergraduate, understanding the many facets of what constitutes an effective oral performance in a legal context and how they might deliver such a performance themselves presents a significant challenge. Indeed, the many ingredients that make up a good quality advocacy performance may be difficult to articulate in a meaningful way to new students as "standards of quality are contextually bound within disciplinary notions of knowledge and professional practice" (Ajjawi et al, 2018: 9). Interventions need to offer the opportunity for students to develop their ability to make evaluative judgements "as a way of *being* that is contextual, social and cultural" (Ajjawi et al, 2018: 9).

Teaching oral communication skills at undergraduate level – One Potential Model
Oral communication and advocacy skills training at the undergraduate stage of legal education should be aimed at equipping students with an understanding of notions of quality in a legal context to enable them to develop their ability to make evaluative judgements in relation to their own work and the work of others. There is, of course, a range of interventions which could be developed from this starting point. What is suggested here is

one such approach which can be supported by the wider literature on oral communication skills and learning theory.

It has already been seen that Davies and Welsh (2016) have called for more constructivist approaches and a closer link to Kolb's experiential learning cycle to help students to manage their own development. Such constructivist approaches link with wider themes of self-regulation and reflection in the use of feedback and formative assessment in the higher education literature (e.g. Nicol & Macfarlane-Dick, 2006). However, it is submitted that while developing students' independent learning skills through constructivist approaches is important, there also needs to be recognition of the social and cultural context in which these legal skills are situated. Within studies of oral communication skills away from law, themes such as self-efficacy, reflection and self-regulation are prominent. For example, social cognitive theorist argue that people develop complex behaviours such as presentation skills through the observation and performance of modelled patterns of behaviour, ultimately reaching a point where they can self-regulate their performance (Bandura, 2005; De Grez et al., 2012; De Grez et al., 2009). The observations in question can include self-observation (Bandura, 1991). Directly or indirectly many of the above ideas already inform oral communication teaching strategies which often focus on observation, performance and reflection designed to develop students as independent and self-regulating public speakers. However, existing "teaching strategies can be refined to explicitly promote learners' evaluative judgements and shared understandings of standards" (Ajjawi et al, 2018: 15). In activity theory terms, the object of the activity should be the development of evaluative judgement skills which allow students to make decisions about the quality of their own performances and the performances of others. Making development of evaluative judgement skills the object of the activity will promote the development of oral communication skills as a wider outcome. In this way students will graduate equipped with skills that are valuable both to further legal education and other career routes.

Figure 5 offers an activity system where familiar teaching approaches have been refined to promote the development of evaluative judgement in a legal context. Within this framework students are required to perform, engage in peer-review and reflect on both their own performances and the performances of others. Disciplinary notions of knowledge and quality can be explored through use of wider exemplars (e.g. videos of advocates and court visits) and tutor feedback and developed through the ongoing performance and review process within the activity. The ephemeral nature of classroom performances can be countered by use of video recording (Barker & Sparrow, 2016) to allow more nuanced reflection and review.
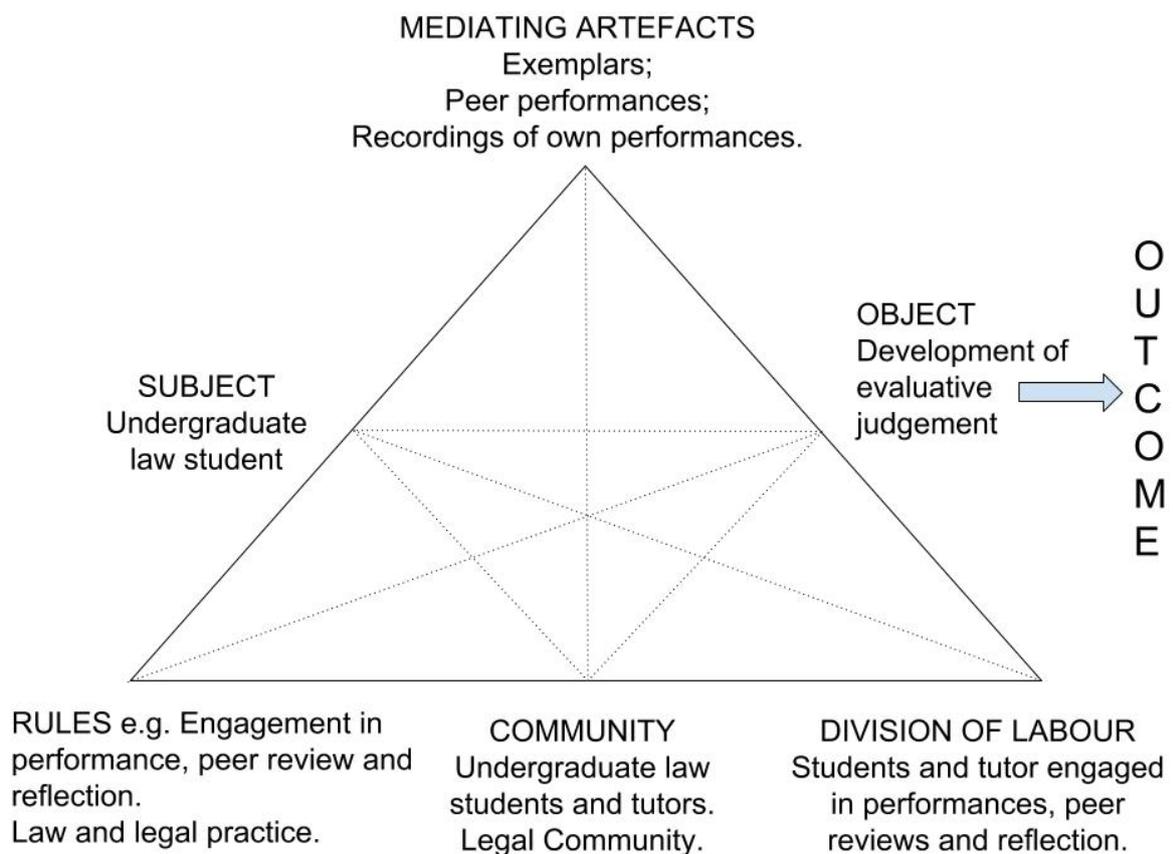
MEDIATING ARTEFACTS
Exemplars;
Peer performances;
Recordings of own performances.

OBJECT
Development of
evaluative
judgement

OUTCOME

SUBJECT
Undergraduate
law student

RULES e.g. Engagement in
performance, peer review and
reflection.
Law and legal practice.

COMMUNITY
Undergraduate law
students and tutors.
Legal Community.

DIVISION OF LABOUR
Students and tutor engaged
in performances, peer
reviews and reflection.

Figure 5 - Activity system showing oral presentation skills activity designed to develop evaluative judgement (based on Engeström 2014).

Conclusion

It has been argued that oral presentation skills teaching should be "viewed as social practice situated in a specific historical and socio-cultural context" (Havnes, 2004: 162). While this analysis is based on the work of Vygotsky and Leont'ev in the twentieth century, it is possible to discern the social context of oral communication skills development being expressed in the writing of Cicero. However, the temptation to view oral communication skills as individual and innate rather than as collective and capable of being learned has created challenges for successful teaching interventions particularly at the novice stage.

Using activity theory as a lens to help evaluate, design and re-evaluate our undergraduate oral communication skills teaching practices does not mean that any particular activity theory based teaching interventions need to be put in place. Designers of undergraduate programmes who wish to teach oral communication skills can use a range of approaches based on any learning theories appropriate to the undergraduate context. Activity theory helps to conceptualise and analyse oral skills development and design ways to support the learning of those skills.

Undergraduate teaching of oral communication skills need not be just an early introduction to skills that will be developed in earnest at a later stage of legal training. On the contrary such teaching should be aimed at equipping students with an understanding of what constitutes good quality in legal oral communications and the skills to make evaluative judgements of both their own performances and the performances of others. Through this process law graduates will be prepared for the next stage of their career, whether that be vocational legal training or a role outside of legal practice.

References

Ajjawi, R., Tai, J., Dawson, P., & Boud, D. (2018). 'Conceptualising evaluative judgement for sustainable assessment in higher education', In D. Boud, R. Ajjawi, J. Tai, & P. Dawson Eds., *Developing Evaluative Judgement in Higher Education: Assessment for Knowing and Producing Quality Work*. Routledge: (pp. 7-17).

Bandura, A. (1991) 'Social cognitive theory of self-regulation'. *Organizational behavior and human decision processes*, 50(2): 248–287.

Bandura, A. (2005) 'The evolution of social cognitive theory', *Great minds in management*: 9–35.

Bar Standards Board (2016) *Bar Professional Training Course Syllabus and Curriculum 2016/17*. Available at: https://www.barstandardsboard.org.uk/media/1820691/2016-17_bptc_syllabus_-_including_civil_and_criminal_full_syllabus_feb_2017_pdf.pdf.

Bar Standards Board & Solicitors Regulation Authority. (2014). *Academic Stage Handbook Solicitors Regulation Authority* (Version 1.4). Retrieved from https://www.sra.org.uk/documents/students/academic-stage/academic-stage-handbook.pdf

Barker, C. & Sparrow, C. (2016) 'Technology and presentation skills teaching: activity theory as a tool for the design and evaluation of strategies for the use of video as a learning tool in presentation skills teaching', *European Journal of Law and Technology*, 7(3). Available at: http://ejlt.org/article/view/480 [Accessed January 30, 2017].

Brooke, H. (2015) *A Lifetime in the Law. Henry Brooke.* Available at: https://sirhenrybrooke.me/2015/10/14/a-lifetime-in-the-law/ [Accessed April 20, 2018].

Brown, G. (2006) 'Explaining', In O. Hargie, ed. *The Handbook of Communication Skills.* Routledge: 205–238.

Cicero, M.T. (1892) *De Oratore.* translated into English with an introduction by E.N.P. Moor, London: Methuen.

Committee on Legal Education (1971) *Report of the Committee on Legal Education* (Cmnd 4595). London: H.M.S.O.

Davies, G.L. & Welsh, J. (2016) 'Advocacy 20 years on from Hampel: is it time we revisited the postgraduate teaching of advocacy?', *The Law Teacher,* 51(4): 401–410.

De Grez, L., Valcke, M. & Roozen, I. (2009) 'The impact of an innovative instructional intervention on the acquisition of oral presentation skills in higher education', *Computers & Education*, 53(1): 112–120.

De Grez, L., Valcke, M. & Roozen, I. (2012) 'How effective are self- and peer assessment of oral presentation skills compared with teachers' assessments?', *Active Learning in Higher Education,* 13(2): 129–142.

De Grez, L., Valcke, M. & Roozen, I. (2014) 'The differential impact of observational learning and practice-based learning on the development of oral presentation skills in higher education', *Higher Education Research & Development*, 33(2): 256–271.

Engeström, Y. (2001) 'Expansive Learning at Work: Toward an activity theoretical reconceptualization', *Journal of Education and Work*, 14(1): 133–156.

Engeström, Y. (2014) *Learning by expanding: An activity-theoretical approach to developmental research*, Cambridge: Cambridge University Press.

Fantham, E. (2004) *The Roman World of Cicero's De Oratore*, Oxford: Oxford University Press.

Hand, J. & Sparrow, C. (2016) 'Crumbling, creeping or enduring – the foundations of legal knowledge at a time of training reform', *Amicus Curiae*, 104

Havnes, A. (2004) 'Examination and learning: an activity-theoretical analysis of the relationship between assessment and educational practice', *Assessment & Evaluation in Higher Education*, 29(2): 159–176.

Holman, D., Pavlica, K. & Thorpe, R. (1997) 'Rethinking Kolb's Theory of Experiential Learning in Management Education', *Management Learning*, 28(2): 135–148.

Inns of Court College of Advocacy (2018) *What is The Hampel Method?* Available at: https://www.icca.ac.uk/advocacy-training/what-is-the-hampel-method [Accessed April 28, 2018].

Jones, D. (2017) 'Talking about talk: reviewing oracy in English primary education', *Early child development and care,* 187(3-4): 498–508.

Kaptelinin, V., & Nardi, B. A. (2006). *Acting with Technology: Activity Theory and Interaction Design*, MIT Press.

Kolb, D.A. (2014) *Experiential Learning: Experience as the Source of Learning and Development*, Pearson Education.

Kolb, D, A. (1984) *Experiential Learning : Experience as the Source of Learning and Development*, Englewood Cliffs, NJ: Prentice Hall.

Le Brun, M.J. & Johnstone, R. (1994) *The Quiet (R)evolution: improving student learning in law*, Sydney: Law Book Co.

Leont'ev, A. (2009) *The Development of Mind: Selected Works*, Marxists Internet Archive.

Mauet, T.A. & McCrimmon, L.A. (1993) *Fundamentals of Trial Techniques: Australian Edition,* Cheshire: Longman

Mercer, N., Warwick, P. & Ahmed, A. (2017) 'An oracy assessment toolkit: Linking research and development in the assessment of students' spoken language skills at age 11-12', *Learning and Instruction*, 48: 51–60.

Millard, W. & Menzies, L. (2015) *The State of Speaking in Our Schools.* Available at: https://www.esu.org/__data/assets/pdf_file/0026/13796/Oracy-State-of-speaking-report-v2.pdf.

Moore, C. (2012) 'Is Boris Johnson serious? When it comes to No 10, the answer is deadly so', *The Daily Telegraph*. Available at: https://www.telegraph.co.uk/news/politics/9449612/Is-Boris-Johnson-serious-When-it-comes-to-No-10-the-answer-is-deadly-so.html [Accessed April 19, 2018].

Nicol, D.J. & Macfarlane-Dick, D. (2006) 'Formative assessment and self-regulated learning: a model and seven principles of good feedback practice', *Studies in Higher Education*, 31(2): 199–218.

Quality Assurance Agency for Higher Education. (2015). *Subject Benchmark Statement: Law.* Retrieved from http://www.qaa.ac.uk/docs/qaa/subject-benchmark-statements/sbs-law-15.pdf?sfvrsn=ff99f781_8

Solicitors Regulation Authority (2018) 'LSB gives go-ahead to the first stage of reforms to how solicitors qualify', *SRA News Release.* Available at: https://www.sra.org.uk/sra/news/press/lsb-gives-first-stage-sqe-approval.page [Accessed April 19, 2018].

Tai, J., Ajjawi, R., Boud, D., Dawson, P., & Panadero, E. (2017). 'Developing evaluative judgement: enabling students to make decisions about the quality of work', *Higher Education.* https://doi.org/10.1007/s10734-017-0220-3

Vygotsky, L.S. & Cole, M. (1978) *Mind in Society: Development of Higher Psychological Processes,* Cambridge: Harvard University Press.

Webb, J. et al. (2013) *Setting standards: the future of legal services education and training regulation in England and Wales: the final report of the Legal Education and Training Review independent research team, June 2013.* Available at: http://irep.ntu.ac.uk/id/eprint/26418/ [Accessed April 10, 2018].

Wilkinson, A. (1965) 'The Concept of Oracy', *English in Education*, 2(A2): 3–5.

Yasnitsky, A. & Van der Veer, R. (2015) *Revisionist Revolution in Vygotsky Studies: The State of the Art,* Routledge.

Zauzmer, J. (2016) 'Donald Trump, the Cicero of 2016', *The Washington Post.* Available at: https://www.washingtonpost.com/news/book-party/wp/2016/11/03/donald-trump-the-cicero-of-2016/ [Accessed April 19, 2018].