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I am most grateful to Michael Cosgrave for the invitation to speak on the subject of a legal Hippocratic oath to this distinguished and international audience. I would also like to acknowledge the important contribution of Andrew Holroyd who, as President of the Law Society of England & Wales, has over the past year shown impressive leadership in drawing the attention of English & Welsh solicitors to the need to engage seriously with core values, particularly through his "*Markets, Justice and Legal Ethics*" campaign. I hope very much that the momentum Andrew has created will be carried forward, both by his successors and European counterparts. As Professor of Legal Ethics, I am deeply concerned about the core values that bind lawyers together wherever they practise and, in particular, want to know what law teachers can do to help practitioners embed core legal values in the next generation of European lawyers. We need to share this responsibility, and be successful, for a lot is at stake.

I shall keep my observations brief and it is not hard to do this because academic and practising lawyers have, on the whole, been relatively silent on the topic of professional ethics and commitment. Consequently, the question as to what it means to be a lawyer is one rarely posed by lawyers, and also ignored in most law schools, primarily because we spend most of our time absorbed in the tasks of applying and mastering legal rules. From a philosophical standpoint, positivism has been a hugely dominant intellectual force shaping modern legal education, and displacing alternative perspectives, with the result that there has been a rigid separation between law and morality. The first point where English lawyers appear to acquire any real understanding of their professionalism has, up until very recently, been overwhelmingly if not exclusively concentrated on the vocational stage of their legal education. The code of conduct provides a key focal point and governs the way in which lawyers both define and comprehend their

professional duties. However, over the past decade, several academics in the UK have tried to alter the way in which law schools conceptualise and discharge their own professional responsibilities to include introducing professionalism into the formal curriculum. Indeed, about 10 years ago I first proposed exploring the idea of a Hippocratic Oath (making the quip that it might be seen as a 'hypocritical' oath) in order that lawyers could begin to engage in a serious discussion about the nature and scope of their professional values.

A basic problem confronting legal (and other) professions – which I've tried to express through a concept I've elsewhere labelled 'value devaluation' – is not that ideas of justice are absent from the legal world, indeed quite the opposite, my point is that we are almost overwhelmed by the ubiquity of the term 'justice'. We frequently use this word all the time, in every law court, in every law school, and practitioners use 'justice', not simply as a term of art to determine liability but also to refer to a quite different set of ideas ranging from natural justice to the administration of justice. One of the by-products of this over-familiar usage is that we become, if not contemptuous, then almost immune to a deep engagement with that concept. Many lawyers have no meaningful relationship with the notion of justice, or even professionalism, perhaps because they are so much absorbed in their day-to-day lives – and this is true both of academic lawyers and practitioners – with the business of communicating and applying rules, or handling disputes and whatever other managerial pressures govern modern professionals, that there really isn't the time, space, energy or inclination for deep reflection on concepts such as justice. And I believe this may matter, for it means something important could be neglected or even totally absent from lawyers' professional lives and character: namely courage and integrity.

To illustrate this potential blind-spot let me give you a story that reveals, contrary to popular assumptions that lawyers are totally parasitical, lawyers can and do take a moral stand. Last November I tuned into the news on Radio 4 and heard a report on lawyers and judges in Pakistan being beaten up and imprisoned for taking a stand in defence of democracy and the rule of law. I was incredibly moved and impressed by the way in which these lawyers naturally assumed, and despite considerable cost to their personal security, their duty was to uphold democratic and legal values. This prompted the question of what motivated them to take this courageous stand and to consider what, if anything, we do in law schools or, indeed in the wider profession, to instil and encourage professional commitment to legal values. I was motivated to write a letter to *The Times* suggesting lawyers might swear some kind of legal Hippocratic oath and, in the online discussion that followed, someone even made the same joke I'd made 10 years earlier about

this being a 'hypocritical oath'.¹ The real point of such an oath - and the discussion we are having this afternoon - is to raise awareness of and reinforce the deeper professional commitments lawyers owe not only to their clients immediately before them, but also to more abstract and distant interests such as the rule of law, the duty to the court, the wider public duties that lawyers may owe to third parties and other citizens, and which can so easily be overlooked. Should any of these commitments feature more prominently in formal statements about lawyers' duties, and particularly those taken at the point of entry to the profession?

Having posed this question one has to acknowledge widespread resistance – both in the past and present - to the idea of oath-taking, perhaps reflecting ingrained sceptical or even oppositional attitudes embedded in the mentality of the English. Current discussion in the UK surrounding an oath of citizenship, for example, encounters a range of contrasting opinion including ambivalence and scepticism, if not outright hostility, as well as strong support. Similarly, in the professional context one senses that many practitioners feel, well, do I really need to utter an oath? What is the point and what will change in practise? It is important to consider both the historical context and proposed content of the oath to be sworn. A solicitors' oath actually did exist up until the mid-nineteenth century - and it's worth remembering that solicitors remain 'commissioners for oaths' – s.19 of the Solicitors' Act 1843, says: *'I do swear and affirm that I will truly and honestly demean myself in the practice of the solicitor according to the best of my knowledge and ability, so help me God'*. Now I have to say I do not find such oaths terribly helpful or meaningful as they tend to be circular: since what they require is promising to act in a manner consistent with the behaviour of a solicitor, yet fail to explain adequately what is appropriate for a solicitor, this is something left unclear and undefined.

Other jurisdictions may have more to offer us. For example, I find the oath used in Brazil, far more challenging and inspiring in that this says: *'I promise to work as a lawyer with dignity and independence, to respect ethics, professional duties and responsibilities, to uphold the Brazilian constitution, the democratic legal order, human rights, social justice, fair and expeditious procedures, and the reform of both legal culture and legal institutions'*. Now this set of obligations is far more aspirational, socially aware and deep-cutting and you can see that there is an

¹ K. Economides, "Lawyers take a stand. Lawyers must take some kind of Hippocratic Oath" Letter to *The Times*, November 15, 2007
<http://www.timesonline.co.uk/tol/comment/letters/article2871928.ece>

entirely different and far broader, almost radical, conception of what it means to be a lawyer.

Now it seems to me one can either take the view that uttering this oath is going to be empty rhetoric and not very significant, or one could see it as being absolutely instrumental – and at a very formative point in the development of professional character - because at this point the lawyer communes and identifies with the fundamental values of her profession. At present in the UK we don't require this at all in any meaningful sense, and I tend to the view that this is a serious omission. So what I'm hoping is that this afternoon's discussion may help trigger is a wide-ranging discussion within the UK and Europe as to the need and form of a new legal Hippocratic oath. It is worth noting that judges already swear an oath and we need to ask, well, if we expect judges to swear an oath why should we expect anything less from other lawyers? Should we move beyond the current situation and expect an outcome more demanding than mere 'knowledge and understanding' of the code of conduct and insist on requiring something more? And, for me, I would express this 'something more' in terms of requiring commitment that establishes a direct and personal relationship of the lawyer to the fundamental values of her profession.

Is this going too far, and would we be expecting too much of future lawyers if they were expected to take an oath? Well, I think we can say that already other legal professions, and indeed some European law schools, either at the point of entry or graduation do expect a commitment to professional values from their new entrants and this is often expressed through a public ceremony that, both privately and publically, amounts to a significant *rite de passage*. Does failing to create the opportunity to give expression to this commitment here, and at such a crucial moment in the formation of professional character, sell short not only future members of the profession, but also the wider public they serve? For is not commitment to these values right at the heart of what it means to be a true professional? And does not the silence of law schools on this issue amount to an abdication of our own professional responsibility as law teachers? I believe debating this issue is both timely and important, and not least because both in the new Legal Services Act of 2007 and the Solicitors' Code of Conduct 2007 there is now a very clear requirement that overriding duties are owed by lawyers to justice. How practically should this fundamental duty be interpreted and applied? I feel very strongly that maintaining silence is simply no longer acceptable.

In order to stimulate and provide a focus for our discussion I would welcome your reaction to the following draft:

I promise to use my legal knowledge and skill to the best of my ability and, notwithstanding overriding duties owed to clients and the Court, will at all times serve the interests of justice without fear or favour. As a lawyer, I shall work diligently, honestly, with integrity and independence to the highest standards and do my utmost to uphold the core duties of my profession whilst respecting the truth and avoiding unnecessary harm to public and third party interests. I shall uphold the rule of law, the democratic order, human rights, social justice, fair and expeditious process, and work toward the improvement and accessibility of the law, legal institutions and processes.

[Some drafting points: should a *pro bono* obligation be added? And might 'defend' be better than 'uphold' the rule of law etc? Other points]