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The legal education - legal practice relationship: a critical evaluation

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The Legal Education - Legal Practice Relationship: A Critical Evaluation

Peter Smith

A thesis submitted in partial fulfilment of the requirements
of Sheffield Hallam University for the degree of
Master of Laws by Research

JANUARY 2015

To Helen and David, with love and thanks

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Abstract

This thesis critically evaluates the relationship between legal practice and legal education, with particular attention to the law degree. It analyses how the relationship has been discussed in the academic literature and in landmark legal education reform reports. It is a literature based thesis, focusing on the situation in England and Wales.

The current context of legal education and practice are discussed, providing the background for the work. A brief history of legal education in England and Wales sets the wider context and introduces some of the key ideas. This history covers developments in the forms of legal education and the major reports which have analysed and critiqued the provision of legal education in England and Wales.

Themes from this history are then discussed, looking at the issues raised, the problems identified, and the solutions proposed. The conclusion of the thesis brings these themes together to identify how legal education and legal practice have related to each other over time, how they are linked now, and the possible relationship they will have in the future.

The work contributes to the history of legal education by updating the coverage and analysis of reforms to take in the work of the Legal Education and Training Review, and by discussing key elements of the discourse around the relationship between legal education and legal practice.

A sketch of future research possibilities is provided, to show how elements of this work could be further developed.

Chapter One- Introduction

Why study the relationship between legal education and legal practice?

“Some sense of existential crisis has never been far away from thinking about... English... legal education.”¹

“[T]here is something timeless about the tension in legal education between the speculative approach and the practical.”²

This sense of crisis and tension is reflected in the number of investigations there have been into the subject of legal education. This ‘official’ work has been complemented by academic discussions the internal work of regulators and representative groups, debates within the legal profession, and the work of consumer groups.

Setting standards from the Legal Education and Training Review (LETR) - published in 2013³ - was the latest report on the nature, scope, and issues facing legal education in England and Wales. These reports have reflected the challenges and concerns of their times, and have raised a number of important questions concerning legal education, including its relationship with legal practice and the needs of the legal profession.

Recent developments in higher education- the emphasis on employability and skills, the introduction of student fees, the challenge from distance and online learning providers- have also had their effect as part of the context of legal education. Taken together these developments have shaped, and will continue to shape, the form and content of legal education.⁴

In reviewing the history of legal education, this thesis will update the work done in the 1971 Ormrod Report⁵, looking at developments from then up to and including the 2013 Legal Education and Training Review.

¹ Julian Webb, “Regulating lawyers in a liberalized legal services market: the role of education and training” (2013) 24 *Stan.L. & Pol’y Review* 533, 552

² John Baker, *Legal education in London 1250-1850* (Selden Society, 2007) 44

³ Legal Education and Training Review, *Setting standards: The future of legal services education and training in England and Wales June 2013* < <http://www.lettr.org.uk/wp-content/uploads/LETR-Report.pdf>>

⁴ Jessica Guth and Chris Ashford, “The Legal Education and Training Review: regulating socio-legal and liberal legal education?” (2014) 48 *The Law Teacher* 5

⁵ Committee on Legal Education, *Report of the Committee on Legal Education* (Cmnd 4595, 1971) (Ormrod Report)

The thesis has a particular focus on the education of solicitors and barristers, and a concern with the detail of the law degree, as it is the focus of many of the discussions and associated tensions around the relationship between legal education and legal practice.

Aims and objectives

The aim of the thesis is to critically evaluate the relationship between legal education and legal practice, with a particular focus on the education of solicitors and barristers and the role of the law degree.

The objectives of the thesis are to:

- provide an outline of the development of legal education, providing a context for the issues under discussion; this historical overview is based on the academic literature and a reading of key legal education reform documents
- identify key themes and ideas in the development of academic legal education, through an analysis of the literature referred to in the history
- critically evaluate these ideas and themes in terms of what they reveal about the legal education-legal practice relationship and how they inform current debates
- identify areas for future research

Structure of the thesis

Chapter two sets out the methodological and conceptual approach of the thesis. It covers the content analysis which underlies the critical evaluation, and the ideas of *neoliberalism* and *professionalism* which provide a structure for the analysis.

Chapter three sets the background for the thesis, laying out the current social, technological, and regulatory trends in legal education and legal practice. These trends led in part to the convening of the Legal Education and Training Review (LETR), which was the immediate context for the work which led to this thesis.

Chapters four and five build on the background laid out in chapter one by providing a broad historical overview of developments in the legal profession and legal education. This history moves from the early days of legal practitioners and the emergence of organisations such as the Inns of Court,

through the decline of the Inns as educational bodies and the emergence of apprenticeship as the key form of education, to the establishment of common law as a university subject and the development of the current system of academic and vocational educational stages. These chapters incorporate discussions of major legal education reports from the 1846 Select Committee to the 2013 LETR.

This historical overview of legal education, in terms of the forms which legal education took and critiques of those forms, highlights important ideas and practices in legal education and its relationship with legal practice, pointing to the issues discussed in subsequent chapters.

Chapter six presents the key themes drawn from the published works of leading commentators on legal education and from contributions to the reports discussed in chapters two and three.

Chapter seven outlines the conclusions of the thesis, discussing the ideas and approaches deployed in the discussions around the relationship between legal education and legal practice. It also looks at potential areas of future research.

Chapter Two- Methodology

Approach

This is a literature based thesis, drawing on the works of academics, commentators, and practitioners in the fields of legal history, legal education, and legal services.

The thesis takes as its starting point the current context of legal education and legal practice. To establish this context an extensive literature review was carried out. Issues around the delivery of legal services, regulation of those services, education for the providers of legal services, and public attitudes towards both legal education and legal practice were the main topics in this review.

From this initial literature review important themes and approaches to the issue of legal education and its relationship with legal practice were identified. Key reports and leading academic commentators were also highlighted.

Using the insights gained from this reading, a brief analysis of the current situation was created. Following from this a broad outline history of legal education was put together. This outline history provided the deeper context for the current issues identified in the initial literature review. It also helped in identifying some of the key themes and issues that became important in the later analysis.

When using documents in constructing a history there is the danger of taking particular groups' accounts as reflective of the wider situation, or uncritically accepting the claims of ideologies. To guard against this academic literature representing a range of perspectives and the use of documents from a variety of actors have been used.

Whilst these safeguards have been taken, the history presented in this thesis is much more linear and smooth than the events it summarises. The thesis does not go into detail on the discussions, debates, and disagreements; rather it uses key moments and decisions to highlight ideas and practices which were important in the development of legal education, the law degree, and the reflection of practice in education.

Content analysis

As well as providing the important information required for the current context and the broader historical outline, selected reports on legal education and academic discussions of those reports and other aspects of legal education formed the material for a form of content analysis.

Content analysis is an approach in which a close reading of important texts is used to identify important ideas and practices. In this case the texts were the major legal education reports and a selection of the academic literature on legal education.

In the initial reading important ideas, approaches, and historical practices were identified. At this stage the categorising of ideas was very fluid and open. As the number of texts read increased and the connections between these open categories increased it became possible to organise a more structured set of themes.

Therefore as the structure developed the number of categories was reduced as they were organised into higher level themes. For example, the theme of control emerged from a number of categories relating to the role of organisations, the role of individuals, the relationship between the state and these organisations and individuals, and the overall influence exercised by those involved in legal education.

This form of content analysis uses texts to identify important themes in the relationship between legal education and legal practice. It does not seek to relate the language used in these discussions to wider sociolinguistic currents, social psychological insight, or to other linguistic aspects of the law and education. To that end the process of creating the themes related purely to ideas and positions regarding the relationship between legal education and legal practice. For example in discussing the theme of control what is important is how what is said reflects differing conceptions of how legal education should be controlled.

Models

We can frame many of the discussions around legal education and legal practice in terms of the organisation of lawyers and education and their relationship with the state, and the wider political context within which those

relationships are located. The socio-political context of *neoliberalism* and the ideal of *professionalism* are helpful in this framing.

Neoliberalism

The current form of the law degree is a result of developments in higher education and the legal profession in the 1960s and 1970s. Recent developments of this settlement of legal education have their roots partly in changes in the relationship between the state and legal professions. These have found expression in shifts in the claims of the state and the professions in regard to education and practice, which are contested in terms of professional claims to autonomy- including in the setting of educational standards- and in the state's claims to a role in regulating the provision of services, which leads to claims of regulation over the work of professions. These changes can be linked to the set of ideas and practices labelled *neoliberalism*.

Neoliberal approaches to services- including legal services- place competition, efficiency, and consumer interest at the heart of a policy. They are rooted in the idea that a free and competitive market represents the best way of providing services.⁶

Neoliberalism also redefines the role of the state with respect to services⁷. The state has at times been a *laissez- faire* benevolent watchman, at times an interventionist provider. Under neoliberalism the state has increasingly withdrawn from being a provider of services to being an enabler / arbitrator, mediating between service providers and users.⁸ To foster free and competitive markets the state creates regulatory systems as part of its role in enabling the operation of service markets.

The creation of a market approach, with associated consumer and service orientations amongst participants in markets, is a key element in neoliberalism.⁹ This has seen the state move from its hands off approach to legal services,

⁶ Margaret Thornton, "The new knowledge economy and the transformation of the law discipline" (2012) 19 *International journal of the legal profession* 265, 265; James Faulconbridge and Daniel Muzio, "Professions in a globalizing world: towards a transnational sociology of the professions" (2011) 27 *International sociology* 136, 140; Daniel Muzio, "The professional project and the contemporary re-organisation of the legal profession in England and Wales" (2004) 11 *International journal of the legal profession* 33, 38-39; Richard Abel, "The professional is political" (2004) 11 *International journal of the legal profession* 131, 142

⁷ Webb 'Regulating lawyers' n1 535

⁸ Faulconbridge and Muzio 'Professions' n6 145

⁹ Faulconbridge and Muzio 'Professions' n6 148; Webb 'Regulating lawyers' n1 533

which allowed legal professionals a great deal of latitude in regulating themselves, to a greater involvement of the state- for example via the creation of oversight regulators such as the Legal Services Board (LSB) and bodies such as the Legal Services Consumer Panel (LSCP.)¹⁰

As a consequence of the stress on consumer and market approaches, neoliberalism has shifted the idea of legal services from being an area in which those turning to lawyers are *clients* to one where they are *customers* receiving *services*¹¹. The prime interest of these customers is held to be efficiency and price.

This position leads to the argument that increased competition and openness are the key to delivering the desired cost-effective and efficient services. This has meant increased competition within the legal profession such as that between various forms of advocate, but also competition from *outside* the profession, for example through the opening up of legal services provision to non-lawyer owned and led business forms.

These pressures have also found expression in higher education. Just as users of legal services are conceptualised as consumers, so are students. As we will discuss later, the introduction of fees in England has led to a potential strengthening of this view, with students looking for value and return on investment in the way they would for other forms of service.

In essence neoliberalism replaces *public oriented* values in law and education with *private/individual oriented* ones. Education becomes a private good purchased with a view to its future economic usefulness to the individual. The work of lawyers are seen as *services*, designed and assessed with economy and efficiency in mind.

The return of education in terms of its contribution to the wider public realm and the value of legal services as part of the wider rule of law receive acknowledgement in words but are rendered secondary in practice. This has

¹⁰ Mark Davies, "The demise of professional self-regulation? Evidence from the 'ideal type' professions of medicine and law" (2010) 26 PN 3, 6-7 & 9; Andrew Boon, "Professionalism under the Legal Services Act 2007" (2010) 17 International Journal of the Legal Profession 195, 196

¹¹ Webb 'Regulating lawyers' n1 539

had its effect both on the nature of legal education and legal practice, as we will see.

Professionalism

In redefining the roles of the state and providers, neoliberalism has called into question the role of professions and professional bodies.

Professionalism is itself a contested concept, with a range of interpretations; we can identify two broad approaches to the idea of professions and professionalism, one focusing on public interest claims and one on private interests.¹² From a public interest perspective, professionalism exists to maintain and promote standards- such as of education, whilst from the private interest approach they exist to create and defend monopolies of practice.¹³

From a more neutral perspective, professionalism can be seen as the outcome of a set of processes whereby a group establishes control over an area of work, sets entry and practice boundaries around that work, and responds to challenges to its control and the emergence of potential and actual competitors.¹⁴ These processes lead to a 'negotiated settlement' or a series of settlements across varied work spaces,¹⁵ within which the emergent profession regulates the activities of its members.

Thus claims to control over a specific form of work- a 'jurisdiction'- and the ability to self-regulate are important elements of a profession.¹⁶ Within that jurisdiction, these claims are based in part on an extensive process of 'systematic and scholarly' training.¹⁷

¹² James Faulconbridge and Daniel Muzio, "Symposium: Empirical research on the legal profession: insights from theory and practice" (2009) 22 *Geo J Legal Ethics* 1335, 1339-1341; Camille Chasserant and Sophie Harnay, "The regulation of quality in the market for legal services: taking the heterogeneity of legal services seriously" (2013) 1 *The European Journal of Comparative Economics* 267, 270-275

¹³ Faulconbridge and Muzio 'Professions' n6 137

¹⁴ Daniel Muzio, David Brock, and Roy Suddaby, "Professions and institutional change: towards an institutional change: towards an institutionalist sociology of the professions" (2013) 50 *Journal of management studies* 699, 714

¹⁵ Faulconbridge and Muzio 'Symposium' n12 1341; Muzio, Brock, and Suddaby n14 705 & 710

¹⁶ Andrew Abbott, "Jurisdictional conflicts: a new approach to the development of the legal professions" (1986) 11 *Am.B.Found.Res.J.* 187, 190; John Flood, "The re-landscaping of the legal profession: large law firms and professional re-regulation" (2011) 59 *Current Sociology* 507, 508

¹⁷ David Sciulli, "Continental sociology of professions today: conceptual contributions" (2005) 54 *Current Sociology* 915, 920-921

Control over the entry of people into the profession is affected via control over standards and content in education and training.¹⁸ It has been argued that the law degree is evidence of a loss of control in this area, from practitioners to academia¹⁹. Whilst it does represent some loss of control, the professions have maintained an influence over the law degree; and the number of students with such a degree has now shifted the locus of control over entry to the vocational stage, particularly the training contract for solicitors.

The construction of a complex and sophisticated knowledge base, with associated control over the broad content and aims of education, are a key element in professional formation.²⁰ It may be that the assumption of a single knowledge base for all lawyers no longer holds, both in terms of what the base consists of and whether all practitioners use it.²¹

The claims of professionalism within legal services have come under pressure from shifts in business structures within law firms and the associated processes of financialisation, commercialisation, and managerialism.²²

As a result of these pressures the ability of professions to maintain their control over elements of 'guild power'²³, - such as over the forms their professional bodies take, the forms of organisation in which their work takes place, and the balance of power between professionals and the state - is in decline.²⁴ This is part of the long-term process whereby the state and professions have

¹⁸ Richard L. Abel, "Comparative sociology of legal professions: an exploratory essay" (1985) 10 *Am.B.Found.Res.J.* 1, 9-17

¹⁹ Richard Abel, "England and Wales : A comparison of the professional projects of solicitors and barristers" in Richard Abel and Phillip Lewis (ed), *Lawyers in society: the common law world* (Beard Books, 1988) 32

²⁰ Richard Abel, "The rise of professionalism" (1979) 6 *British Journal of Law and Society* 82, 186; Andrew Abbott, "The order of professionalization: an empirical analysis" (1991) 18 *Work and occupations* 355, 357; Richard Abel, "The politics of professionalism: the transformation of English lawyers at the end of the twentieth century" (1999) 2 *Legal Ethics* 131, 135; Andrew Francis *At the edge of law : emergent and divergent models of legal professionalism* (Ashgate, 2011) 17-18

²¹ Francis *At the edge of law* n20 158

²² Elliott Krause, *Death of the guilds : professions, states, and the advance of capitalism, 1930 to the present* (Yale University Press, 1999) 281; Julia Evetts, "Professionalism: value and ideology" (2013)

²³ Krause n22 3

²⁴ Krause n22 283

negotiated- and fought over- the power to control access to areas of work and forms of business.²⁵

Historically solicitors and barristers have regulated themselves, albeit through powers derived from statute.²⁶ Removing regulation from professionals by the gradual weakening of self-regulation is the latest stage in this process, and reflects a declining deference to those professionals and a desire to subject them to the same type of scrutiny as other occupational groups might be.²⁷

As legal practice changes and the scope of legal work shifts so professionalism may become a smaller, marginal element in large law firms, or reconfigured to meet the demands of such firms.²⁸

The approach of lawyers may change from *assuming* the value of professional groups to *positively claiming* the value of professionalism to firms, users of legal services, and the legal system as a whole- that value being expressed in terms of independence, quality, and ethics.

Whilst professionalism is under challenge, it still provides a useful framework for discussing the development of legal education, in particular the role of education and the emergence of the law degree and some of the differences in approach between solicitors and barristers.

²⁵ Krause n22 ch1; Richard Abel, "Between market and state: the legal profession in turmoil" [1989] 52 The Modern Law Journal 285; John Flood, "Will there be fallout from Clementi? The repercussions for the legal profession after the Legal Services Act 2007" [2012] Michigan State Law Review 537, 563; Webb 'Regulating lawyers' n1 535

²⁶ Jane Creaton, "Modernizing the courts and the legal profession" (2003) 9 Contemporary Politics 115, 116 and 119

²⁷ Flood 'Will there be fallout after Clementi?' n25 541

²⁸ James Marshall, "A shift to a post-structuralist analysis of the legal profession" (2004) 11 International Journal of the Legal Profession 21, 22

Chapter 3- The current context of legal education and legal practice

Education: nature, participants, current issues

The legal education system- its schools, their teachers, and students- is shaped by social, economic, and political forces, and in turn legal education has an effect in these areas²⁹. Which groups have an interest in legal education, what are those interests, and what influence do they have on the system of legal education?³⁰

The legal profession has a major stake in legal education. It depends on the system to provide it with skilled and knowledgeable practitioners. The profession has an interest in the content of legal education, naturally, but is also interested in issues such as access to legal education, assessment and competency measures, and the contribution of legal scholarship to the law as a whole. There are various forms of legal practice, each of which will see these interests in different ways; and there are increasing differences between sectors, individuals, and organisations.

Until recently the interests of the legal profession in legal education at the undergraduate level were represented by the involvement of solicitor and barrister members of the Joint Academic Stage Board (JASB.) The JASB has set the standards for qualifying law degrees, and as such has great influence on the content of law degrees. There is still academic representation, despite the dissolution of the JASB, within the regulators' education and training systems.

The state has an interest in legal education, as part of its broader role in educational policy and management of the legal system. Academic freedom and the independence of the legal profession has meant that government has not set standards or content, but it has great influence through setting policy in areas such as access to higher education, financial support, and attitudes to the professions.

²⁹ Avrom Sherr and David Sugarman, "Theory in legal education" (2000) 7 *International Journal of the Legal Profession* 165, 166

³⁰ For a wider discussion see Fiona Cownie (ed), *Stakeholders in the law school* (Oxford, Hart 2010)

Looking ahead to the theme of control, the ideals of academic freedom and the independence of the legal profession may be more restricted than theory and ideal suggest. Both are currently affected by the drive to respond to consumerist approaches and the wider loss of autonomy attendant on such pressures.

Students (and their families) have an interest in the legal education system. Does it provide the right skills and knowledge? How easy is it for them to get a legal education? What value does a legal education have, both in terms of its application to legal practice and in providing wider opportunities? With the development of a market approach to education and increased fees for students, these groups represent an element of the consumerism mentioned above.

Legal academics have a range of interests. Some are functional and relate to higher education generally- pay, conditions, academic freedom, etc.; others relate more specifically to legal education- questions such as what say do academics have in content and curriculum design, what is the relationship between the legal academy and the legal profession, etc.

Finally there are those who use the legal system, represented by consumer interest groups both general and specific to law. Their interests can be seen in such questions as: Can those who use legal services rely on the products of legal education? What sort of lawyers do people want? Do they need all lawyers to be graduates, or are apprenticeship routes just as good for what they need? How is 'just as good' defined?

In the current system the LSCP represents the interests of users of legal services, and contributes reports on a range of issues, including legal education.³¹

Higher education, in which the academic stage of solicitor and barrister education takes place, is undergoing a great deal of change. The changes are to the quality assessment regime, changes in the profile of those 'using' higher education, and changes in the expectations placed on higher education. In a general sense these changes can be seen to represent the application of a consumer oriented and vocational approach, in which students' outlooks have a

³¹ <http://www.legalservicesconsumerpanel.org.uk/index.html>

major role in planning³² and higher education is assessed on its contribution to the wider economy.³³

Higher education has seen the number of students rise whilst at the same time the funding from government has fallen, replaced by student fees.

Accompanying this has been a greater emphasis on 'employability,' with numbers of students in graduate employment being a key factor in assessment of institutional success and placement on league tables. These changes underlie a more 'consumerist' approach on the part of both students and higher education institutions, seen by some as a threat to the true mission of higher education³⁴.

The theme of control can be seen in the development of the audit regime in higher education. Audit bodies, such as the Quality Assessment Authority³⁵, have been set up to assess higher education institutions' performance. Information on performance is provided to prospective students through league tables and data on areas such as graduate employment and student satisfaction, recently gathered together in the Key Information Set of each institution³⁶.

Education: approaches

The changing context of higher education is critical in understanding how legal education at the academic stage has shifted in emphasis.

A largely vocational approach sets the context for current higher education and thus for the academic element of legal education and for law departments in universities. The Dearing report forms the basis for this approach in recent times³⁷, building as it did on a number of changes to higher education practice

³² W Wesley Pue, "Legal education's mission" (2008) 42 *The law Teacher* 270, 280

³³ Anthony Bradney, "English university law schools, the age of austerity and human flourishing" (2011) 18 *International Journal of the Legal Profession* 59, 61; Jane Kelsey 'Privatising the universities' in Anthony Bradney and Fiona Cownie (eds), *Transformative visions of legal education* (Blackwell, 1998) 59

³⁴ Andrew Boon and Julian Webb, "Legal education and training in England and Wales: back to the future?" (2008) 58 *J.Leg.Ed.* 79, 79; Bradney 'English university law schools' n33 60; Tracey Varnava and Roger Burridge 'Revising legal education' in Roger Burridge et al (eds), *Effective learning and teaching in law* (Kogan Page, 2002) 12

³⁵ See <http://www.qaa.ac.uk>

³⁶ See <https://unistats.direct.gov.uk/find-out-more/key-information-set>

³⁷ Ron Dearing, *Report of the National Committee of Inquiry into Higher Education* (1997) <<http://www.leeds.ac.uk/educol/ncihe/>> ; Varnava and Burridge n34 6; Anthony Bradney, *Conversations, choices and chances: the liberal law school in the twenty-first century* (Oxford: Hart, 2003) 6

in the preceding years. Whilst this report acknowledged the value of education for personal development, it clearly stated that higher education's role was to support the economy. Curriculum design, course planning, assessment, lesson content- all would be shaped by the needs of employers, as expressed through bodies such as sector skills councils (SSCs)³⁸, employer groups, and professional associations.

This means that it is expected that graduates will have certain generic skills as well as sector specific experience and competencies, which make them suitable for particular roles and jobs. Whilst in the course of their time at university people may develop useful personal characteristics and attain personal goals- seen as being desirable aims in themselves- the core objective of HE is to enable students to gain the skills and attitudes which will enable them to be effective workers, and by implication the work of universities is to support this process.³⁹

The increased emphasis on graduate employability, and the more general idea that the academy should serve the economy⁴⁰, has meant that all disciplines have had to respond to the challenge of developing teaching and learning experiences which meet these demands.

There is concern that the work of bodies such as the QAA and Higher Education Academy, with emphasis on competencies and outputs, can distort education⁴¹. League tables and National Student Survey results are seen as having the potential of leading to forms of teaching and assessment which satisfy neither the needs of the professions nor the demands of a liberal education.

As discussed earlier, these developments have been connected with a neo-liberal approach to education within government, which sees education as being

³⁸ The Sector Skills Council for legal services is Skills for Justice <http://www.sfiuk.com/>

³⁹ Anthony Bradney, "How to live: aristocratic values, the liberal university law school and the modern lawyer" [2011] 2 Web Journal of Current Legal Issues <<http://webjcli.ncl.ac.uk/2011/issue2/bradney2.html>>

⁴⁰ Anthony Bradney, "Accountability, the university law school and the death of Socrates" [2002] 1 Web Journal of Current Legal Issues <<http://webjcli.ncl.ac.uk/2002/issue1/bradney1.html>>; Jeff Giddings et al, 'The first wave of modern clinical legal education: the United States, Britain, Canada, and Australia' in Frank Bloch (ed), *The global clinical movement* (Oxford University Press, 2011) 17; Margaret Thornton, 'Legal education and the corporate university' (2014) *Annu Rev Law Soc Sci* 10 19, 20

⁴¹ Varnava and Burrige n34 5

a transaction and students as the consumers in that transaction⁴². Here education is seen not as a public good supported by state funding, but as a commoditised private good purchased by consumer-students.⁴³

In terms of academic law this has meant a development of more clinical modules and a loss of critical and reflective elements, save those relating to employment.⁴⁴ Again the theme of control is important here; in this case the control exercised through government policy and to some extent the influence of elements of the profession in terms of the related theme of the content of the law degree.

In contrast to the consumerist / vocational approach there is the tradition of liberal education. In this ideal, knowledge is pursued for its own sake⁴⁵ and education is a process of personal development aimed at the creation of 'personal autonomy', developing self-aware and critically engaged individuals⁴⁶. The role of the university is to 'educate students not workers.'⁴⁷ Legal education takes law as its subject in service of these aims, rather than with a view to preparing students for any form of legal practice.⁴⁸

Liberal education is seen to be not just about students and their learning, but also about how academics and students relate to one another, how academics relate to their subject, and how academics and their relate to those outside the university.⁴⁹

The legal profession's point of view is not privileged in curriculum and teaching design; there would be no mandatory core of topics as set by lawyers. Law is taken as the start point and topic of discussion, but is not the end point. Rather

⁴² Bradney 'English university law schools' n33 67; Andrew Boon, John Flood, and Julian Webb, "Postmodern professions? The fragmentation of legal education and the legal profession" [2005] 32 *Journal of Law and Society* 473, 480-487; Thornton 'Legal education' n40 22

⁴³ Margaret Thornton n6, 268; Margaret Thornton, "Gothic horror in the legal academy" (2005) 14 *Social and Legal Studies* 267, 268; Hilary Sommerlad, "The commercialisation of law and the enterprising legal practitioner: continuity and change" (2011) 18 *International Journal of the Legal Profession* 73, 75

⁴⁴ Thornton 'Gothic horror' n43 269; Thornton 'Legal education' n40 23

⁴⁵ Varnava and Burridge n34 5

⁴⁶ Bradney 'How to live' n39 ; Varnava and Burridge n34 13

⁴⁷ Anthony Bradney, "Raising the drawbridge: defending university law schools" [1995] 1 *Web Journal of Current Legal Issues*

<<http://www.baillii.org/uk/other/journals/WebJCLI/1995/issue1/bradney1.html>>

⁴⁸ Roger Burridge and Julian Webb, "The values of common law legal education: rethinking rules, responsibilities, relationships and roles in the law school" (2007) 10 *Legal Ethics* 72, 74

⁴⁹ Bradney *Conversations* n37 27

the law is the medium for the development of those personal attributes and attitudes which form the base for liberal education- engagement, criticality, and social orientation.

A liberal law degree, then, might contain very little in the way of 'substantive' or black letter law. It could focus on legal history or jurisprudence, or look at topics outside of the current core, such as welfare, sexuality, education etc. Students who wanted to go on to practice law would gain 'core' knowledge and skills as part of vocational / professional courses and experiences undertaken after their degree. Practice oriented legal skills, such as the use of particular forms of information or the carrying out of particular tasks would be covered in so far as they help students understand the legal issues they are studying; they would not be an aim of the programme nor a strong focus.

The liberal elements of a legal education are not necessarily lost in vocational approaches, but they are in danger of being marginalised. Student demand takes precedence, and students are held to want work related experiences; therefore all teaching takes on a clinical edge, and more philosophical and reflective elements can be side-lined.

Legal practice: change and context

Just as higher education is subject to change, so is legal practice. There are several dimensions to the current changes affecting legal practice and practitioners⁵⁰. These can be summarised under the headings of changes in law firm structures, changes in technology as applied to legal practice, changing consumer expectations of legal practice, and changes in the relationship between legal professions and wider society.⁵¹

We will consider first the legislative context in which legal practice takes place. The key piece of legislation is the Legal Services Act 2007 (LSA 2007). The reforms in the LSA 2007 continue the trend of increased competition and emphasis on the consumer nature of legal services⁵² that can be traced to the

⁵⁰ David Edmonds, "Training the lawyers of the future – a regulator's view" (2011) 45 *The Law Teacher* 4, 5; Legal Education and Training Review *Setting standards* n3 Ch 3

⁵¹ See Richard Susskind, *The end of lawyers?* (Rev edn., OUP 2010); Richard Susskind, *Tomorrow's lawyers* (OUP 2013)

⁵² Abel 'Between market and state' n25 291; Patricia Leighton, "Back from the future: did the LETR really prepare us for the future?" (2014) 48 *The Law Teacher* 79, 80-81; Creaton n26 118; Webb 'Regulating lawyers' n1 544

legal services reforms of the 80s and 90s⁵³. The 1989 green paper *The work and organisation of the legal profession* laid out the argument that increased competition and market mechanisms would lead to improved legal services; efficiency was the key to the reforms proposed, which found legislative expression in the Courts and Legal Services Act 1990.⁵⁴

The New Labour government which came to power in 1997 continued much of this emphasis on consumer oriented services and the opening up of the legal services market. This found expression in the Clementi Report of 2004⁵⁵, commissioned by the New Labour government to investigate the regulation of legal services.

Clementi reported that many people found legal services difficult to access, hard to understand, expensive, and when things went wrong making the complaints process was difficult. It was also argued that the organisation of legal services made it difficult for lawyers and their services to be responsive and efficient.⁵⁶

The recommendations of the Clementi Report were incorporated into *The future of legal services: putting consumers first*⁵⁷, which formed the base of the LSA 2007. In its introduction it summed up the aims of the reform programme:

“Our vision is of a legal services market where excellence continues to be delivered; and a market that is responsive, flexible, and puts the consumer first.”⁵⁸

In order to make legal services more customer friendly and competitive, the Clementi Report had proposed changes in the way that legal practitioners and legal services were regulated and delivered. Key amongst these was the separation of the representative functions of professional bodies from their

⁵³ Boon n10 196

⁵⁴ Lord Chancellor's Department, *The work and organisation of the legal profession* (Cm 570, 1988/89) 1; Leighton n52 80-81; Creton n26 119

⁵⁵ David Clementi, *Report of the review of the regulatory framework for legal services in England and Wales* (TSO, 2004)

⁵⁶ Clementi n55 1-3

⁵⁷ Department of Constitutional Affairs, *The future of legal services: putting consumers first* (Cm 6679, 2005)

⁵⁸ Department of Constitutional Affairs n57 7

regulatory functions, which *The future of legal services: putting consumers first* identified as a particular problem with regard to complaints handling.⁵⁹

Therefore new regulatory bodies were created – the Solicitors Regulation Authority (SRA) and the Bar Standards Board (BSB)⁶⁰ – and the representative functions remained with the Law Society and the General Council of the Bar. The new regulatory bodies set standards in legal education, can act as licensing bodies for alternative business structures, and manage the discipline of their respective professional groups.

In the LSA 2007 s12 certain activities are referred to as the reserved legal activities. 'Reserved' means that only people with certain qualifications or membership of certain bodies or recognition by nominated authorities can lawfully provide those services or conduct those activities. For example only people with the appropriate authorisation can provide advocacy services in the courts; it is a criminal offence for any other person to do so.

The reserved activities are important in terms of the theme of the content of the law degree as they provide much of the focus for the education of solicitors and barristers. Much of the content of the degree and vocational stages is predicated on the idea that those taking them will work in one or more area of reserved legal work. This can be seen in law degrees, for example in simulated clinics focused on litigation and the provision of mooted courses and competitions with their focus on advocacy.

Here the theme of control is also engaged; we can see the reserved activities as a means whereby a degree of professional control of legal education can be exercised. This situation could change if the link between titles and reserved activities is renegotiated- even broken- perhaps as part of a wider reconsideration of what it means to be a 'solicitor' or 'barrister.'⁶¹

⁵⁹ Department of Constitutional Affairs n57 8

⁶⁰ Boon and Webb 'Legal education' n34 79 and 106; Webb 'Regulating lawyers' n1 547 Similar arrangements exist for other legal services bodies

⁶¹ Stephen Mayson, "Training the lawyer of the future" 46 in Legal Services Board (ed), *The future of the legal services: Emerging thinking* (2010) < http://www.legalservicesboard.org.uk/news_publications/press_releases/2010/pdf/14_june_conferece_papers_master.pdf>; Legal Services Institute, *Reforming legal education: Issues for the Legal Services Board* 4 (2012) < http://www.thelegaleducationfoundation.org/wp-content/uploads/2013/06/LSI_Jan_2012_Reforming_legal_education_1.pdf>; Legal Education

In terms of who can provide legal services, the LSA 2007 made no major changes in terms of the *people* who can provide certain services. It has changed the *business forms* in which those services could be provided, with the coming into force of the provisions relating to alternative business structures (ABS)⁶².

The ABS provisions of the LSA 2007 are important for legal education as new forms of legal business could bring with them new forms of legal job.⁶³ These jobs will require new skills; the demand for 'employability' in degrees and relevance in vocational courses could see their content and form change to accommodate the new jobs.⁶⁴

Clients, customers, and legal professionals

The relationship between the professions and the state, as we have discussed, has shifted and this shift has been echoed in a change in the relationship between lawyers and those coming to them. The 1988 Marre Committee on the future of the legal profession noted that 'in recent years there have been major changes in the attitudes of citizens as consumers.'⁶⁵ The report went on to comment that there was a 'tendency for consumers increasingly to think in terms of "rights" and to question the authority of those claiming expert knowledge.'⁶⁶ The roots of this were traced to government policy in opening the professions to competition,⁶⁷ a process accelerated by the Clementi Report and the associated reforms introduced by the LSA 2007.

Regardless of qualifications or the nature of the relationship with the lawyer, people making use of the services of legal professionals expect them to have a degree of competence; they should know what they are doing and be able to do it effectively.⁶⁸ How do we know a law graduate has sufficient competency to carry out legal work effectively? How can the competency of those practising as legal professionals be measured? And how can we ensure that practitioners

and Training Review, *Discussion paper 02/2012- Key issues II: developing the detail* 12 (2012) < http://letr.org.uk/wp-content/uploads/Discussion-Paper-02_2012final2.pdf>

⁶² Clementi n55 Chapter F lays out the background for alternative business structures. LSA 2007 Part V establishes the nature and regulation of ABS

⁶³ See Susskind n51

⁶⁴ Faulconbridge and Muzio 'Symposium' n12 1343

⁶⁵ The Marre Committee, *A time for change?* (The General Council of the Bar, 1988) 23

⁶⁶ *ibid*

⁶⁷ The Marre Committee n65 20

⁶⁸ Legal Education and Training Review *Setting standards* n3

maintain and develop their skills and knowledge over time? The regulators of the legal profession oversee such issues through their accreditation of educational and professional development schemes, disciplinary committees, and their work with government. The interests of consumers are represented by groups such as the LSCP and relevant aspects of the work of the LSB.

Those using legal services are held to want those services provided in a manner which best meets their needs⁶⁹; one example is the greater willingness and indeed desire on the part of consumers to use Internet-based technologies to find out about, interact with, and use legal services.⁷⁰

Legal services have been seen as somewhat different from other forms of service, and many critiques of the LSA 2007 are based on this view. Legal services are seen to rest on a client basis, not a consumer one. They are based on trust and the delivery of specialised knowledge. The provision of legal services is also related to wider rule of law issues.

An independent legal profession, not bound primarily by customer obligations or service philosophies, is seen as a key part of the proper working of the rule of law. For all of these reasons, it is argued that legal services and professionals cannot be treated in the same way as areas such as retail.

These arguments have their parallels in discussions around education. In both case, the 'service' provided is seen as a both a private and a public good- whilst education and legal services benefit those who receive them, they are also benefit to those within and outside of any 'transaction.'

These critiques notwithstanding , owing to increased consumer activism and changes in government approaches, legal professionals and their services have come to be seen in the same light as other forms of service⁷¹ and people are coming to demand from them the same kind of ease of access and use that they would expect from other forms of transaction.

Legal education: the current system

In chapters four and five we will see how the present system of education for solicitors and barristers is the result of a long period of development. Here we

⁶⁹ Department of Constitutional Affairs n57 21

⁷⁰ Susskind *Tomorrow's lawyers* n51 42-43, chapter 9

⁷¹ Webb 'Regulating lawyers' n1 537; Francis *At the edge of law* n20 24

will lay out the current context of legal education and highlight the areas of change and flux which form part of the context for this thesis.

The Solicitors Regulation Authority (SRA) and Bar Standards Board (BSB) create education and training regulations for their respective professions.⁷² Both professions set out a three stage path to qualification.

The first or academic stage is governed by the Joint Statement which sets out what the academic stage should cover.⁷³ Students will have studied the workings of the English legal system plus the 'foundations of legal knowledge'.⁷⁴ In order to achieve this, students will either take a three year law degree (a 'qualifying law degree' or QLD), or a degree in another subject followed by the one year Graduate Diploma in Law (GDL.)

Until recently the SRA and BSB were custodians of the Joint Statement which laid out the requirements of the QLD. As of January 2014 the Joint Academic Stage Board ceased to exist, and a regime of self-certification against the Joint Statement will be introduced.⁷⁵ It is not clear what, if any, difference this will make to law degrees; the shift to competency statements and the management of the law degree solely via higher education audit systems is likely to have a greater impact.

The Quality Assessment Agency (QAA) benchmark statement complements the Joint Statement by providing standards against which law degrees are assessed as part of the higher education quality system.⁷⁶

The second or vocational stage is governed by regulations specific to the profession in question. In both cases the vocational stage consists of a course at an approved provider- for solicitors this is the Legal Practice Course⁷⁷, for barristers the Bar Professional Training Course⁷⁸. These courses cover the

⁷² See <http://www.sra.org.uk/solicitors/handbook/trainingregs2014/content.page> for solicitors and https://www.barstandardsboard.org.uk/media/1553795/bsb_handbook_jan_2014.pdf for barristers

⁷³ <http://www.sra.org.uk/students/academic-stage-joint-statement-bsb-law-society.page>

⁷⁴ <http://www.lawsociety.org.uk/law-careers/becoming-a-solicitor/routes-to-qualifying/>

⁷⁵ Guth and Ashford n4 9

⁷⁶ <http://www.qaa.ac.uk/en/Publications/Documents/Subject-benchmark-statement-law.pdf> At the time of writing the law benchmark was under review, and a review of the higher education quality assurance system had recently been announced

⁷⁷ <http://www.sra.org.uk/students/lpc.page>

⁷⁸ <https://www.barstandardsboard.org.uk/qualifying-as-a-barrister/bar-professional-training-course/>

procedural and practical skills deemed important for legal practice, such as rules of court, financial management, and advocacy.

The third stage consists of a period of supervised practice- the training contract for solicitors⁷⁹, pupillage for barristers.⁸⁰ At the end of this practical stage the student qualifies and can begin work as a solicitor or barrister.

The form of the current system reveals some of the themes to be discussed later, particularly those of control and the content of the law degree. At present half of a QLD degree is made up of the foundation or core subjects which reflect to some extent the earlier professional examinations that practitioners would sit, and so encode some practitioner assumptions about what lawyers need to know and embed them in the law degree.

The presence of the core subjects reflects the longstanding influence of lawyers on the educational requirements of those seeking to practise law. There has been debate as to how much of those requirements should be met by the law degree; some have seen the current system as allowing too much control through the definition of the 'core' subjects, for example.⁸¹

This being said, the level of content prescription is minimal; the latitude of higher education institutes in designing the teaching of the core has been relatively wide. As will be seen in the discussion of the LETR report this might change; whilst the core itself may change, there is the possibility that core elements may be subject to greater content prescription. Much will depend on the outcome of the competency statement consultations by the regulators and the approaches taken by higher education institutions.

Summary

Changes in higher education are an important consideration, along with wider changes in attitudes to education. As legal practice forms the other element of the thesis' question, changes affecting how legal services are provided and by whom are also important.

⁷⁹ <http://www.sra.org.uk/trainees/training-contract.page>

⁸⁰ <https://www.barstandardsboard.org.uk/qualifying-as-a-barrister/pupillage/>

⁸¹ See for example Peter Birks, "Compulsory subjects: will the seven foundations ever crumble?" [1995] 1 Web Journal of Current Legal Issues <
<http://www.bailii.org/uk/other/journals/WebJCLI/1995/issue1/birks1.html>>

The current state of legal services is in flux with the winding out of the effect of changes from regulation, technology, and clients providing a range of challenges to legal practitioners. New forms of legal business are developing, new ways of working continue to emerge, and attitudes to professions continue to shift from their previous deferential mode.

Changes are also taking place within the field of education. The emphasis on employability, the introduction of student fees, and the creation of league tables has led to a consumer-provider oriented model of education to dominate in many institutions. This in turn has had its effect on the design of curricula, assessment, and the expectations of students. Law degrees have not been immune from these changes; indeed the relationship with legal practice may have made some institutions more susceptible.

The current systems of legal education and legal practice- and the changes affecting them and their relationship to one another- are the result of a long process of development. The assumptions about education and practice of previous times have given way to new positions, without being totally cleared; the past still informs the present.

The next two chapters will outline the history of legal education, with the focus being on the education of solicitors and barristers. Important issues in the relationship between legal education and legal practice will be identified, forming the basis for the themes which will be discussed in chapter six.

Chapter 4- Legal education: from the beginnings to 1854

The current situation of legal education and legal practice has roots stretching back to the 12th century. By tracing the development of legal education we can begin to identify important issues in the relationship between legal practice and legal education; in both this and the following chapter we will see the emergence of the themes which form the base of chapter six.

In this chapter we will cover the emergence of the Inns of Court and the development of formal educational systems, along with their eventual decline and the emergence of informal approaches to legal education from the 17th century. The reform movements of the 18th and 19th centuries conclude this chapter.

Earliest times

We can trace developments in legal education from the 13th century and infer elements of the system before then and link them with developments in the legal profession.

The earliest references to an education system for such lawyers can be found in legislation dating from the mid to late thirteenth centuries.⁸² This sought to manage, in some way, the admittance of practitioners, suggesting the existence of a recognised set of skills which advocates and attorneys should have, and by implication a system of education aimed at developing these skills.⁸³

At this point we can see that 'the roots of English legal education are not in the academy.'⁸⁴ Rather legal education was provided by practitioners for practitioners, with an emphasis on the workings of the courts and their procedure.⁸⁵ We see here the theme of control; practitioners were able to set

⁸² Penny Tucker, "First steps towards an English legal profession: the case of the 'London Ordinance' of 1280" (2006) 121 *English History Review* 361; John Baker, *An introduction to English legal history* (4th edn., Butterworths, 2002) 156

⁸³ Tucker n82 365

⁸⁴ Andrew Boon and Julian Webb, 'The legal professions as stakeholders in the academy in England and Wales' in Fiona Cownie n30 67

⁸⁵ John Flood, *Legal education in the global context* (2011) <

http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/l_sb_legal_education_report_flood.pdf> 3

their own education standards and were self-regulating exercising the full range of 'guild powers'⁸⁶ including control over education.

The Inns of Court as law school

Formalised legal education, in which the provision of legal education is linked to particular organisations where legal education was an important activity, can be speculatively traced to the 1340s and the emergence of the Inns of Court.⁸⁷

From the later 13th century to ca 1340, lawyers developed educational practices and social routines which led to the formation of the Inns of Court. Groups of lawyers came to use the London residences of leading figures in society- the Inns- as bases during court term times. These groups evolved into societies based at the Inns, which amongst other functions provided an education for lawyers⁸⁸. The functions of the Inns seem to have emerged organically, growing from practices and habits of earlier times, so whilst education was not the reason for their existence it was an important aspect of their work.⁸⁹

The education in the Inns consisted of moots – discussions of legal problems in the form of court cases- and lectures, known as readings, given by senior members of the Inns⁹⁰. The moots and lectures were based on specific legal issues or the texts of statutes

Over time the Inns were developed into what some have called the third University of England⁹¹, joining Oxford and Cambridge as the premier educational institutions of the nation.

The Inns of Court formed part of a tripartite organisation of legal practice. The Serjeants' Inns were at the top of this system, housing the leading practitioners

⁸⁶ Krause n22 ch 1

⁸⁷ Christopher Brooks, *Lawyers, litigation and English society since 1450* (Hambledon Press, 1998) 77, 130; Lord Rawlinson, 'The administration of the Bar' in Judy Hodgson (ed), *The English legal heritage* (Oyez Publishing, 1979) 27; Tucker says we can only be sure of formal and systematic teaching of the common law from the 15th century- Tucker n82 361

⁸⁸ John Baker, *The third university of England* (Selden Society, 1999) 9; *Report from the Select Committee on legal education; together with the minutes of evidence, appendix and index.* (686, 1846) x

⁸⁹ Although not all lawyers may have attended the Inns. See Tucker n82 361

⁹⁰ William Holdsworth, *A history of English law* (vol II) (4th edn., Sweet and Maxwell, 1936) 506

⁹¹ Baker *The third university of England* n88

and the judiciary, but having no educational role.⁹² The Inns of Chancery formed a 'junior' section, with students taking time to learn the rudiments of their craft there before moving on to one of the Inns of Court.

The four Inns of Court provided a social and educational setting for those who wished to get on in law, or life- they provided something of a 'liberal' education for those who wanted some knowledge of law and an entry to the Inns' circles but not necessarily a career in law; in this sense the liberal law degree is not solely a creature of later times.⁹³

The system of education developed in the Inns was one in which legal education and legal practice were closely linked.⁹⁴ It has been characterised as essentially vocational, with no systematising intellectual work, in contrast to university based continental legal learning.⁹⁵

The educators were lawyers of long standing, the learning was rooted in the practical world of pleading, parsing statutes, and understanding writs. Those who went on to become judges had spent their time teaching in the Inns and practising as serjeants and would often return to teach; there was therefore a close link between the profession, the bench, and legal education. Control and content of the education of lawyers were in the hands of the lawyers.

From the mid-14th century - and with due regard to changing context up to the 19th century - the relationship between legal practice and legal education, as far as advocates were concerned, was conceptualised as one in which legal practice to some extent was legal education. To take part in the professional and social life of the law as a barrister, serjeant, or judge was key to being part of the legal profession.

⁹² John Baker, 'The English legal profession, 1450-1550' in John Baker, *The legal profession and the common law* (Hambledon Press, 1986) 79

⁹³ Committee on Legal Education n5 4

⁹⁴ M H Hoeflich, "The Americanization of British legal education in the nineteenth century" (1987)

8 *The Journal of legal history* 244, 246; Boon and Webb 'Legal education' n34 79 and 82-83

⁹⁵ Brooks n87 201; Flood *Legal education* n85 3

The decline of the Inns to the 1846 Select Committee

The educational system of the Inns developed in the 15th and 16th centuries⁹⁶, but was already in decline by the time the Civil Wars dealt them a fatal blow, and by the 18th century only the formal shadow of it remained.⁹⁷

It has been argued that those charged with providing the lectures grew less and less inclined to provide them⁹⁸. At the root of their objections were time and money- the lecturers could make money pursuing legal work in the time they might have given to education⁹⁹, and students might also take on legal work rather than attend lectures.

Intending lawyers were left to their own devices for their education¹⁰⁰. They would learn through self-directed study¹⁰¹ –learning law from books, and such observations they might make in court. Some might gain access to practitioners, making use of their libraries and potentially the expertise of the barrister they were accepted by.¹⁰²

Such education as there existed was entirely dependent on the will and resources of the individual student, if they were lucky aided by a supportive practitioner, or their fellows in one of the societies students set up.¹⁰³

In the 18th and 19th centuries the Inns did try to revive their educational traditions by creating new lecture series, but to no great or lasting effect. Holdsworth argued that the decline of the Inn system meant that the "public teaching of English law was stopped for nearly a century and a half."¹⁰⁴

Various attempts were made from the mid-18th century onwards to provide some formal education for common lawyers. In 1758 the Vinerian chair was established at Oxford, its first holder being Blackstone¹⁰⁵. Blackstone's lectures were sparsely attended, though his book was well received, and his successors

⁹⁶ William Holdsworth, *A history of English law* (vol VI) (2nd edn., Sweet and Maxwell, 1937) 481

⁹⁷ Frances Cowper, 'The Inns of Court' in Judy Hodgson (ed), *The English legal heritage* (Oyez Publishing, 1979) 39; Hoeflich n94 246-247

⁹⁸ Holdsworth vol VI n96 490

⁹⁹ Holdsworth vol VI n96 484

¹⁰⁰ Baker *An introduction* n82 170

¹⁰¹ Brooks n87 151

¹⁰² *ibid*

¹⁰³ Baker *Legal education in London* n2 17-18

¹⁰⁴ Holdsworth vol VI n96 593

¹⁰⁵ Hoeflich n94 247; Baker *An introduction* n82 170

met with no greater success; a similar lack of attendance met the lecturers at Cambridge.

On its foundation the University of London sought to provide an education in practical law for intending barristers and attorneys.¹⁰⁶ In 1828 University College London began teaching law¹⁰⁷. The lectures were not a success¹⁰⁸; as no degree was needed to practice, and there was no exam to pass¹⁰⁹, there was little demand from students. Indeed, it was not until 1872 that exams were a requirement for the call to the Bar.¹¹⁰

The Inns made some efforts towards education in the 18th and 19th centuries; lectures and readings which met with limited success¹¹¹.

As was the case for the advocates, attorneys were also associated with an Inn- either of Court, or Chancery.¹¹² However from the 17th century they were gradually excluded from the Inns of Court, coming to be associated solely with the Inns of Chancery.¹¹³ There were for a time lectures or readings in the Chancery inns, often delivered by a member of the Inns of Court.¹¹⁴ Alongside this- and latterly in place of it- attorneys generally undertook a period of apprenticeship, and were subject to statutory registration and the supervision of judges.¹¹⁵ The education of attorneys was regulated by such legislation as the Attorney Act 1729, which stipulated a five year period of 'articles' and subjected attorneys to the scrutiny of the judges.¹¹⁶

¹⁰⁶ Christopher Brooks and Michael Lobban, 'Apprenticeship or academy? The idea of a law university, 1830-1860' in Jonathan Bush and Alain Wijffels (eds), *Learning the law: teaching and the transmission of law in England 1150-1900* (Hambledon Press, 1999) 353, 359

¹⁰⁷ Hoeflich n94 247; Brooks and Lobban n106 359-60

¹⁰⁸ Baker *Legal education in London* n2 28-32; Brooks and Lobban n106 353, 360

¹⁰⁹ Baker *Legal education in London* n2 37-38; Committee on Legal Education n5 5; Brooks and Lobban n106 353, 360

¹¹⁰ Baker *An introduction* n82 171

¹¹¹ Hoeflich n94 248; Brooks and Lobban n106 353, 361

¹¹² *Report from the Select Committee on legal education* n88 13

¹¹³ *ibid*

¹¹⁴ *Report from the Select Committee on legal education* n88 14

¹¹⁵ Brooks n87 130-131 Brooks notes that there were elements of self-regulation, such as the use of juries of attorneys to assess practitioners; *Report from the Select Committee on legal education* n88 14

¹¹⁶ Brooks and Lobban n106 353, 354; Brooks n87 154

To remedy some of the educational deficiencies of the time, attorneys also established groups for professional support, which in London led to the establishment of the Society of Gentlemen Practisers in 1737¹¹⁷.

In 1825 the Law Institution was formed in London, in 1827 the Incorporated Law Society was formed,¹¹⁸ and in 1831 the Law Society obtained its charter. The Law Institution provided lectures from 1833¹¹⁹ and in 1836 a requirement was instituted whereby people had to pass an exam before they could be admitted to the roll¹²⁰. The Solicitors Act of 1843 formalised this requirement, with the judges having control of the examination, and established the Law Society as the regulatory body for solicitors.¹²¹

Despite the emergence of lectures for attorneys and solicitors, the principal form of learning continued to be office-based, and in the case of attorneys / solicitors rooted very much in practice.

The 1846 Select Committee on Legal Education

The 1846 Select Committee met against the backdrop of a sustained period of campaigning for change in legal education.¹²² The report has been described as 'highly critical'¹²³, indeed 'scathing.'¹²⁴ In its own words:

it may therefore be asserted...that the student, professional, and unprofessional, is left almost solely to his own individual exertions... and that no Legal Education, worthy of the name, of a public nature, is at this moment to be had in either country.¹²⁵

Whilst it looked at the legal education of practitioners, it had been called to look at legal education as a whole.¹²⁶ Both branches of the legal profession- the barristers and attorneys- were seen to be lacking; the Bar was held to lack

¹¹⁷ Brooks n87 134; Holdsworth vol VI n96 443

¹¹⁸ *Report from the Select Committee on legal education* n88 15

¹¹⁹ Brooks and Lobban n106 353,361; *Report from the Select Committee on legal education* n88 xv

¹²⁰ Brooks and Lobban n106 353, 362

¹²¹ Brooks n87 142; Committee on Legal Education n5 v

¹²² Hoeflich n94 248; Brooks and Lobban n106 353, 368-370

¹²³ Brooks n87 172

¹²⁴ Brooks and Lobban n106 353, 370

¹²⁵ *Report from the Select Committee on legal education* n88 lvi

¹²⁶ Brooks n87 173

detailed legal knowledge, whilst the attorneys lacked a wider general education.¹²⁷

The report noted that all of its respondents were agreed that the system of legal education was inadequate and in need of wide ranging reform.¹²⁸ A fair degree of the blame was laid at the door of practitioners, who were seen to be indifferent- if not actively hostile- to legal education reform efforts.¹²⁹

This situation was seen to lead to risk for the public, and the student. The lack of formal legal education left students inadequately prepared for a legal career or judicial responsibility.¹³⁰ Similar risks in other professions such as medicine were ameliorated by education, and the same should apply to law.¹³¹

The report opened with the observation that there was little in the way of legal education in universities, particularly when compared with the situation in Germany.¹³² Even in places where there were chairs, and instruction in the common law, there were few students and in some cases no exam or degree.¹³³ Attorneys did not attend lectures, and the exam they did sit was seen as inadequate¹³⁴; it was characterised as only ' a guarantee against absolute incompetency.'¹³⁵

In recommending that the universities take a leading role, the committee recognised that universities had a specific place in legal education. This was to provide the philosophical underpinnings for legal practice; the role of universities was to educate and develop. They would not replace practical apprenticeship based modes of learning for legal practice. Here we see the beginnings of the stage approach to legal education, wherein the student is first

¹²⁷ W Wesley Pue, "Guild training vs professional education: the Committee on Legal Education and the Law Department of Queen's College, Birmingham in the 1850s" (1989) 33 *The American Journal of Legal History* 241, 258

¹²⁸ *Report from the Select Committee on legal education* n88 xxviii

¹²⁹ *ibid*

¹³⁰ *Report from the Select Committee on legal education* n88 lvii

¹³¹ *ibid*

¹³² *Report from the Select Committee on legal education* n88 iii; Hoeflich n94 249

¹³³ *Report from the Select Committee on legal education* n88 iii-v

¹³⁴ *Report from the Select Committee on legal education* n88 xiv

¹³⁵ *Report from the Select Committee on legal education* n88 xvi

introduced to general principles of law through a degree and then through practical learning and training they learn the application of that knowledge.¹³⁶

The committee recommended that the Inns of Court form a College of Law to act as the 'university' for practical legal education, and that the existing university law faculties be enlarged and supported in the creation of new professorships; law degree examinations should be reviewed and made stricter.¹³⁷

In its 'resolutions' the report summarised what it felt were the main problems with legal education at the time. Such education as there was lacked system; the universities provided a thin and patchy coverage, and the Inns of Court no coverage at all.¹³⁸

The Committee said that there was no legal education in England, and concerns were expressed about the "state of English law as an intellectual discipline."¹³⁹ It called for more professors of law, for Arts courses to incorporate legal history and jurisprudence, and for exams to be improved.¹⁴⁰ The Inns were called upon to 'return' to the work of vocational education. They would function as a law university, entrants to which would require a degree.¹⁴¹ The vision for universities was rooted in the example of German universities with their powerful academics.¹⁴² The teaching to be provided could extend into what we would now call public legal education, with a strong legal university sitting "not merely at the heart of public education, but public life."¹⁴³

The 1854 Royal Commission on the Inns of Court

The 1854 Royal Commission was convened to investigate the educational provision of the Inns of Court. It looked at legal education in England, and a

¹³⁶ *Report from the Select Committee on legal education* n88 xlvii; Committee on Legal Education n5 7

¹³⁷ *Report from the Select Committee on legal education* n88 lix; Committee on Legal Education n5 7

¹³⁸ *Report from the Select Committee on legal education* n88 lvi-lvii

¹³⁹ Baker *Legal education in London* n2 41; Brooks and Lobban n106 370

¹⁴⁰ Baker *Legal education in London* n2 41

¹⁴¹ Baker *Legal education in London* n2 41; *Report from the Select Committee on legal education* n88 lix

¹⁴² Brooks and Lobban n106 353, 371

¹⁴³ *ibid*

number of other jurisdictions, with a view to recommendations on improving the English system.¹⁴⁴

The educational demands placed on the intending barrister had not changed much since the 1846 Select Committee; the student joined an Inn, attended dinners, and listened to lectures or sat an exam.¹⁴⁵ This was an improvement on the previous system where there had been no lecture or exam; the commission noted that the creation of the Council for Legal Education in 1852 had been important in this area.¹⁴⁶

Many of the witnesses expressed a desire that “every Student of Law ought to have received a liberal education.”¹⁴⁷ An examination to test the knowledge that such an education provided was seen to be beneficial.¹⁴⁸ This idea speaks to wider themes of the content of legal education. Should lawyers have received the widest possible education, or just that required for effective legal practice? What should control the content- the 'needs' of society as a whole for an educated legal profession, or the 'needs' of the legal profession as defined by practice realities?

Others felt that the requirement for a wider liberal education might deter people from seeking admission to the Bar, people who could take up liberal education through their career; for those who had been to University it could be assumed they had received a liberal education.¹⁴⁹

An examination before entry to the Bar was more widely accepted.¹⁵⁰ Such an exam would encourage and reward attendance at the Inn lectures and serve to improve and maintain the quality of the Bar. Opposition to such an exam was rooted in the feeling that it might deter some otherwise worthy candidates for the Bar¹⁵¹, and also promote superficial knowledge acquisition.¹⁵²

¹⁴⁴ *Report of the commissioners appointed to inquire into the arrangements in the Inns of Court and Inns of Chancery, for promoting the study of the law and jurisprudence; together with appendices.* (1998, 1854-55) 10

¹⁴⁵ *ibid*

¹⁴⁶ *Report of the commissioners* n144 14

¹⁴⁷ *Report of the commissioners* n144 12

¹⁴⁸ *ibid*

¹⁴⁹ *ibid*

¹⁵⁰ *ibid*

¹⁵¹ A view expressed by, amongst others, Whitmarsh, Treasurer of Gray's Inn. *Report of the commissioners* n144 80; this view was countered by witnesses such as Maine, who argued that

The commissioners themselves were strongly in favour of examinations, both in respect of general education and of professional knowledge.¹⁵³ They noted that solicitors and other professionals, such as clergymen, had to pass exams.¹⁵⁴ Whilst they acknowledged concerns that an exam might deter those who wished to be called to the Bar for the legal knowledge, social, and cultural status it afforded,¹⁵⁵ they argued that this was not sufficient an argument against examinations.¹⁵⁶

A system of lectures would provide students with the principles of legal knowledge which were seen to be of value to barristers- both as legal practitioners and potential judges.¹⁵⁷

In calling for exams the Commission stressed that it valued practice based education, whilst pointing out that such an approach did not allow for a wider understanding of 'the scientific branches of Legal knowledge' such as jurisprudence and legal history.¹⁵⁸ A period of lecture based study of general principles of law would make practical learning, such as pupillage, more effective.¹⁵⁹

After the Royal Commission

The response of the professions to the Select Committee and Royal Commission has been characterised as "refinement" of their own exams and the teaching systems associated with them.¹⁶⁰

A number of universities responded positively to the recommendations of 1846 and 1854. In the 1850s both Oxford and Cambridge set up law degrees.¹⁶¹ Law schools at University College and King's College London were joined by one at

there were public benefits to be had from examining those who wished to gain by being called to the Bar- see p 99

¹⁵² *Report of the commissioners* n144 12

¹⁵³ *Report of the commissioners* n144 15

¹⁵⁴ *ibid*

¹⁵⁵ *Report of the commissioners* n144 12, 16

¹⁵⁶ *Report of the commissioners* n144 16

¹⁵⁷ *Report of the commissioners* n144 15-16

¹⁵⁸ *Report of the commissioners* n144 15

¹⁵⁹ *Report of the commissioners* n144 16

¹⁶⁰ *The Royal commission on legal services* (Cmnd. 7648, 1979) 608

¹⁶¹ Baker *An introduction* n82 171; Brooks and Lobban n106 374; Boon and Webb 'Legal education' n34 85; Gary Slapper, "The history of legal education" [2011] 8 *Journal of Commonwealth Law and Legal Education* 8, 12

the London School of Economics. Outside of London as new institutions were founded so new law schools were founded¹⁶².

Despite all of this academic activity, neither the Inns of Court nor the Law Society made a move to *requiring* a law degree and there was no clarity on the 'status' that academic study had in the profession.¹⁶³ It remained the case that most lawyers would not have a law degree, or indeed a degree of any sort.¹⁶⁴

As debate continued both parts of the profession pursued their own courses in legal education. The Council of Legal Education had been founded by the Bar in 1852 and in 1903 the School of Law was established by the Law Society¹⁶⁵.

In the wake of the Royal Commission the Bar had introduced, albeit reluctantly, examinations- although the final examination for the Bar did not become compulsory until 1872¹⁶⁶.

Most studied for the Bar final examination through a tutor service or, harking back to their 18th-century ancestors, studied on their own account via law books. Some teaching for the exams was provided for the Council of Legal Education by University law tutors.

The Law Society took control of solicitors' qualifying exams in 1877¹⁶⁷. With the increasing importance of exams came the increased importance of effective teaching. The Bar could rely on the concentration of many of its members in London to provide for effective education. This was not the case for solicitors, who worked around the country. Articles were still the main form of education and training, and as noted earlier this did not allow time or energy for detailed study and also varied widely in quality.

To allow for such time the Law Society ruled that clerks could take time to study for the exams. The developing importance of the exams and the patchiness of

¹⁶² For example Queen's College Birmingham- W Wesley Pue n127; Baker *An introduction* n82 171

¹⁶³ Brooks and Lobban n106 375, 376

¹⁶⁴ David Sugarman, 'A special relationship? American influences on English legal education 1870-1965' [2011] 18 *International Journal of the Legal Profession* 7, 10

¹⁶⁵ *The Royal commission on legal services* n160 608-609

¹⁶⁶ Brooks and Lobban n106 376

¹⁶⁷ *The Royal commission on legal services* n160 608; Boon and Webb 'Legal education' n34 83-84

educational provision was the main impetus behind the foundation of the School of Law.

Legal education was still very much under the control of the legal profession, despite the emergence of several university law schools and the evident desire for reform. The content of legal education, including much of the content of law degrees, was influenced by the professions. As apprenticeship was still the main mode of training for lawyers most learning took place in practice contexts and reflected practice needs. Such liberal education as lawyers might receive was the purview of schools and universities, and derived from subjects other than law.

The next chapter looks at how such developments were continued and expanded on in the 20th and 21st centuries, starting with the Haldane Commission's study of higher education in London and concluding with the Legal Education and Training Review.

Chapter 5- Legal education: from Haldane to the Legal Education and Training Review

The Haldane Commission

The Haldane Commission, which was set up to look at university education in London and sat between 1910-1913, included discussions of legal education. It can be seen to have endorsed a vision of stages of 'theory plus practice' for legal education.¹⁶⁸ The theory / university stage would focus on general educational goals- the 'science' of law- which the Commission felt had been neglected.¹⁶⁹ A university education in law was not only of value to those intending to practice, but was also of use to those going into colonial, diplomatic, and local government service¹⁷⁰ - a view echoing ideas put forward in 1846.

The Haldane Commission did not support the idea of a general University of Law in London. It held that law should be taught within the University of London as one faculty or department amongst many. This would allow the study of law to be carried out with academic freedom and integrity; there were concerns that a separate University of Law might be subject to professional capture and become rather narrow in its work. This concern was rooted in the idea that the study of law should be academic and free from professional control, whilst retaining a link with practice realities; it was part of establishing law as an academic discipline.

The Society of Public Teachers of Law had been founded the year before the Haldane Commission began its work, with the explicit purpose of developing both legal education and the work of legal educators. In terms of control and content this reflects an emerging desire to establish a clearly defined sphere for academic law and law teaching, which would feed into subsequent discussions; it perhaps in part contributed to tensions by *creating* a separate focus of debate and associated professional claims.

In 1922 it was decided that all those who wished to be admitted to the solicitors' roll had to take an academic year's study at the School of Law or other appropriate institution; law graduates and those who had served as articled

¹⁶⁸ Boon and Webb 'The legal professions' n30 81

¹⁶⁹ *Royal Commission on University Education in London. Final report of the Commissioners* (Cd. 6717, 1913) 146

¹⁷⁰ *ibid*

clerks for ten years (the "ten-year men") were granted an exemption from this year¹⁷¹. This reflected a developing sense that some form of academic study was useful for solicitors.

The Atkin Committee

The Legal Education Committee- hereafter the Atkin Committee- was set up in 1932 to investigate legal education with a focus on two areas; improved co-operation between universities and the legal professions, and provision for advanced legal studies.¹⁷²

In an echo of earlier reports, the Committee said that university law schools would focus on the study of law as part of a broader system of knowledge, focusing on the 'science' of law.¹⁷³ That said, the Atkin Committee argued that whilst universities should be free to pursue such a 'scientific' education, they should also have regard to the needs of those intending to enter legal practice.¹⁷⁴ Indeed the Atkin Committee argued that the distinction between academic and professional stages should not be 'exaggerated,' the difference being perhaps one of emphasis.¹⁷⁵ As different spheres of activity emerged, so each would take its lead from the group providing the activity, with the academic stage providing coverage of a broad liberal education and the practice stage the elements required of the working lawyer.

Students could be spared some time and expense by allowing greater exemptions from professional exams for law graduates.¹⁷⁶ Such exemptions, and other matters of concern to providers and students, could be managed through the creation of an Advisory Committee.¹⁷⁷ Such a committee would bring together representatives of the academy and the professions.

¹⁷¹ Committee on Legal Education n5 12-13

¹⁷² *Report of the Legal Education Committee* (Cmd. 4663, 1933-34) 3

¹⁷³ *Report of the Legal Education Committee* n172 6; Bradney comments on the common use of the term 'science of law' as part of university law school identity formation- Anthony Bradney, "Ivory towers and satanic mills: choices for university law schools" (1992) 17 *Studies in Higher Education* 5, 11

¹⁷⁴ *Report of the Legal Education Committee* n172 6

¹⁷⁵ *ibid*

¹⁷⁶ *Report of the Legal Education Committee* n172 7

¹⁷⁷ *Report of the Legal Education Committee* n172 7-8

In the period after the Atkin Committee law schools maintained their rhetorical commitment to the 'science of law,' but their curricula tended to be shaped more by the needs of the professions.¹⁷⁸

The Ditchley Conference

In the early 60s the Law Society formed the College of Law¹⁷⁹, and 1967 saw the formation of a permanent Bar school in the form of the Inns of Court School of Law¹⁸⁰. This period also saw an expansion of higher education and with it a greater acceptance of the value of degrees within the legal profession.¹⁸¹

The Ditchley Conference brought together academics and practitioners to discuss "training for the law."¹⁸² It looked at Britain and North America and covered the full range of education and training, from law degrees to work done in legal practice.¹⁸³

The legal education system at the time has been characterised as 'un-coordinated and unplanned' with practitioners and academics existing in a state of 'mutual indifference.'¹⁸⁴ In terms of control and content the two groups maintained such control as they could in their areas of work, with practitioners having a greater degree of overall control through their influence over the required content of law degrees. The lack of a central body, such as a legal education council, was part of a broader problem with management and communication within legal education.

A tripartite system of education, much like that laid out a few years later in the Ormrod Report, was suggested by one of the sub-groups. This would be made up of a legal knowledge stage, a practice stage based on group learning, and an experiential stage along the lines of pupillage or articles.¹⁸⁵

Universities- so long as their teaching met the standards required by the professions- would be the site of initial education; practical training was very

¹⁷⁸ Bradney 'Ivory towers' n173 11

¹⁷⁹ Boon and Webb 'Legal education' n34 84

¹⁸⁰ *ibid*

¹⁸¹ Boon and Webb 'Legal education' n34 88

¹⁸² *Training for the law* (The Ditchley Foundation, 1967)

¹⁸³ *Training for the law* n182 13

¹⁸⁴ Boon and Webb 'Legal education' n34 89

¹⁸⁵ *Training for the law* n182 24

definitely the responsibility for of the profession.¹⁸⁶ University legal education could be seen as a 'liberal education', with the caveat that changes in the content of the initial stage could mean changes in the character of the degree.¹⁸⁷

Some concern was expressed that a graduate-only profession could exclude some people who might otherwise be good lawyers; such exclusion could be made less likely by ensuring institutions could accept all applicants.¹⁸⁸

The Ditchley Report made two recommendations which echoed those of previous reports and which would be repeated in subsequent ones- the formation of a legal education council, and the creation of a continued professional education scheme.¹⁸⁹

The Ormrod Report

The Ormrod Committee was formed in 1967, with a remit to consider legal education with particular reference to improving co-operation between the various elements of the system, looking at the contribution of institutions of higher education, and considering the work of the professional bodies.¹⁹⁰

When the report was published there were 22 law schools in universities, seven colleges providing law degrees, and other institutions providing teaching towards the external London law degree. Some 80% of those practising at the Bar, and 40% of solicitors, were law graduates. These branches were on their way to becoming primarily a graduate profession, and in time primarily a law graduate profession.¹⁹¹

The current form of the academic stage can be traced back to the Ormrod Report. Whilst there was no set 'core' for the law degree, there was a notable uniformity in coverage, driven by the exemptions offered from professional examinations. This has been seen as something of a negative, with the emphasis on professional elements inhibiting development of the degree; the

¹⁸⁶ *Training for the law* n182 26

¹⁸⁷ *Training for the law* n182 31

¹⁸⁸ *Training for the law* n182 42; this concern had earlier been expressed in the 19th century reports

¹⁸⁹ *Training for the law* n182 32

¹⁹⁰ Committee on Legal Education n5 1

¹⁹¹ There were still significant numbers who had qualified as lawyers without law degrees, or in some cases any degree at all. Committee on Legal Education n5 16

emphasis on certain topics for professional exams was seen as leading to cramming at this stage.¹⁹²

Contract, tort, crime, property, constitutional law, and elements of the legal system were found in almost all courses. This reflected an underlying professional consensus as to what lawyers needed to know and perhaps also their importance as sources of work for lawyers.

In its discussion of the overall structure of legal education, the Committee noted the underlying tension in legal education. On the one hand there was the need to prepare students for membership of a 'learned' profession; on the other there were the practical demands of working in that profession.¹⁹³

Historically - at least since the decline of the Inns of Court - practical training had been left to apprenticeship, supplemented by such reading and instruction the student could find.¹⁹⁴ The development of the law degree placed legal education in a new situation - how to educate students to be professionals via the degree, and also prepare them for the realities of practice; how could these elements work together?

Concerns were expressed by the universities regarding the requirements of professional exams, which were held to be restrictive of their work. The need to provide relevant material to allow students to gain exemptions from the exams was a major part of this restriction.

The Ormrod Committee proposed that the academic and vocational stages become more closely linked or integrated.¹⁹⁵ A major part of this would be the recognition of a law degree as a sufficient first stage qualification, and not merely something offering exemptions from the first of a two stage examination process.

The argument advanced was that there should not be any distinction between academic and vocational stages, nor should there be any tension between them. By working together and appropriately placing different aspects of the

¹⁹² Boon and Webb 'Legal education' n34 90

¹⁹³ Committee on Legal Education n5 33

¹⁹⁴ *ibid*

¹⁹⁵ Committee on Legal Education n5 34

educational system into academic and vocational areas, the Ormrod Committee argued that better use could be made of resources and a better experience

The Ormrod Report laid out three aims for the academic stage. It would provide students with legal knowledge, an awareness of how law relates to social and economic conditions and the skills to deal with legal facts and apply legal concepts to those facts.¹⁹⁶

Whilst some non-law graduates would still be allowed to enter the profession the Ormrod Committee felt that the majority of legal professionals should have a law degree. Through this degree students would get the basic intellectual skills any degree would offer and at the same time develop, or begin to develop, specific legal skills and knowledge.¹⁹⁷

The law degree would not aim to teach everything a legal professional might need to know. Rather it should cover as much of the core knowledge and skills as were required for both smooth progress to the next stage of training and continuous learning throughout the student's career.¹⁹⁸ As well as legal skills and knowledge, the student would also be introduced to elements of other disciplines that may be useful.¹⁹⁹

The Ormrod Committee argued that an education of this nature, with its mixed legal and general skills and knowledge development, could “only be provided in the setting of the University or College of higher education.”²⁰⁰ At the time of the Ormrod Report the solicitors' and barristers' professional bodies both felt that law should be a graduate profession as soon as possible; this did not mean the profession should be exclusively for graduates, but that the majority should hold a degree.

This emerges as a key theme- should lawyers be graduates, of law or any other discipline? For much of its history the legal profession did not require a degree, and some routes such as that provided by CILEX allow for qualification without a degree. As we will see there are some still within the profession who do not see a law degree as necessary for lawyers, and developments post-LETR could

¹⁹⁶ Committee on Legal Education n5 43

¹⁹⁷ *ibid*

¹⁹⁸ *ibid*

¹⁹⁹ Committee on Legal Education n5 44

²⁰⁰ *ibid*

well see more non-graduate routes opening up- 'graduate level' skills and knowledge being more important than having a degree.

The vocational course would provide students with access to professional educators, who would provide an education which would enable the students to apply legal knowledge in practice settings. In-training, such as pupillage, would build upon this and in the best situations would provide an example and experience based learning opportunity for prospective lawyers.

The Ormrod Committee saw the vocational course as forming a link between the academic stage and the application of legal knowledge in practice.²⁰¹ Courses would not introduce students to law, in the sense of bodies of knowledge, but rather to the practical skills of the lawyer and the techniques they use in applying that knowledge.²⁰² Any substantive law that would be covered would come from within vocationally relevant areas such as procedural law.²⁰³

Although the courses would be delivered in an educational setting, the Ormrod Report was clear that as much time as possible should be spent with legal practitioners. Students should also be encouraged to visit a range of relevant practice settings.²⁰⁴

Taken together the report's recommendations would mean that a typical entrant to the legal profession would have a law degree, a certificate from a vocational course, and experience gained in a practice setting.²⁰⁵ The professions moved to a graduate only position in the wake of Ormrod, and over time developed vocational courses and refined their practice stages.

Whilst many of its recommendations were not taken up, the Ormrod Report set the foundations for legal education to the present, and its views were endorsed by subsequent investigations into legal education.²⁰⁶ In creating definite stages of education it can be seen to have contributed to continued tension between

²⁰¹ Committee on Legal Education n5 61

²⁰² *ibid*

²⁰³ Committee on Legal Education n5 62

²⁰⁴ *ibid*

²⁰⁵ Committee on Legal Education n5 97

²⁰⁶ Boon and Webb 'Legal education' n34 91

liberal and vocational approaches to legal education²⁰⁷, and despite the move of professional courses into the academy to have removed the influence of academics from the process of professional development.²⁰⁸

The Royal Commission on Legal Services- the Benson Commission

The Benson Commission was called to investigate all aspects of legal services; here we will concentrate on its discussion of legal education.

The Commission commented that whilst law degrees were accepted as giving exemption from professional qualifications, they were not a legal qualification in their own right.²⁰⁹ Law degrees had to contain the 'core' subjects prescribed by the professions, and forms of assessment were set by the profession.²¹⁰

The Law Society had recently changed its education and training regulations, producing a system broadly similar to that of today and reflecting the Ormrod recommendations. There would be an academic stage, consisting of a law degree or the Common Professional Examination, followed by a vocational course and Final Examination, concluding with a two year period of articles.²¹¹

The system for barristers was broadly similar, with the law degree or Common Professional Examination forming the academic stage, followed by a vocational course and a one year pupillage.²¹²

The Commission noted that graduates formed the majority of the profession, and were supportive of the value of graduates to a profession. They did not want to limit entry to *only* law graduates, as this might mean otherwise valuable members might be lost to the law.²¹³ This view, which pre-dates Benson, can be seen to be behind the reality that a law degree has never been a *sine qua non* for legal practice.

With regard to the law degree, the Commission agreed that professional control over the degree should not inhibit the freedom of universities; on the other hand, if the degree were to exempt graduates from professional requirements, it

²⁰⁷ Bob Hepple, "The renewal of the liberal law degree" [1996] 55 C.L.J. 470, 471

²⁰⁸ Boon and Webb 'Legal education' n34 91

²⁰⁹ *The Royal commission on legal services* n160 607

²¹⁰ Boon and Webb 'Legal education' n34 91

²¹¹ *The Royal commission on legal services* n160 615; there were alternative arrangements for non-graduates

²¹² *The Royal commission on legal services* n160 619

²¹³ *The Royal commission on legal services* n160 630, 660

should reflect the requirements of the profession.²¹⁴ This balance- between academic freedom and professional needs- is seen later in the theme of control. Even with a separate academic sphere there is a continued emphasis on the need for that sphere to recognise and incorporate the requirements of the legal profession. In the integrated system of the Inns, and the 'pure' apprenticeship that followed, this was not an issue; as academic law developed control became an issue.

The Advisory Committee on Legal Education and Conduct: first report

The white paper underlying the Courts and Legal Services Act 1990, *Legal services: a framework for the future*²¹⁵, called for the Advisory Committee created after the Ormrod Report to be 'reconstituted.'²¹⁶ The new committee would keep legal education under review, bringing together interested parties to develop standards and offer advice.²¹⁷ The Act brought this recommendation into reality through the creation of the Advisory Committee on Legal Education and Conduct (ACLEC.)²¹⁸

Its first report has been seen as radical compared with previous legal education reviews, with a clear commitment to liberal legal education²¹⁹. In the introduction to the report the ACLEC was clear that solicitors and barristers would still form the base of the legal profession, whatever the future changes in legal practice.²²⁰ The effects of the Courts and Legal Services Act 1990 were still unwinding, but the Committee anticipated that the opening up of the market for legal services would continue and bring in more and different providers.²²¹ Any new forms of legal practice- and practitioner- would be judged against the standards set by the solicitor and barrister professions.

²¹⁴ *The Royal commission on legal services* n160 632

²¹⁵ Lord Chancellor's Department, *Legal services: a framework for the future* (Cm 740, 1988/89)

²¹⁶ Lord Chancellor's Department n 215 30

²¹⁷ *ibid*

²¹⁸ Courts and Legal Services Act 1990 s19

²¹⁹ Webb 'Regulating lawyers' n1 555; Boon and Webb 'Legal education' n34 96; N K Sam Banks, "Pedagogy and ideology: teaching law as if it matters" (1999) 19 LS 445, 448; Hepple n207 471

²²⁰ ACLEC, *First report on legal education and training* (Lord Chancellor's Advisory Committee for Legal Education and Conduct, 1996) 3

²²¹ ACLEC n220 11

The Report noted the changes in legal practice and higher education which set the context for its work.²²² Such changes required that legal education be as flexible in its approach as possible, with greater freedom for providers in designing and delivering education.²²³

The Report saw the post-Ormrod situation as unsatisfactory. The rigid distinction between academic and vocational stages, and the view some took of the academic stage as being primarily a preparation for the vocational stage, were particularly noted.²²⁴

In terms of legal education its key recommendation was that "the degree course should stand as an independent liberal education in the discipline of law, not tied to any specific vocation."²²⁵ This was linked to the ideal of law as a preparation for a range of occupations and careers.²²⁶ A move away from a prescriptive 'core' to a focus on skills and development was recommended.²²⁷ Universities should be free to decide what should be studied²²⁸, and how, with *some* element of prescription to ensure coherence²²⁹ and with the proviso that "the broad aims of the undergraduate law degree are satisfied."²³⁰

The professional bodies would retain the right to withdraw recognition of degrees should they not meet the required intellectual and content standards.²³¹

There needed to be greater co-operation between academics and practitioners, even as the former were given greater autonomy; such co-operation would be made easier by moving away from rigid distinctions between the academic and vocational stages.²³²

The law degree is seen as a site for the development of "intellectual integrity and independence of mind" and "core knowledge."²³³ The development of professional approaches, skills, and values were for the most part to be found in

²²² ACLEC n220 2

²²³ ACLEC n220 19

²²⁴ ACLEC n220 22, 24

²²⁵ ACLEC n220 45, 91

²²⁶ ACLEC n220 19

²²⁷ ACLEC n220 49

²²⁸ ACLEC n220 19

²²⁹ ACLEC n220 49

²³⁰ ACLEC n220 91

²³¹ ACLEC n220 56, 91

²³² ACLEC n220 20

²³³ ACLEC n220 21

vocational education, although the area of 'legal values' is part of the overall process of legal education.²³⁴

Here we see the themes of control and content, and the ongoing debate over the roles of the university and the legal profession in legal education - who should set standards, and how should those standards be interpreted by law schools?

Despite its extensive work, most of the recommendations of the report were not taken up²³⁵; it has been argued that some of its work did have an effect in so far as the professional bodies made changes to their Joint Announcement on law degrees in light of the report- such as removing content specifications for the core²³⁶ and there was a relaxation of the regulation of law degrees.²³⁷ We can also see its influence in the ongoing emphasis on a range of routes to qualification and the need for a diverse profession.²³⁸

The Legal Education and Training Review

The Legal Education and Training Review (LETR) was convened by the barrister, solicitor, and legal executive regulators. It first met in 2011 and issued its final report in July 2013²³⁹. The LETR focused on the regulation of legal services education and training rather than specifics of courses, although it did look at such issues.

The LETR report had three aims - to ensure that future lawyers had the knowledge and skills necessary, that the regulation of legal services education and training is helpful to providers of legal education, and that legal services employers were able to train and develop their employees.²⁴⁰

The LSA 2007 was recognised as the primary driver of the changes affecting legal services.²⁴¹ Along with the changes introduced by the LSA 2007, the report observed the great changes in the use of technology in legal services, increasing globalisation in the legal services market, changes in the

²³⁴ *ibid*

²³⁵ Legal Education and Training Review *Setting standards* n3 v

²³⁶ Webb 'Regulating lawyers' n1 555

²³⁷ Guth and Ashford n4 10

²³⁸ Webb 'Regulating lawyers' n1 556

²³⁹ Legal Education and Training Review *Setting standards* n3

²⁴⁰ Legal Education and Training Review *Setting standards* n3 ix

²⁴¹ Legal Education and Training Review *Setting standards* n3 v

composition of society, shifts in the attitudes people have towards legal services, and an emphasis on efficiency and value for money all played their part in setting the context for legal services.²⁴²

The review put forward a number of key messages. It said that legal services in England and Wales were well-regarded and any changes in legal education and training would have to ensure that this level of respect was maintained.²⁴³ The extent and rate of change, it was argued, meant that any changes to the education had to be flexible and adaptive in order that legal services could respond to change effectively.²⁴⁴ In order to enable all those with the abilities and talents needed to succeed, legal education and training itself should promote a diverse legal services workforce.²⁴⁵

In its headline findings the research phase acknowledged that broadly speaking the current system of legal education worked well.²⁴⁶ However three areas were identified in which there was potential for reform and improvement.

The first area was that of quality. Here there were concerns over consistency in legal education, the presence or lack of training in ethics, a system or lack of such in continuous professional development, and a lack of information available to regulators for the assessment of quality in legal services education and training.²⁴⁷

The second area was “access and mobility;” there was concern over the lack of information for prospective law students, and a desire to create new ways into the profession- for example legal apprenticeships.²⁴⁸ Universities could be part of these apprenticeships²⁴⁹ and groups such as paralegals are being looked at as an element in widening participation.²⁵⁰

Thirdly was the issue of flexibility. Regulators should work together to establish common educational outcomes for legal education. It should be easier to transfer between different branches of the profession, and indeed easier to

²⁴² *ibid*

²⁴³ Legal Education and Training Review *Setting standards* n3 vi

²⁴⁴ Legal Education and Training Review *Setting standards* n3 vii

²⁴⁵ *ibid*

²⁴⁶ Legal Education and Training Review *Setting standards* n3 ix

²⁴⁷ *ibid*

²⁴⁸ Legal Education and Training Review *Setting standards* n3 x

²⁴⁹ See <http://www.law.mmu.ac.uk/business/business-legal-apprenticeships/> for an example

²⁵⁰ See http://www.cilex.org.uk/about_cilex/paralegal_enquiry.aspx

enter the profession. Any systems of education and training should allow for flexible approaches to teaching and learning.²⁵¹

In terms of a set of common outcomes and standards for lawyers the LETR focused on the issue of *competence*. It argued that the current education and training system did not lead to clearly demonstrated competence on the part of those who passed through it.

The LETR recommended that for each regulated area of legal services learning outcomes should be defined.²⁵² Guidance would help legal services education and training institutions to create assessments which established that their students had received the relevant education and training and had met the competency standards.²⁵³

These developments could lead to a return of apprenticeship modes and thus greater control by the legal professions over the content of legal education. The creation of competency frameworks would feed into this process, as they would exert an influence on legal education providers- including university law schools, many of whom would feel they needed to ensure their graduates met some (if not all) of the competency standards.

This said the LETR also recognised that too close a regulation of the law degree could have a limiting effect, especially if law schools started basing their teaching on vocational outcomes or if 'crammer' schools re-emerged to help prepare graduates for vocational exams.²⁵⁴

The learning outcomes should be based on an understanding of the knowledge, skills and character required in the regulated profession in question.²⁵⁵

The competency framework looks ahead to the first day of practice, or 'day one.' The competencies are predicated on the notion that this day one is the first day in a specific legal services environment²⁵⁶. Having met such competency

²⁵¹ Legal Education and Training Review *Setting standards* n3 x

²⁵² Legal Education and Training Review *Setting standards* n3 xiii

²⁵³ *ibid*

²⁵⁴ Legal Education and Training Review *Setting standards* n3 141

²⁵⁵ Legal Education and Training Review *Setting standards* n3xiii

²⁵⁶ Legal Services Institute n61

standards an individual would be authorised to practice in that area.²⁵⁷ The requirements of such competency frameworks can be argued to have potential impact on any academic stage of legal education²⁵⁸, as the report recommends that these frameworks “be cascaded downwards.”²⁵⁹

How this cascading will be done is important when considering the relationship between legal education and legal practice. Will they appear in the law degree, which would support an element of practitioner control, or will they only be part of vocational / apprenticeship schemes? It is likely that a range of responses will emerge, conditioned by the perceived needs of institutions and their students; some universities will not look to the competency statements, stressing their commitment to a liberal and general education, whilst others will seek to incorporate some into their programmes.

In terms of the level of content and assessment required as it relates to national qualifications frameworks, the research phase implicitly argued for a graduate level profession. A common set of competency standards would be set at a level equivalent to that of an undergraduate degree.²⁶⁰

Such a common framework would not only guarantee intellectual and practical standards, it would also make it easier for people to plan progression and transfer within and between different regulated professions. Looking to the future the LETR envisaged a common set of learning outcomes for legal services education and training providers.²⁶¹

Responses to the Legal Education and Training Review

The LSB has been clear in its support of major reform of legal education²⁶², and their attitude is likely to be crucial in defining the terms of debate. They have issued statutory guidance to the frontline regulators, which clearly assumes that competency based approaches, risk based and outcome focused regulation,

²⁵⁷ Legal Education and Training Review *Setting standards* n3 xiii; The idea of day one competences can be traced to the 80s and vocational qualifications, and became prominent in discussions on the vocational stage in the early 2000s; Boon and Webb 'Legal education' n34 79, 103, 109

²⁵⁸ Guth and Ashford n4 8 Guth and Ashford are critical of the limitations of the LETR, seeing its focus on training as limiting its ability to see all that legal education could offer

²⁵⁹ Legal Education and Training Review *Setting standards* n3 Recommendation 3

²⁶⁰ Legal Education and Training Review *Setting standards* n3 xiii, 145

²⁶¹ Legal Education and Training Review *Setting standards* n3xiii

²⁶² Edmonds n50 7

and activity based licensing are the expectation.²⁶³ It is left to the regulators to work out how practitioners develop and prove these competencies, but no one route should be mandated; flexibility is a key element. In terms of the law degree it envisages quality assurance resting with the higher education system.

The frontline regulators are working out their responses to the LETR; as yet no detailed plans have been formed, but we can see the basic elements of their response.

The SRA issued its *Policy document: training for tomorrow* in response to LETR, outlining how it would implement its recommendations.²⁶⁴

The key point is that the SRA sees itself as possibly moving away from prescription of particular *forms* of qualification towards a system in which it sets *competencies* and leaves room for a range of routes towards achieving and demonstrating those competencies. This would include courses which integrate academic and vocational stages, and also systems whereby formal courses are not involved. Whilst there will therefore be greater diversity in how people become solicitors, the title of solicitor will remain, as it is seen to have a role in supporting a shared set of values.

The BSB issued a statement on the release of the report²⁶⁵ in which it identified six areas for development, including developing competence statements and developing the academic stage. The 'Future Bar Training' programme will develop the details of these areas.²⁶⁶

William Twining was largely positive about the LETR report, but was critical of the language used.²⁶⁷ He describes the report as rooted in "bureaucratic

²⁶³ Legal Services Board, *Guidance on regulatory arrangements for education and training issued under section 162 of the Legal Services Act 2007* (2014) <[http://www.legalservicesboard.org.uk/what we do/regulation/pdf/20140304 LSB Education And Training Guidance.pdf](http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/20140304_LSB_Education_And_Training_Guidance.pdf) >

²⁶⁴ Solicitors Regulation Authority *Training for tomorrow* (2014) <<http://www.sra.org.uk/sra/policy/training-for-tomorrow/resources/policy-statement.page>>

²⁶⁵ Bar Standards Board *LETR next steps* (2013) <<https://www.barstandardsboard.org.uk/qualifying-as-a-barrister/letr-next-steps/>>

²⁶⁶ Bar Standards Board *BSB launches ambitious new programme to reshape legal education and training and tells the Bar: we want your help* (2014) <<https://www.barstandardsboard.org.uk/media-centre/press-releases-and-news/bsb-launches-ambitious-new-programme-to-reshape-legal-education-and-training/>>

²⁶⁷ William Twining, "LETR: the role of academics in legal education and training: 10 theses" (2014) 48 *The Law Teacher* 94, 98

rationalism" and "managerialism."²⁶⁸ It is true that the report focuses on competence and standards- perhaps understandable in light of its commissioners and the focus on legal services education and training.

Lord Neuberger PSC called for a second research phase, one which focused on the 'practical and professional' as opposed to the academic approach of the LETR report.²⁶⁹ This phase would bring in the insights of consumers, the professions, and judges.²⁷⁰

Neuberger was critical of the LETR's focus on the LSA 2007 objectives "consumer interest" and "effective legal profession," arguing that the "rule of law" and "protecting the public interest" were more important.²⁷¹ This reflects wider concerns that the emphasis on seeing users of legal services as consumers and customers is changing the relationship not only between lawyers and those they serve, but between lawyers and the law itself. Ideals related to consumerism- efficiency in particular- whilst of importance are seen to be worryingly dominant in the setting of legal services policy.

Whilst the LETR report does, as noted, make reference to the wider roles of the law degree the emphasis on day one competences and the role of the professions does serve to undermine that emphasis. Sherr has noted that whilst competence forms a useful basis for course design and indeed conceptualising the entirety of legal education, competencies cannot capture all that might- or should- be covered in education and training.²⁷²

Guth and Ashford expressed the concern that day one competences could crowd out liberal education elements from the law degree in favour of practice relevant modules; law schools may alter their curricula and promote their degrees as covering the competencies required.²⁷³ The consequence is that

Suddenly, on the vocational versus liberal, UG law degrees swing very much towards the former at the expense of the latter because the focus

²⁶⁸ *ibid*

²⁶⁹ Lord Neuberger of Abbotsbury, "Lord Upjohn Lecture 2012: Reforming legal education" (2013) 47 *The Law Teacher* 8, 5

²⁷⁰ *ibid*

²⁷¹ Lord Neuberger of Abbotsbury n269 7

²⁷² Avrom Sherr, *Legal Education, Legal Competence and Little Bo Peep* (2001)

<<http://ials.sas.ac.uk/research/woolf/inaugpub.htm>>

²⁷³ Guth and Ashford n4 14

of the degree becomes the meeting of learning outcomes set by the profession, albeit with possible involvement of the academic learned societies and wider consultation.²⁷⁴

This critique is rooted in a concern that the LETR did not have enough evidence from a wide range of stakeholders, being strongly shaped by the view of the legal professions and vocational course teachers.²⁷⁵

Summary

With the release of the LETR report the scene is set for the next stage in legal education's development.

The current form of legal education - in particular the law degree with its emphasis on an academic stage of preparation for legal life- is a creation of the 20th century; we can find some of its antecedents in the 19th century. As noted until the 20th century it was not considered necessary for a practitioner to have a law degree. And indeed until the present century it was not necessary for a barrister to have any degree.

It is only in the 20th century that the undergraduate law degree emerges as the primary route into legal practice. Legal practice forms part of legal education but as a second stage of professional socialisation after an initial stage which owes something to a broader model of liberal education.

With the increased number of universities after WWII, the scope of legal education widened. Law was seen as a valid academic subject, and it was assumed that most practising lawyers would have a law degree. Space was retained for those who did not have a law degree in the form of the Common Professional Examination, latterly the Graduate Diploma in Law, which allowed for non-law graduates to take the courses required for exemption from professional body requirements for progression to the vocational stage.

The changing nature of legal work, particularly at the 'entry' end where much of the work is being standardised²⁷⁶ and can be done by people without a law

²⁷⁴ Guth and Ashford n4 14

²⁷⁵ Guth and Ashford n4 19

²⁷⁶ Andrew Francis, "Legal ethics, the marketplace and the fragmentation of legal professionalism" (2005) 12 *International journal of the legal profession* 173, 184; Mayson 'Training' n61; *Legal Education and Training Review Discussion paper 02/2012* n61 9

degree²⁷⁷, means that the nature, scope and indeed necessity of the law degree has come into question.²⁷⁸ This is not a new development; the need for a degree has been questioned from at least the time of the 19th century reports, particularly in respect of the work of solicitors.

There may still be a need for a law degree based on a wider and deeper education for an 'elite' group²⁷⁹ such as those looking to law firm leadership, high office in professional bodies, or higher judicial work.

Several themes emerge from the history outlined in this and the preceding chapter. Who should be in charge of legal education? Is it a shared enterprise, or one which should be led by the profession? Should lawyers engage in theoretical study, or should they focus on practice? Should there be a law degree, and if so, what should it contain?

The following chapter considers these questions by critically evaluating several themes within the reports and other literature on legal education.

²⁷⁷ Richard Abel, "The decline of professionalism?" [1986] 49 MLR 1, 39;

²⁷⁸ Richard Moorhead, Avrom Sherr, and Alan Paterson, "Contesting professionalism: legal aid and nonlawyers in England and Wales" (2003) 37 Law and society review 765, 797; Caroline Wallace, "Priorities ahead for legal education and training" http://www.legalservicesboard.org.uk/news_publications/speeches_presentations/2014/20141104_Caroline_Wallace_Westminster_Legal_Policy_Forum_On_Education.pdf; Thornton 'Legal education' n40 24

²⁷⁹ Richard Epstein, "Big Law and Big Med: the deprofessionalization of legal and medical services" (2014) 38 International review of law and economics 64, 75

Chapter 6- Themes

In outlining the history of legal education we have seen several themes emerge, particularly those of *control over legal education* and issues around the *content of law degrees*. Further analysis of the legal education reform documents and academic literature reveal more evidence of these themes, as well as others- whether lawyers need to be graduates, and if so whether they need to be law graduates, and the desirability of liberal education for lawyers.

Graduates? And if so, any graduates or law graduates?

Not until the 1970s did the legal professions require a degree for entry, and even then with some reluctance.²⁸⁰ And whilst the law degree has become the 'usual' route for solicitors and barristers, the value of a degree in law has not always been apparent or accepted by the professions.²⁸¹

The Bar has historically had a high proportion of graduates, as part of its claims to social status rather than as a base for knowledge, but even with the development of university common law courses these would typically have been in subjects such as classics.²⁸²

For solicitors it was the case, until relatively recently, that the majority of practitioners would not have a degree.²⁸³ Even after the law degree became the usual route, non-law graduates and those without degrees have had routes open for them; this is likely to continue with the post-LETR emphasis on diversity of routes to practice.

This reflects the historic emphasis of the solicitors' profession on the business and practical orientation of their profession, which carried over into the support for the law degree as part of a practical preparation.²⁸⁴

The offer of exemptions from professional requirements of the Bar to degree holders in 1756 has been seen as less an acknowledgement of the value of a degree than a desire to maintain the social status of the Bar, by attracting

²⁸⁰ Flood *Legal education* n85 2

²⁸¹ Boon and Webb 'Legal education' n34 88; Peter Birks 'A decade of turmoil in legal education' in Peter Birks (ed), *Examining the law syllabus : beyond the core* (OUP, 1993) 17

²⁸² Richard Abel, *The legal profession in England and Wales* (Basil Blackwell, 1998) 47

²⁸³ Abel *The legal profession* n282 143

²⁸⁴ Abel *The legal profession* n282 144

graduates.²⁸⁵ The Solicitors Act 1821 extended such exemptions to all graduates, again reflecting the acknowledged value of a degree rather than a desire to promote the academic study of law.²⁸⁶ The gradual recognition of degrees- any degree, not law degrees only- was part of establishing the social and professional status of lawyers.

Speaking to the 1846 Select Committee, Edward Creasy²⁸⁷ argued for an examination to assess a prospective barrister's 'liberal education' before they moved on to the practical stage.²⁸⁸ He was supportive of the idea of this education coming from university study, but he did not *limit* it to such and not to a law degree in particular.²⁸⁹ Wilson's survey of legal education in 1966 reported that only 38% of barristers preferred law degrees, and 62% of solicitors.²⁹⁰

The GDL has meant that a law degree is not necessary for qualification as a solicitor or barrister, and has perhaps made the law degree a lesser choice for some²⁹¹. For example many in the Bar, including the judiciary, have said that a degree in a subject other than law is preferable, as such graduates will make for better lawyers.²⁹² The essence of this argument is that by studying outside of law the intending lawyer will gain a wider and deeper education, and can then focus on such knowledge as practice demands.²⁹³

In contrast there have been those, such as an academic commenting on a LETR paper, who feel that the brief nature of the GDL was damaging to the image of law as a profession²⁹⁴; here the depth and scope of intellectual attainment is presented as a key element of professionalism.

²⁸⁵ Boon and Webb 'Legal education' n34 87

²⁸⁶ *ibid*

²⁸⁷ Barrister and Professor of History at University College, London

²⁸⁸ *Report from the Select Committee on legal education* n88 31

²⁸⁹ *ibid*

²⁹⁰ John Wilson, *A survey of legal education in the United Kingdom* (Butterworth, 1966) 56-57

²⁹¹ Abel 'The rise of professionalism' n20 136

²⁹² Sugarman n164 15; William Twining, *Law in context: enlarging a discipline* (OUP, 1997) 64

²⁹³ See for example Lord Sumption's argument at <http://www.telegraph.co.uk/news/uknews/law-and-order/9384619/The-best-lawyers-are-not-law-graduates-claims-judge.html>

²⁹⁴ Legal Education and Training Review *Discussion paper 02/2012* n61 16

The GDL has also been as restricting the development of the law degree- it acts as a 'dead hand'²⁹⁵- in so far as it represents a minimum set of requirements which in turn shape the QLD²⁹⁶.

The Ormrod committee noted that a great many degrees other than law could provide training in analysis and the application of concepts to fact situations.²⁹⁷

Twining observed that

when practitioners emphasise the value of a broad education for intending lawyers, they frequently also indicate that it is of secondary importance whether or not it is in law. Some go so far as to say that a subject other than law is to be preferred for university study.²⁹⁸

In his contribution to the Ditchley Conference²⁹⁹ Diplock LJ asked whether a graduate of any discipline other than law would need a three year course to learn such law as practice needed, a question at the heart of the debate around conversion courses and the balance of intellectual and practical knowledge in all law courses.

The ACLEC report stated that law must be a graduate profession. This meant primarily law graduates, but the Committee accepted the need for routes for non-law graduates and so supported the Common Professional Examination; it also recognised the need for experienced non-graduates having a route into the profession.

In considering various models for legal education, ACLEC discussed the 'conversion' model. It noted the evidence offered by practitioners that non-law graduates who had taken the Common Professional Exam often showed "broader and more flexible" approaches than law graduates.³⁰⁰ It also observed that such graduates, who had received their liberal education in a variety of

²⁹⁵ Legal Education and Training Review *Discussion paper 02/2012* n61 18

²⁹⁶ See also Peter Birks, 'Short cuts' in Peter Birks (ed), *Reviewing legal education* (OUP, 1994)

²⁹⁷ Committee on Legal Education n5 43

²⁹⁸ William Twining *Law in context* n292 64

²⁹⁹ *Training for the law* n182 11

³⁰⁰ ACLEC n220 27

disciplines, enriched the legal profession with a wide range of skills and experience.³⁰¹

These arguments were rehearsed again during the LETR research phase with 'maturity', 'intellectual breadth', 'commitment,' and 'currency in knowledge' being advanced as benefits to the professions of those who had studied a discipline other than law before taking the GDL.³⁰²

Control

Who should define and manage legal education? The history of legal education has been in part a history of tension between lawyers and the academy³⁰³ and the accommodation by the academy of 'professional demands.'³⁰⁴ Much of the tension in the debates can be traced to this- the professions' desire to maintain control over legal education, at least in terms of what is accepted as qualifying someone for entrance to the profession and what form practical education should take.

The Inns system and the 17th-20th century self-directed apprenticeship based model with its emphasis on learning from and through practice, can be linked to a desire on the part of the professions to retain their social and cultural position through maintaining cohesion. Students of the law would be socialised through a long process of learning based on practical experience. They would come to absorb and identify with the social, cultural and legal views of those higher up in the profession.

At the time of the 1846 Select Committee many in the Bar were strongly arguing the benefits of chambers and practical learning.³⁰⁵ Were there to be lectures, they should be provided by the Inns.³⁰⁶ An exam to test competence was not needed; a poor barrister would not receive instructions, and so the public were protected from incompetence.³⁰⁷

³⁰¹ *ibid*

³⁰² Legal Education and Training Review *Discussion paper 02/2012* n61 16-17

³⁰³ Francis *At the edge of law* n20 175; Thornton 'Legal education' n40 22

³⁰⁴ Leighton n52 92

³⁰⁵ Brooks and Lobban n106 353, 377

³⁰⁶ *ibid*

³⁰⁷ Brooks and Lobban n106 353, 379

Some on the Ormrod committee felt that a practitioner law school was preferable to expanding provision in universities and colleges. A professional law school would be used to control by the profession, allowing it to meet its responsibilities of maintaining standards. Existing professional law schools, it was argued, had sufficient staff and could hire more if needed.

Spreading the vocational course over several institutions was not seen as an efficient use of resources. The allegedly limited nature of a professional law school was seen as being a positive, as contributing to the professional formation of future legal practitioners. The fact that many if not most students of the vocational course would be law graduates meant that they had already had the benefit of a broader university based educational environment.³⁰⁸

The Law Society repeated its conviction that the professional stage should take place at the College of Law.³⁰⁹ The reasoning was the same as that of the Bar-control over access and content by the profession.

The claim to self-regulation has been regularly asserted, even in the face of government policy³¹⁰. We can see this in the response of the Bar to the 2014 Ministry of Justice consultation on regulation, an outlook reflected in the Law Society's response.³¹¹

The 1988 Marre Committee, representing the views of the Bar and Law Society, concluded that 'the profession should remind its critics that there are fundamental differences between the provision of legal services and supply of other services.'³¹² It felt that self-regulation- including the regulation of legal education- was no worse than *state* regulation, and that any move away from self-regulation would be against the public interest.³¹³

The Ormrod committee wanted professional and academic education to be more integrated. It is interesting that the Ormrod Committee reflected on the

³⁰⁸ Committee on Legal Education n5 68-69

³⁰⁹ Committee on Legal Education n5 144

³¹⁰ Francis *At the edge of law* n20 142

³¹¹ For the consultation see <https://consult.justice.gov.uk/digital-communications/legal-services-review>. The Bar's response is at http://www.barcouncil.org.uk/media/230629/legal_services_review_call_for_evidence_final_160913.pdf; that of the Law Society at <http://www.lawsociety.org.uk/representation/policy-discussion/documents/regulation-of-legal-services-in-england-and-wales/>

³¹² The Marre Committee, *A time for change* (The General Council of the Bar 1988) 28

³¹³ The Marre Committee n312 29-30

worries of some teachers in University law schools that such integration might lead to the degree becoming too vocational. The committee observed that teachers wanted law to remain a liberal subject with, in the committee's words, only "the vocational bias inherent in a professional subject."³¹⁴ Academic freedom is also important in so far as universities should be free to modify their curricula and teach in the way they see fit.³¹⁵

The ACLEC report saw the relationship between the professions and universities as one in which the professions were 'regulators' of the law degree rather than 'partners' in legal education, a role strengthened by the increased content prescription of the qualifying law degree, which inhibited development and variety in the law degree.³¹⁶

The freedom of universities in the academic stage were held to be "undermined" by the profession's role in validating degrees as meeting the requirements for the academic stage.³¹⁷ The foundations set out by the professions were seen as limiting innovation and promoting an undesirable uniformity of approach in law degrees.³¹⁸

As Birks noted, the ACLEC ideal did not come to pass, with the professions making unilateral changes to the foundation subjects and the wider recommendations of the report being ignored.³¹⁹

Birks saw this as being the result not only of professional control but of an "alliance" between professions and those in the universities who were ready to accept the profession's position.³²⁰ He argued that the profession did not take legal education seriously, often expressing a preference for non-law graduates, and were happy to have a crammed coverage of the 'foundation' subjects as the basis of legal education.³²¹

The Hunt Review of the regulation of legal services was clear in its support for a high level of professional control over legal education. It recommended that the

³¹⁴ Committee on Legal Education n5 46

³¹⁵ *ibid*

³¹⁶ ACLEC n220; Hepple n207 479

³¹⁷ ACLEC n220 22

³¹⁸ *ibid*

³¹⁹ Birks 'Compulsory subjects' n81

³²⁰ *ibid*

³²¹ *ibid*

Joint Academic Stage Board conduct its own quality assessment of qualifying law degrees, and that the professional bodies be able to withdraw recognition if degrees not meet certain standards.³²² The SRA was enjoined to keep law degree standards under continuous review.³²³

The presence of the core subjects has acted as an expression of control by the profession. This degree of control over the law degree is seen by some to be based purely on assertion of authority; control for the sake of control, rooted in a set of 'core' topics which are of no special significance³²⁴ and the justification for which has been long forgotten.³²⁵ The current competency standard reviews hold out the chance to review the core and make it more relevant; the move to quality control of the law degree by higher education audit systems could also provide an opportunity to revisit the core in context of how practice is and should be reflected in the degree.

Alongside control over legal education there is the issue of control over higher education itself. Whilst governments publicly support the idea of academic freedom, the audit systems discussed earlier establish constraints on what universities can do³²⁶; they also create incentives for certain activities and methods. In recent times the establishment of league tables and the requirement to provide a number of performance indicators in the form of Key Information Sets, with a particular emphasis on the employment destinations of graduates, has meant that activities and methods connected with practical / work based learning have become more important. This has meant that clinical programmes have increased in number and an emphasis on aligning law degrees with the needs of practice has shaped other aspects of the curriculum.

To deal with the issue of control a form of legal education council has often been proposed. The Ormrod report laid out a proposed structure for an advisory committee on legal education.³²⁷ The Lord Chancellor would be the chair and

³²² *The Hunt Review of the Regulation of Legal Services* (2009)
<http://www.nzls.org.nz/catalogue/opac/DigitalContent/Legal_Regulation_Report_FINAL.PDF;jsessionid=59C098BA43C679461703712227096824?parenttreeid=f4cb742268ce4c4984e1d382ea50d5f4andsessiondepth=1andk=18> 11, 89

³²³ *ibid*

³²⁴ Rebecca Huxley-Binns, "What is the 'Q' for?" (2011) 45 *The Law Teacher* 294, 298

³²⁵ I Ward, "Legal education and the Democratic imagination" [2009] 3 *Web Journal of Current Legal Issues* <<http://webjcli.ncl.ac.uk/2009/issue3/ward3.html>>

³²⁶ Varnava and Burrige n34 5

³²⁷ Committee on Legal Education n5 51

representatives of professional and academic bodies would be nominated by those bodies. There would also be a solicitor and a barrister to represent practitioners. Representatives of the practitioner schools would also be invited to the meetings of the committee.

The committee would not set standards, write curricula, or oversee legal education. Rather it would consult and advise.³²⁸ One of its key purposes would be maintaining communication between professional and academic bodies, which have the Ormrod Committee felt was crucial to the success of its proposed reforms.

As seen earlier an Advisory Council on Legal Education was created after the Ormrod Report, which brought together practitioners and academics. Despite producing a number of reports, by the time of the Benson Commission it was felt that the Council had not succeeded in its aims of creating a forum which commanded the attention and respect of those involved in legal education.³²⁹

To correct this, the Benson Commission recommended a Joint Committee on Legal Education, headed by someone who was neither a legal academic nor a legal practitioner.³³⁰ It would have the same terms of reference as the Advisory Council; it would report to the professional bodies on "all matters affecting the education and training of candidates for entry to the legal profession."³³¹ Such a council implicitly equates legal education with the preparation of legal professionals- it would not consider wider aspects of research in law.

The Marre Committee on the future of the legal profession proposed a Joint Legal Education Council.³³² The committee founded after the Ormrod Report was replaced, as we have seen, by the ACLEC. This body recommended that it form a sub-committee- a Joint Legal Education and Training Committee; this group would review the standards for qualifying law degrees.³³³

Recommendation 25 of LETR envisaged a legal education council as assisting with collaboration and sharing of information:

³²⁸ Committee on Legal Education n5 52

³²⁹ *The Royal commission on legal services* n160 659

³³⁰ *The Royal commission on legal services* n160 660

³³¹ *ibid*

³³² The Marre Committee n312 143

³³³ ACLEC n220 85

A body, the 'Legal Education Council', should be established to provide a forum for the coordination of the continuing review of LSET and to advise the approved regulators on LSET regulation and effective practice.³³⁴

It would enable ongoing review and reform of legal services education and training and support an evidence-based approach to such work.

After the LETR the regulators have led the negative responses to the idea of a legal education council, arguing that such a body would be an expensive talking shop and complicate an already complex system.³³⁵ The regulators, and the LSB, have instead said that they will develop co-operation around standards.

Along with a legal education council, a university of law appears frequently in debates on legal education. In his evidence to the 1846 Select Committee, William Empson³³⁶ argued that such a university should be formed by the Inns of Court.³³⁷ In so doing the Inns would be returning to their original purpose, and the university would benefit from their links to the courts and the judiciary. Andrew Amos argued that without an involvement in education, the Inns lacked genuine purpose, and should take up the task of educating lawyers in the practical elements of their profession.³³⁸

The 1854 Royal Commission argued that closer co-operation between the Inns would be better for the Bar as a 'liberal profession' and to that end recommended that they form a University which would set examinations and confer degrees; the Inns would retain their individual nature as social organisations and offices for practitioners.³³⁹

The Commission commented on the low regard for law degrees amongst the profession, and stated that a professional university conferring degrees might

³³⁴ Legal Education and Training Review *Setting standards* n3 xviii

³³⁵ Kathleen Hall, "Regulators reject plans for a legal education training council" *Law Society Gazette* 21 October 2013 < <http://www.lawgazette.co.uk/practice/regulators-reject-plans-for-a-legal-education-training-council/5038288.article> >

³³⁶ Professor at Haileybury College, the Indian Civil Servicer college

³³⁷ *Report from the Select Committee on legal education* n88 55

³³⁸ *Report from the Select Committee on legal education* n88 105

³³⁹ *Report of the commissioners* n144 17

change this.³⁴⁰ The proposed University would manage the examinations for entrance to the Bar and also confer degrees in law.³⁴¹

Discussing the idea of a law University in his evidence to the Haldane Commission, Barrington raised the issue of professional control over such a body.³⁴² Many people were looking for a legal education, and would not look favourably on one provided by the professional bodies. A law-only university would also suffer from the lack of contact with other subjects.

The value of legal education here lies not in its connection with forms of practice, but with its contribution to the wider educational needs of students, particularly those going into administration and diplomatic careers.

At a wider level these concerns relate to a rule of law understanding of legal education- the law is best served by liberally educated politicians, lawyers, and judges. Professionally focused education would militate against this by having too practical a focus.

Boon and Webb argue that opposition to a law university derived not only from professional concerns over control but also- on the part of solicitors- from the belief that a university education in law was not appropriate for the technical work of many lawyers.³⁴³

Law and liberal education

The feeling amongst some academics that practice elements do not belong in a law degree³⁴⁴ are partly connected with issues of control over education, and partly with the ideal that law should provide a liberal education³⁴⁵. We can express some of its essence in the words of Banks "legal education ought to be something more than learning cases and statutes and applying the law to the facts."³⁴⁶

³⁴⁰ *Report of the commissioners* n144 17

³⁴¹ *ibid*

³⁴² *Royal Commission on University Education in London*. (Cd. 5911, 1911) 15

³⁴³ Andrew Boon and Julian Webb, "Legal education and training in England and Wales: back to the future?" (2008) 58 *Journal of Legal Education* 79 2008 79, 87

³⁴⁴ Roger Burridge 'Learning law and legal expertise by experience' in Roger Burridge et al (eds), *Effective learning and teaching in law* (Kogan Page, 2002) 35

³⁴⁵ Fiona Cownie, "Alternative values in legal education" (2003) *Legal Ethics* 6 59, 161

³⁴⁶ Banks 'Pedagogy and ideology' n219 446

In the 1846 Select Committee evidence, Thomas Starkie³⁴⁷ argued that a general law degree would be of great benefit to those who would be making and enforcing the law- future legislators and magistrates,³⁴⁸ a view which was echoed by Lord Brougham.³⁴⁹ Andrew Amos³⁵⁰ agreed, saying that instruction in law should be extended to all university students.³⁵¹ Along with Brougham, Amos argued that the lack of a scientific / general legal education led to deficiencies in the magistracy and legislature.³⁵² The focus on 'practicalities' in the early careers of lawyers crowded out the liberal approach valuable to the later career judge or parliamentarian.³⁵³ These arguments have been echoed in the rule of law based position we discussed earlier, whereby the law itself benefits from the widest possible education not only of its practitioners but of those who will make and administer the law.

Thomas Taylor³⁵⁴ put forward the view that a broad and liberal education was also of value to solicitors, as it would 'raise the tone' of that branch and produce more effective solicitors.³⁵⁵ Such a view can be connected to the emerging professionalisation movement within the attorney / solicitor body.

The 1854 Royal Commission held out 'an enlightened University education' as the best foundation for entry to a profession.³⁵⁶ An 'educated and enlightened Bar' is seen to be vital to the administration of justice, and so a liberal education allied to a reformed practical education was needed.³⁵⁷

In his survey of legal education in 1966, Wilson observed that

many would argue that a liberal education is in any event the best form of preparation for a professional career, while it is also clear that a

³⁴⁷ Barrister and Professor of Civil Law at Cambridge

³⁴⁸ *Report from the Select Committee on legal education* n88 10; also recommended by Creasy see p 29

³⁴⁹ *Report from the Select Committee on legal education* n88 280-281

³⁵⁰ Professor at University College, London

³⁵¹ *Report from the Select Committee on legal education* n88 99

³⁵² *Report from the Select Committee on legal education* n88 103

³⁵³ *ibid*

³⁵⁴ A Manchester solicitor

³⁵⁵ *Report from the Select Committee on legal education* n88 80

³⁵⁶ *Report of the commissioners* n144 19

³⁵⁷ *Royal Commission on University Education in London* n169 148

substantial proportion of law graduates do not enter the profession on leaving university.³⁵⁸

The Ormrod Report endorsed a comment from the Robins Committee on higher education, which argued that whilst universities may undertake some elements of practical training their main role was to develop the character of individuals.³⁵⁹

From this perspective the relationship between practice and education is seen as one in which the initial stage of education is broadly speaking knowledge and character formation of a liberal mode. Whilst practical issues may be covered and particular skills learned, this is in service to a deeper commitment to developing general skills and knowledge which can be applied in many areas. Practical vocational education as such happens at a later stage, and uses the insights, values and skills of the academic stage, rather than shaping them.

Peter Birks argued that 'society needs lawyers to have the vision and command which only a wide and liberal education can confer.'³⁶⁰ For Birks, the purpose of law schools is 'not so much to produce good lawyers as to add to the number of enlightened citizens'³⁶¹; in an echo of earlier concerns that legal education serve the wider legal world he argued that law schools also have "have a constitutional and law-making role."³⁶²

Birks argued that the lawyer needs to have studied the law in depth³⁶³, not just focus on what is needed for practice. However Birks does recognise that *some* connection with legal practice, particularly the work of the judiciary, is crucial to the law school.³⁶⁴

The ACLEC 1997 report noted that many law students did not go into practice; the law degree, for them, functioned as preparation for a wide range of professions.³⁶⁵ The law degree could, and should, be allowed to develop as a

³⁵⁸ Wilson *A survey* n290 41

³⁵⁹ Committee on Legal Education n5 46

³⁶⁰ Peter Birks, 'Introduction' in Peter Birks (ed), *Examining the law syllabus : the core* (OUP, 1992) 7

³⁶¹ Birks 'Introduction' n360 10

³⁶² Birks 'Compulsory subjects' n81

³⁶³ Birks quoted in ACLEC n220 23

³⁶⁴ Peter Birks (ed) *What are law schools for?* (OUP 1996) ix

³⁶⁵ ACLEC n220 19

liberal education as free as possible from practice constraints.³⁶⁶ At the head of its characteristics of legal education the report placed “[I]ntellectual integrity and independence of mind”- core elements of the general definition of a liberal education.³⁶⁷

This approach was echoed by Martin George in his address to the 2013 CEPLER conference on legal education and the legal profession.³⁶⁸ George argued that the law degree has value separate from its connection with practice. With imaginative pedagogic approaches the creativity and wide applicability of the law can be shown to students. Such an approach could- whilst that is not its aim- take on practice elements, showing students the work of lawyers even as it critiques and contextualises them.

The LETR report also recognised that most law graduates do not become lawyers, and that higher education institutions may have aims other than preparation for practice for their law degrees.³⁶⁹

Content of the law degree

Related to the issue of law as a liberal education is the question of whether a law degree should contain a core of material foundational to legal practice, or to the academic discipline of law- or indeed have a core at all?³⁷⁰

In practical terms of the relationship between law degrees and the professional stage, the Ormrod Committee recommended that existing law degrees be recognised by the professional bodies. It did allow that the professional bodies could withdraw such recognition if the content of a law degree fell seriously short of what they considered appropriate.³⁷¹ The Ormrod Report recommended that professional bodies should not define the content of any particular law degree before it exempted graduates of these degrees from the professional exam requirement.³⁷²

³⁶⁶ *ibid*

³⁶⁷ *ibid*

³⁶⁸ Martin George, *The value of a law degree* (2013) <
<https://www.youtube.com/watch?v=UhBbpMMLe6c>>

³⁶⁹ Legal Education and Training Review *Setting standards* n3 144

³⁷⁰ Guth and Ashford n4 9

³⁷¹ Committee on Legal Education n5 47

³⁷² *ibid*

The Ormrod Committee came out against reductions in the length of the law degree. The report argued that anything less than a three-year law degree could see a reduction in standards of education, and would also see people who were too young entering into the next stage of legal education.³⁷³ Here the content of the degree is important. Would anything less than three years be enough to cover all of the knowledge a law graduate requires? What is sacrificed in shorter degrees? Commentators such as Birks argued that shorter degrees which only covered 'core' knowledge would not be able to provide the depth of analysis required of a profession.³⁷⁴ A shorter law degree is seen to relate more to the idea of law as a form only of practice, a matter of routine and delimited application of discrete knowledge.

The solicitor's list of recommended elements of a law degree, presented to the Ormrod committee, included company and family law.³⁷⁵ The academic stage is here seen through a practitioner lens; solicitors could reasonably expect to undertake family work, and an understanding of company law would be important for future partners.

The Senate of the Inns of Court statement to the Ormrod Committee accepted that the academic stage would be primarily university based, but argued that the Council of Legal Education should retain control over what subjects be covered before a student could progress to the professional ('training') stage. The Senate observed the high level of similarity across law degrees, and welcomed collaboration with the Law Society on a joint list of core subjects. Implicit in this is the idea that whilst there are stages to qualification, and not all who pass through them will practice, the education provided must in some aspects conform to standards and schemes approved by the practitioner bodies.³⁷⁶

The core or foundation subjects have been a source of controversy and debate. Birks described the legal professions as being at best indifferent, at worst actively hostile, to university legal education.³⁷⁷ He stated that

³⁷³ Committee on Legal Education n5 48

³⁷⁴ Peter Birks, 'Introduction' in Peter Birks (ed), *What are law school for?* (Oxford University Press, 1996) xii-xiii

³⁷⁵ Committee on Legal Education n5 217

³⁷⁶ Committee on Legal Education n5 206

³⁷⁷ Birks 'Introduction' n374 x

The fixed list of compulsory subjects is the most obvious symptom of an attitude to legal education which weakens English legal science. We will never have strong law schools in this country while the professions continue to disavow them, repeatedly declaring their preference for non-law graduates and boiling the subject down to this miserable list of now seven compulsory subjects.³⁷⁸

The focus on a core, Birks argued, is detrimental to a wider view of law and to the development of optional subjects.³⁷⁹ The core has been described as limiting the development of the undergraduate degree *and* the vocational stage.³⁸⁰ In terms of the academic stage it acts as a limit as, in the form of the one year postgraduate conversion course, it defines “what can reasonably be expected of a law degree.”³⁸¹

Birks does not argue that legal practice cannot form *any* part of a law degree. He observed that a law degree which took no notice of legal practice would be one which was a ‘contradiction in terms.’³⁸² Legal practice as a field of study can be seen to be constitutive of law as an academic discipline, with the work of lawyers and judges being a site of analysis and critique. In this way practice can be accommodated within the law degree; it is not a practical degree, in the sense that practice is the object and not the aim of study.

The ACLEC First Report argued that legal education needed to be ‘broad and intellectually challenging’ to support the rule of law and democracy.³⁸³ Any law degree needed to take into account the range of careers into which graduates moved, not simply focus on legal practice.³⁸⁴ It rejected an earlier idea that the law degree should aim at having enough content that the vocational stage could be as short as possible; this was not consonant with the idea of a law degree as a foundation for a range of careers.³⁸⁵

³⁷⁸ Birks ‘Compulsory subjects’ n81 ; see also William Wilson and Gillian Morris, ‘The future of the academic law degree’ in Peter Birks (ed), *Reviewing legal education* (OUP, 1994) 101

³⁷⁹ Birks ‘Compulsory subjects’ n81 ; see also Birks ‘Short cuts’ n296

³⁸⁰ Boon and Webb ‘Legal education’ n34 92; See Huxley-Binns n324 for a proposal which replaces the core *subjects* with knowledge covered via core legal *skills*

³⁸¹ Webb ‘Regulating lawyers’ n1 553

³⁸² Birks ‘Introduction’ n374 ix

³⁸³ ACLEC n220 3

³⁸⁴ ACLEC n220 6

³⁸⁵ ACLEC n220 45

To support the liberal aims of their proposals, the Committee were strongly in favour of a four year degree, and opposed to any shortening of the time needed.³⁸⁶ A longer degree allows for greater reflection on learning and the development of a mature outlook on the law. The three year degree, whilst preferable to any shorter a period, was seen as limiting some of the possibilities for reflection and development.³⁸⁷

Whilst 'practical' subjects have not historically formed part of the law degree³⁸⁸, the core represents the interests of the professions. There has not been detailed content prescription, with the academy free to interpret the core as they would, but the influence of professional views can be seen in the development of the core and in the broad outlines of core classes in many institutions.

In its assessment of perspectives on the existing system, the LETR found that 79% of those responding were in favour of keeping the qualifying law degree.³⁸⁹ Most also saw that there was value in keeping the liberal and professional aspects of the qualifying law degree; there was a need to balance these sometimes seen to be competing demands.³⁹⁰

When looking at how elements of legal education are valued, it is clear from the LETR report that procedure and ethics are seen as most important by practitioners. Those areas which might be thought of as characterising a liberal education, for example jurisprudence, psychology, and socio-legal studies are all very far down in the hierarchy.³⁹¹

The question then is where are those skills covered? The report observed that students paying fees may begin to demand more employment and skills focused content in their degrees.³⁹² The Bar expressed concerns that any shift to greater skills coverage would pose a threat to what it saw as the key role of the law degree, to provide "academic knowledge and intellectual (analytical) skills."³⁹³

³⁸⁶ ACLEC n220 53-54

³⁸⁷ ACLEC n220 54

³⁸⁸ Boon n10 222

³⁸⁹ Legal Education and Training Review *Setting standards* n3 26

³⁹⁰ Legal Education and Training Review *Setting standards* n3 28

³⁹¹ Legal Education and Training Review *Setting standards* n3 34

³⁹² Legal Education and Training Review *Setting standards* n3 45

³⁹³ Legal Education and Training Review *Setting standards* n3 45

In terms of the qualifying law degree, the report stated that the “balance between foundations of legal knowledge” and the “statement of knowledge and skills within the joint statement” should be reviewed. In this area the LETR recommended that “a broad content specification should be introduced for the foundation subjects.”

At present there is no particular content specification for the foundation subjects. It is left to individual institutions to determine what was included in the teaching of the foundation subjects. As in the pre-Ormrod situation a broad consensus has emerged as to what their content should be, in part shaped by practice interests but also shaped by general academic interest and the understanding of the shape and nature of these foundation subjects which has evolved.

Whilst the LETR notes the many purposes of the qualifying law degree, the undergraduate law degree is recognised as having value in preparation for practice in terms of the development of 'intellectual and critical skills' as well as legal knowledge.³⁹⁴ Balancing these demands is in many ways the core of the story of the law degree, stretching back to the demands for a 'science' of law in the 19th century.

Summary

From its earliest times to the present, legal education has thrown up a number of questions.

Who should be in control of legal education? Historically the professions have exercised close control, but the emergence of the law degree has seen some of that control moving to the academy. In addition, the state has played its part through legislating for the education and training of lawyers, and most recently through its policies with regard to services.

Where should lawyers be taught? Initially lawyers learned in institutions organised and controlled by lawyers- first the Inns, then practice settings when apprenticeship became the main mode of legal learning.

The decline of the Inns as educational bodies left practitioners with no organised body to co-ordinate the reform of legal education which the 19th century reform plans required. The universities were not well placed to take up

³⁹⁴ Legal Education and Training Review *Setting standards* n3 141

this role, and the practitioners were not wholly positive towards a greater role for them in any event. This meant that the academy did not establish itself as an unchallenged site of education for lawyers, facing as they did the condescension of some in the profession and competition from renewed attempts at formal education by the Inns and the Law Society.

The changed view towards degrees in the 20th century saw the law degree and thus the academy become an important site of learning and the creation and maintenance of professional identity.³⁹⁵ Some degree of control was thus given up, but not entirely; professional exams and their descendants, the core, represent a continued exercise of control by the profession.

What should lawyers be taught? The stress on practical knowledge by the solicitors in the 19th century stood in contrast with the 'academic' emphasis of the Bar. This division was somewhat closed by the creation of the single law degree. It can be argued that the creation of a single law degree for two divergent professions represents the triumph of the 'science' and academic view of law, along with the social status of the degree.

Claims to an area of work were based on the extent of study required, even though that study might not reflect the work actually done. As the nature of law work shifts, particularly for solicitors, the law degree has come to seem over engineered and distant from practice realities. The law degree finds itself in a no man's land, neither thoroughly practical nor wholly academic, as it is trying to do too many things for too many people.

Behind all these questions is the question of what legal education *is*. Is it education for practice or an education in law which could have many applications, one of which is practice?

³⁹⁵ Francis *At the edge of law* n20 21

Chapter 7- Conclusions

Histories

Twining argues that the English legal education system can only be understood as a product of its histories- the compromises, the lacunae, the inconsistencies.³⁹⁶ It can also be seen as a product of tensions and misunderstandings - the 'uneasy alliance'³⁹⁷ -between academics and practitioners.³⁹⁸

In all of these histories, external factors such as the state of the economy and the approaches of the state to legal professionals and their work have been as important as the debates and tensions between practitioners and academics.³⁹⁹

As we have seen in the discussion of themes certain ideas and controversies recur in discussions about legal education.

The value of a formal legal education for some practitioners- attorneys and solicitors- has been questioned as these sectors have been seen as practical and so the education needed for them should be practical also.

Formal education has also been seen as a potential barrier to entrants. Both the Bar and solicitors have stressed the value of keeping routes to their professions open to all who could do the work.⁴⁰⁰

Education has been valued for its status granting role. A degree, of whatever subject, came to be seen as granting social status and was also an element in the jurisdictional claims of the professionalization of solicitors and barristers.

Legal education has also been seen as part of the *legal system*. Legal education for politicians, civil servants, and magistrates has been held out as an important part of supporting the rule of law. Well trained magistrates would make better decisions; legally informed politicians would draft better laws. Legal education is seen as being *wider* than the education of legal practitioners.

³⁹⁶ Twining *Law in context* n292 181; William Twining, "Professionalism in legal education" (2011) 18 *International Journal of the Legal Profession* 165, 166; Twining 'LETR' n267 99-100

³⁹⁷ Flood *Legal education* n85 2

³⁹⁸ Sherr *Legal education* n272

³⁹⁹ William Twining, "Remembering 1972: The Oxford Centre in the context of developments in higher education and the discipline of law" (1995) 22 *Journal of Law and Society* 35, 39

⁴⁰⁰ Historically 'all' meant 'white men' of a certain standing

We can argue then that the history of the relationship between legal education and legal practice in England can be seen as a process of moving from a system in which vocational and academic elements were fused as part of a broad sense of practice. This is the system which led to the Inns. In these earliest stages legal education was the province of legal practitioners. Those who led the moots, gave readings, and wrote texts had practised in the courts- indeed many continued to practice, and others served as judges. The academic lawyers were to be found in the law faculties of Oxford and Cambridge, where they taught civil and canon law- not the common law practised in the courts in London, which was the focus of the Inns.

With the end of the Inn system legal education entered a stage in which education was the responsibility of individuals, from the end of the 17th century to the mid-19th century. At this time practice was in itself the education, again provided by practitioners via apprenticeship and legal texts.

For a long time, academic lawyers had little status with the profession, and indeed within the academy.⁴⁰¹ To give one example when giving evidence to the Haldane Commission, Cozens-Hardy MR spoke slightly of the law faculty in the University of London, saying that they had no professional rank and so could not command respect from the profession.⁴⁰²

By the 19th century the bar had strong control over access⁴⁰³, with practice knowledge being a relatively low key element; for solicitors practice was a stronger aspect of their education⁴⁰⁴, and was a key part of their professionalisation.⁴⁰⁵

For barristers and solicitors the process of professionalisation began in the 19th century alongside the development of capitalism and the emphasis on scientific knowledge and the development of modern legal professionalism; this

⁴⁰¹ Martin Partington, "Academic lawyers and legal practice in England: towards a new relationship?" (1992) 3 *Legal Education Review* 75, 83; Bradney 'Ivory towers' n173 11

⁴⁰² *Royal Commission on University Education in London*. (Cd. 5166, 1910) 70

⁴⁰³ Abel 'The decline of professionalism?' n277 2

⁴⁰⁴ Abel 'The decline of professionalism?' n277 4-6

⁴⁰⁵ Abel argues that solicitors were not a profession prior to the 19th century, as they were regulated by the courts; the creation of organisations such as the Law Society was a key element in the professionalisation of solicitors- Abel 'The decline of professionalism?' n277 32-33

settlement held until the renegotiations triggered by the reform drive of the 1980s.⁴⁰⁶

As part of such negotiations some professions can claim expertise in elements of the work of another profession, laying claim to 'the cultural capital of practice.'⁴⁰⁷ Academic lawyers can be seen to have used this strategy. The legal academy built on the aspirations to scientific knowledge of the 19th century reformers, serving the professionalisation of lawyers by explicating and systematising the ever changeful law.⁴⁰⁸ This process worked in tandem with the later expansion of higher legal education to establish professional claims to mastery of difficult knowledge.⁴⁰⁹

With the development of law schools after WWII the English law school emerges as a stronger presence⁴¹⁰ and the legal profession becomes a predominantly graduate profession.⁴¹¹

The professionalisation of the law has been seen as 'incomplete' – particularly in terms of the absence of a single and definitive route to practice- and the challenge from the consumerist and free market ideals of successive governments have served to further undermine its development.⁴¹²

The law has never been a graduate only profession, much less a law graduate only profession. In its nineteenth century moves towards professionalism the legal profession saw the degree as a symbol of learning and science; recognition was given to any degree. As law degrees were not necessary and offered no particular advantage, they did not attract significant numbers of students. As a result the common law academy was slow to develop, and did so in the shadow of practice demands and professional ambivalence.

⁴⁰⁶ Abel 'The rise of professionalism' n20 83; Filippo Ranieri , "From status to profession: the professionalisation of lawyers as a research field in modern European legal history"(1989) 10 *The journal of legal history* 180; W Wesley Pue, " 'Trajectories of professionalism?': legal professionalism after Abel" (1990) 19 *Man L J* 384, 392; Francis *At the edge of law* n20 16-17, 24

⁴⁰⁷ Abbott 'Jurisdictional conflicts' n16 191

⁴⁰⁸ Abel 'The rise of professionalism' n20 87

⁴⁰⁹ Abel 'The rise of professionalism' n20 87-88

⁴¹⁰ Twining 'Remembering 1972' n399 38; Varnava and Burrige n34 7

⁴¹¹ Adam Gearey, Wayne Morrison and Robert Jago, *The politics of the common law* (Routledge, 2009) 39

⁴¹² Krause n22 109

It was only with the post-war expansion of higher education that the law degree begins to attract significant numbers and support. Degrees were made mandatory in 1971 by the Bar and 1979 by solicitors; the CPE allowed for non-law graduates, but the law degree emerged as the principal degree for intending lawyers.

Approaches to the law degree

A key tension in legal education is that between vocational and liberal education.⁴¹³ Cownie noted that there is a continuum of responses to the question "do law schools exist to train lawyers or to offer a liberal legal education?"⁴¹⁴ Jackling defined the end points of this continuum:

the "academic" view is that undergraduate training in law has to do with teaching law as a discipline, and whether graduates practise in law is largely irrelevant. Training is not "necessarily for the narrow profession of law".

The "practice" view is that the prime purpose of an orthodox law course is to train legal practitioners.⁴¹⁵

Building on this we can identify two broad approaches to law degree. The first is based in the ideal that education is a process of self-development, a form of critical engagement with a topic, not a preparation for a career.⁴¹⁶ In this model the goal of higher education is to develop critically aware graduates who have the capacity to adapt and learn. What is required of lawyers is that they first engage in a deep and critical engagement with a subject -which may not be law - before they turn to 'practical' issues.

This, in broad terms, is the 'liberal education' approach. The idea of liberal education covers a variety of approaches and concepts, but we can identify a set of themes common to them all. Here we will cover the broad outlines of its nature and development, with a focus on its application as a concept in legal education.

⁴¹³ Faulconbridge and Muzio 'Symposium' n12 1338; Thornton 'Legal education' n40 24

⁴¹⁴ Cownie *Stakeholders* n30 2

⁴¹⁵ Noel Jackling, "Academic and practical legal education: where next?" [1996] 4 *Journal of Professional Legal Education* 1, 4. Jackling himself was in favour of an approach which prepared students for legal practice; see also Thornton 'The new knowledge economy' n6 275

⁴¹⁶ Guth and Ashford n4 6

Perhaps most importantly, in liberal education models education is seen as a good thing in itself; it is its own goal and measure. To study a subject, no matter how recondite, is worthy. There is no necessary connection between academic study and practical application, rather the outcome- that of an educated individual- is the aim. What students do with their knowledge is a separate matter.

Broadening out from this base, education is seen to be (part of) a process of personal development and self-realisation. By engaging with a subject, exploring its meaning, and discussing and debating that subject with others, the individual comes to a better understanding of themselves and the world they live in. They come to better understand their ways of seeing and acting in the world, the ways of seeing and doing of others, the flaws that such approaches can have, and how to allow for them. Knowledge of a particular subject is secondary to this knowledge of self and others. In this sense, the actual subject is not important- as noted above, it can be highly rarefied and obscure, of little or no 'practical' application.

This self-development does have an outward element. A liberal education is part of preparation for meaningful engagement with society. It is preparation for a role, as opposed to a job; it creates critical and self-aware individuals prepared to contribute to society as a whole through such work as they may undertake. In this sense a liberal education can have a 'vocational' element, in so far as it links with work roles; but it is not preparation for those roles, and any discussion of vocational elements is subsumed within the broader liberal education project.⁴¹⁷

The liberal approach to law is in part an aspect of the university movement of the late 19th century, with its emphasis on the detached and scientific pursuit of knowledge as opposed to the 'mechanical' pursuit of education for trades (and even professions.)

⁴¹⁷Guth and Ashford n4 7

The common observation that a great many law students do not go on to practice law is part of the argument for a more liberal approach to the law degree.⁴¹⁸

Liberal education aims at building connections and insights, as opposed to the collection and cataloguing of isolated facts.⁴¹⁹ Thus it looks not simply to instruct students- in this case law students- in knowledge which can be applied, but also to create a critical approach to that which is covered, with a view to enabling its recipients to contribute to the development of society and to act as positive agents in the legal system, if that is where they find themselves.⁴²⁰

In this way legal practice *can* be part of a liberal education, for from the liberal education perspective practical learning within the degree is not seen as wholly negative.⁴²¹ However, any coverage of the vocational elements of law must feed into the broader aims of the liberal arts law degree rather than being a goal in themselves.⁴²²

Its rejection of employability as the key goal of higher education, and its emphasis instead on personal development, allows the liberal approach to form a base for a broader critique of instrumental approaches to education and of government interference in the life of the academy.⁴²³

Education is a 'public good,' not a private transaction between student and provider.⁴²⁴ The perceived value of law degrees is seen as a defence against pragmatic or vocational oriented changes; law degrees are already seen as valuable and 'marketable' by students and employers and so should not need to change to become so.⁴²⁵

Practical or vocational approaches are rooted in older conceptions of the appropriateness of practice modes for practical work, with neo-liberal

⁴¹⁸ Hepple n207 480

⁴¹⁹ Bradney *Conversations* n37 40; Oliver quoted in ACLEC n220 44; Dawn Oliver, 'Teaching and learning law: pressures on the liberal law degree' in Peter Birks (ed), *Reviewing legal education* (OUP, 1994) 78

⁴²⁰ Ward n325

⁴²¹ Oliver 'Teaching and learning' n419 86; Twining *Law in context* n292 82; Burridge and Webb 'Values' n48 93

⁴²² Bradney *Conversations* n37 41, 44

⁴²³ Bradney 'Ivory towers' n173 9

⁴²⁴ Bradney 'English university law schools' n33 65

⁴²⁵ Bradney 'English university law schools' n33 68-69

conceptions of education as investment and students / employers as consumers being a more recent element.

When applied to legal education a vocational approach is one in which teaching and curriculum design are geared primarily towards forms of legal practice. As is the situation at present, students would learn such law as deemed important by the legal professions, but they would also develop skills that would fit them for legal work. There would be a strong emphasis on real world experience, whether through simulation or live client clinics and student placements in law firms. Skills such as advocacy, document writing, legal research, negotiation, and project management would be central.

What *is* legal education?

At issue is the definition of 'legal education.' *Who* is being educated and for *what*? If it is taken in its widest sense it can mean the study of any body of laws or form of legal practice or system of ideas relating to law; and so the study of law can encompass a number of things. If it is taken in a narrower sense it means preparation for legal practice. One produces people who have studied law; the other produces people ready to practise it.

We have seen that many law graduates do not enter the legal profession, but use the law degree as a respected and broad education when entering other fields of graduate work; this echoes the situation in the high days of the Inns, when the time spent and knowledge gained there were for many part of their preparation for their role in society.

A law degree, or academic study of law in general, has been seen by many not to be sufficient legal education in itself; an example being Edward Creasy at the 1846 Select Committee, who argued that only practical study and experience could prepare someone for the rigours of practice.⁴²⁶ In the same report we see the view of Robert Maugham⁴²⁷, who argued that it might be possible for different 'levels' of education to be offered, as appropriate to the work to be undertaken.⁴²⁸

⁴²⁶ *Report from the Select Committee on legal education* n88 36

⁴²⁷ Solicitor and Secretary to the Law Society

⁴²⁸ *Report from the Select Committee on legal education* n88 159

Looking beyond the practice of law, the 1846 report saw the lack of an academic lawyer cadre as a negative consequence of the absence of formal legal education. The lack of a group of specialists dedicated to the study of law had an effect not only on legal education but on the law itself, through poor law drafting for example.⁴²⁹ We can see here a widening of the idea of what legal education was, from a practice orientation to one in which education in law was valuable beyond its fitting people for legal work.

At the 1854 Royal Commission by Sir Fitzroy Kelly, Treasurer of Lincoln's Inn⁴³⁰ argued that a 'general' system of legal education was of no benefit; as long as the character of the applicant were right, and the Bar could be assured of their previous liberal education, the best form of legal education was still study and work in a practice setting.

Here we can see an implicit distinction between liberal education and legal education. A liberal education was desirable, but it was something to be got before legal education, generally through university study. Kelly supported an examination to establish the liberal educational credentials of intending barristers, but was against an examination in legal knowledge; he felt that such an exam might put off otherwise worthy candidates. He put forward the market argument, that as a referral profession the Bar had a built in guarantee against poor or ill educated practitioners- they would get no work.⁴³¹ He was clear that the best form of legal education was reading and working in a practitioner's office.⁴³²

In giving evidence to the Haldane Commission, Headlam said that the role of a university law school was to "promote the study of law as a general discipline."⁴³³ This reflects a commitment to the 'science' of law and the study of law from an academic standpoint without regard to specific forms of practice.

At the Ditchley Conference Diplock LJ stated that 'education for the practice of the law' related to the education of intending solicitors and barristers.⁴³⁴ He noted that the majority of legal work, at least in the earliest stages of a lawyer's

⁴²⁹ *Report from the Select Committee on legal education* n88 xxxix, lvii

⁴³⁰ *Report of the commissioners* n144 35

⁴³¹ *Report of the commissioners* n144 36

⁴³² *Report of the commissioners* n144 40

⁴³³ *Royal Commission on University education in London* n402 91

⁴³⁴ *Training for the law* n182 7

career, does 'not demand the intellectual qualities of philosopher-kings'; rather it requires a careful attention to detail and sufficient knowledge of the law.⁴³⁵

He went on to comment that even at the highest levels of practice, much work is 'humdrum'; so whilst high intellectual attainment is of value, the ability to carry out routine tasks is the key outcome of legal education.⁴³⁶ This raises the question of the value of a degree to people engaged in such activities- is the degree there for those who will 'rise above' the humdrum and become leading advocates and judges?

Diplock LJ observed that there were many elements of the "humdrum" work of lawyers which would be of little interest to those law students not intending to practice. Universities might not want to take on the teaching of such subjects, particularly considering how many law students did not wish to go on to practice.⁴³⁷ This view offers one answer to Dicey's question⁴³⁸ as to the appropriateness of law as a university subject, one which is sceptical as to the value of a law degree for many practitioners.

In its contribution to the Ormrod Committee, the Society of Public Teachers of Law (SPTL) was clear that preparing future practitioners was not the only role of university legal education.⁴³⁹ Most law graduates did not then- as is still the case now- go on to practice law.⁴⁴⁰ To fit law degrees to practitioner needs would be 'retrogressive'.⁴⁴¹ To maintain the general place of law in universities, law faculties must be free to pursue research and teaching as they saw fit.⁴⁴²

The SPTL followed the Bar and Law Society in envisaging a two stage process of law degree followed by vocational study. Where it differed was in its emphasis on the freedom of universities to set their own curricula and assessment patterns, free from constraints set by the profession.⁴⁴³

⁴³⁵ *ibid*

⁴³⁶ *Training for the law* n182 8-9

⁴³⁷ *Training for the law* n182 10-11

⁴³⁸ Albert Dicey, *Can English law be taught at the universities?* (1883) <<https://archive.org/details/canenglishlawbe00dicegoog>>

⁴³⁹ Committee on Legal Education n5 226

⁴⁴⁰ Committee on Legal Education n5 226; Legal Education and Training Review *Setting standards* n3 144

⁴⁴¹ Committee on Legal Education n5 226

⁴⁴² *ibid*

⁴⁴³ Committee on Legal Education n5 227

The more expansive visions of the 19th century reformers and academics such as Twining have not been brought into reality. Law is not a wide ranging education for administrators and lawmakers, either as the law degree or as an element in wider education.

This being said, the liberal vision remains as an example and site of resistance, particularly to neo-liberalism within universities. It offers a way of interpreting such reports as Dearing in terms of possibility and challenge, and the chance to incorporate practice linked learning in a critical and engaging way.

Moving beyond the divide?

How to reconcile the liberal tradition with the demands of the world of business is one of the perennial problems of University education and "[P]ossibly of all University subjects law faces the basic dilemma in its most acute form."⁴⁴⁴

How can the broad social demand for educated professionals be reconciled with the desire of the representatives of those professionals for people prepared for practice? When, and how, are the needs of the office and the court to be dealt with?

There are approaches to legal education which reflect an attempt to move beyond a liberal / vocational divide.⁴⁴⁵ There is a desire to be both liberal *and* practical.

Partington, for example, argued that

there is no contradiction between the highest standards of legal scholarship and practical utility. Being interested in practical issues does not compromise academic integrity. To the contrary: in many areas of law - especially those dominated by statute and regulation - an adequate understanding of the law can only be achieved by an understanding of how the law operates in practice.⁴⁴⁶

Kahn-Freund observed that '[T]here is in fact no contradiction between the needs of an academic professional education and those of vocational

⁴⁴⁴ Twining *Law in context* n292 65

⁴⁴⁵ Jackling discusses 'integrated' education as an example of such an approach - Jackling n415 5 ; see also Caroline Strevens, Christine Welch, and Roger Welch, "On-line legal services and the changing legal market: preparing law undergraduates for the future" (2011) 45 *The Law teacher* 328, 342

⁴⁴⁶ Partington n401 92

training.⁴⁴⁷ Kahn-Freund argued that the idea of a separation between professional and liberal education had 'bedevilled' discussions on legal education.⁴⁴⁸

He referred back to Blackstone's argument that an education rooted in practice alone would be limited and limiting; lawyers would have no understanding of legal principles and so operate in a mechanical fashion.⁴⁴⁹ Blackstone believed that the common law could be approached as a system of general propositions and rules, and thus amenable to academic study.⁴⁵⁰ This view was opposed by writers such as Reeves, who saw the common law as its procedures and forms of action, best learned in practice.⁴⁵¹

Kahn-Freund observed that both Blackstone and his 19th century successor Dicey did not entertain the idea that only practice was worthy, but nor did they believe that anything which savoured of the practical was to be abjured.⁴⁵²

At the 1967 Ditchley Conference the academic contributors observed that the distinction between 'academic' and 'practical' topics was "artificial."⁴⁵³; in brief, academic legal education should enable students to understand the basics of the legal system, its processes, and the links between law and other subjects.⁴⁵⁴

Pue characterised the role of university of legal education as seeking to 'provide a practically useful, pragmatic, trade training, *as part of a liberal education*.'⁴⁵⁵ The challenge for law is to balance on the 'narrow ledge' between a deep but irrelevant liberal education and a relevant but dull vocational course.⁴⁵⁶ There is a perceived value to the public in having broadly educated individuals working as lawyers.⁴⁵⁷

⁴⁴⁷ Otto Kahn-Freund, 'Reflections on English legal education' [1966] 29 MLR 121,127

⁴⁴⁸ Kahn-Freund n447 121; Fiona Cownie, *Legal academics* (Hart, 2004) 32

⁴⁴⁹ Kahn-Freund n447 122; Brooks n87 153; Hepple n207 472

⁴⁵⁰ Brooks n87 153-154

⁴⁵¹ Brooks n87 154

⁴⁵² Kahn-Freund n447 122-123

⁴⁵³ *Training for the law* n182 16

⁴⁵⁴ *ibid*

⁴⁵⁵ Pue n32 275

⁴⁵⁶ *ibid*

⁴⁵⁷ Pue n32 276

Savage and Watt see the university law school as connecting academic lawyers with practitioners.⁴⁵⁸ They refer to this as the 'house of intellect' model, one room of which could house a 'scholarly law degree'.⁴⁵⁹

Savage and Watt argued that academic lawyers and practitioners have many goals in common, in particular maintaining standards in the face of increasing commercialism, and indeed should see themselves as part of one profession.⁴⁶⁰ In a later paper Watt was clear that the tension or choice between vocational and liberal education was a "false dichotomy."⁴⁶¹ Liberal study could- and should- sit alongside work with practitioners.

William Twining's approach can also be seen as rejecting the apparent choice between a purely liberal model and a purely vocational approach to legal education.⁴⁶² Such a choice is presented as being at best misguided and at worse inimical to the creation of effective legal education⁴⁶³. Twining argued that there is no necessary incompatibility between the development of generic intellectual skills and realising the essential values of a general liberal education;⁴⁶⁴ transferable skills are seen as part of the liberal idea. Liberal education and a skills based education are congruent in so far as both are aiming at 'intellectual skills' rather than particular aptitudes.

Twining sees legal education in very broad terms, taking in not only the education of lawyers but also the teaching of legal matters in schools, the training of judges, and the education in law of non-lawyers; a law school could contribute to any and all of these activities.⁴⁶⁵ He distinguished the preparation of professionals with the idea of 'lawyer education', arguing that

the term lawyer education, though ungainly, has the merit of separating off those aspects of legal education which are concerned with

⁴⁵⁸ Cownie *Legal academics* n448 33

⁴⁵⁹ Nigel Savage and Gary Watt, 'A "House of Intellect"' for the profession in Peter Birks (ed), *What are law schools for?* (OUP 1996) 45

⁴⁶⁰ Savage and Watt 'A "House of Intellect"' n459 46-47

⁴⁶¹ Nigel Watt, 'The Soul of Legal Education', [2006] 3 Web Journal of Current Legal Issues <<http://www.bailii.org/uk/other/journals/WebJCLI/2006/issue3/watt3.html>>

⁴⁶² See William Twining, *Blackstone's tower: the English law school* (Sweet and Maxwell, 1994)

⁴⁶³ Twining *Law in context* n292 280

⁴⁶⁴ William Twining, 'Intellectual skills at the academic stage: twelve theses' in Peter Birks (ed), *Examining the law syllabus- beyond the core* (OUP, 1993) 93

⁴⁶⁵ William Twining, "Developments in legal education : beyond the primary school model" [1991] 2 Legal Education Review 35, 36 and 56

preparation for a career as a professional lawyer from those which have other objectives.⁴⁶⁶

Such a view short-circuits the practice / education dichotomy by widening out the purview of legal education through a particular definition of legal education. In this view legal education is a collection of activities, some of which relate to professional formation (lawyer education), others to areas such as liberal education and public legal education. Twining was clear that academic lawyers needed to maintain as wide a view of legal education as possible, and not just focus on professional competencies.⁴⁶⁷

This approach reflects a commitment on the part of law schools to supporting the work of the legal profession, but also suggests a certain distance from the profession. It does so by arguing that whilst law schools form part of the professional formation of future lawyers, they also provide a space for critique of the practices of the legal profession and the legal system. By providing space for research into the workings of the legal system, and spreading awareness of that research into the profession and throughout the wider society law schools act as a generalised think tank for the legal system as a whole.

For Twining the legal system incorporates all legal actions and relations, and as such any research or teaching in these areas fits into 'legal education.' What makes it 'lawyer education' is the narrowing of focus to the work of lawyers, be it in courts or in the production of legal documents and management of affairs.

Twining sees part of the problem lying with the retreat of academics from all but the academic stage of legal education:

Here an opportunity has been missed. If law teachers collectively take themselves seriously as educators they can expect to be accepted as experts on all aspects of legal education rather than as interested stakeholders fighting to preserve primary legal education from outside 'interference'.⁴⁶⁸

⁴⁶⁶ Twining 'LETR' n267 97

⁴⁶⁷ *ibid*

⁴⁶⁸ Twining 'Professionalism' n396 170

Law schools are broader than the education of lawyers; "[A]s institutions dedicated to the advancement, stimulation, and dissemination of learning about law, they have a key role to play in the national system as a whole."⁴⁶⁹ As we have seen this is a view with roots in the 19th century reform movements, which also linked the wider study of law with the effective workings of the system as a whole.

It can be argued that the law degree- and legal education more widely- is built on an *individualist* approach, focusing on what individuals need to know and do in order to perform effectively as lawyers. The approach taken by Twining is a *systemic* approach, looking at what the legal-political system needs as a whole. Some would go to law school to begin their career as lawyers; others would take a law degree as part of their education for public service; yet others would use the law degree as a basis for careers in business or as entrepreneurs. Law schools would also support research into law drafting, law reform, and legal practice as part of their role within the legal system.

This approach would decouple legal education from the 'internal' professional projects of solicitors and barristers and link them to a wider 'external' project in which the professionalism of lawyers and academics is linked to the wider legal system.

Such a broad vision may have been undermined by the current stress on employability and applied knowledge.

Futures

The future shape of legal education will be determined by the actions of government ministers, regulators, educators, students, and the legal professions.

Following a wide ranging consultation the Ministry of Justice announced that there would be no changes to legal services regulation in the near future.⁴⁷⁰

This could of course change after the 2015 general election, but it is unlikely that the general ideas of the LSA 2007 will be changed, and so consumerism and efficiency will remain key to legal services regulation and so remain

⁴⁶⁹ William Twining, "Thinking about law schools: Rutland reviewed" [1998] *Journal of Law and Society* 25 (1) 1, 5

⁴⁷⁰ <http://www.lawgazette.co.uk/law/moj-rules-out-further-reform-of-legal-services-regulation/5041049.article>

important to legal education. The current audit regime in higher education might change in form, but it is unlikely to change its focus on the consumer based orientation of key information sets and league tables.

There has been differentiation within the legal professions for some time⁴⁷¹ and it has been argued that in the wake of the LSA 2007 legal services are becoming more diverse and opening up new types of work and service⁴⁷². These changes will require changes in regulation⁴⁷³, but legal education is not keeping up.⁴⁷⁴

The commonality assumed in the current system no longer holds.⁴⁷⁵ The change from relative homogeneity of practice and organisational form⁴⁷⁶, to one in which many lawyers are employees in a workforce⁴⁷⁷, may need to be reflected in changes to education⁴⁷⁸. The standard towards which education aims will be that of *competence*, not the attainment of a particular set of qualifications.⁴⁷⁹

The frontline regulators, as we have seen, are working on their future education plans. It is likely that the staged approach will remain, but elements could change; for example the vocational courses could be radically redesigned or even abandoned. The academic stage will still have to deal with the issue of how to deal with practice issues, and indeed whether it should do so.

The development of competency frameworks could lead to *greater* practice integration as degree providers seek to demonstrate the value of their courses to prospective lawyers. This would be a continuation of current trends in many courses, where clinical modules and work related learning have become key elements of the law degree.

⁴⁷¹ Abel 'Between market and state' n25 324; Abel 'The rise of professionalism' n20 146; Julian Webb, "Turf wars and market control: competition and complexity in the market for legal services" (2004) 11 International journal of the legal profession 81, 94; Webb 'Regulating lawyers' n1 537

⁴⁷² Francis *At the edge of law* n20 138

⁴⁷³ Chasserant and Harnay n12 281

⁴⁷⁴ Wallace n278

⁴⁷⁵ *ibid*

⁴⁷⁶ Davies n10 7

⁴⁷⁷ *ibid*

⁴⁷⁸ Huxley-Binns 'What is the Q for?' n324 296

⁴⁷⁹ Wallace n278

The continued popularity of the law degree and its high standing may counter some of these trends, as law could be sold as a good general degree.

Different types of law degree could emerge. We have already seen the development of sector and firm specific forms of legal education, such as the City LPC.⁴⁸⁰ Changes at regional and global levels could have an effect on the content and delivery of qualifications, another example of the impact of neoliberalism with its emphasis on openness and transnational regulatory systems.⁴⁸¹

There are already two year LLBs⁴⁸², and degrees which integrate the LPC.⁴⁸³ The types of degree offered could vary depending on the institutions, with post-92 and new universities feeling under greater pressure to develop practice ready and relevant programmes.

Students are still applying to take law degrees despite the cost of HE. However the changing nature of law work and the difficulties in securing highly remunerative jobs may lead some to take other routes, especially as these are developed post-LETR. Higher apprenticeships and CILEX qualifications have both been promoted on the basis of their 'learn while you earn' nature.

The LETR noted the need for "substantial professional agreement" with any proposed reforms to legal education.⁴⁸⁴ The complex nature of the professions, and the changing nature of their work, may mean that agreement with change will vary according to the professionals in question; and future changes in regulation could well change the form of the legal professions.

The state has taken on the role not only of co-creator and legitimiser of professional claims, but of critiquing and seeking to reign in or adjust those claims to bring them into line with the wider focus on managerial and commercial values.⁴⁸⁵ The creation of the LSB is seen to have undermined self-

⁴⁸⁰ Faulconbridge and Muzio 'Symposium' n12 1343; Francis *At the edge of law* n20 27; Stevens, Welch, and Welch n445 334

⁴⁸¹ Faulconbridge and Muzio 'Symposium' n12 1349-1350; Faulconbridge and Muzio 'Professions' n6 137

⁴⁸² For example at the University of Law

⁴⁸³ For example at Northumbria

⁴⁸⁴ Legal Education and Training Review *Setting standards* n3 6

⁴⁸⁵ Evetts n22 789; Francis *At the edge of law* n20 170

regulation, in so far as it is accountable to government and not the profession.⁴⁸⁶

Challenges from legislative change and consumer pressure are held to be having an effect on the jurisdictional settlements of the established legal professions, opening up opportunities.⁴⁸⁷ For example, existing groups may seek to extend their areas of work (such as happened with legal executives⁴⁸⁸) or new groups may claim professional status based on the work they have taken over (as is happening with paralegals.) In turn such changes could lead to new demands in education, as can be seen in the provision of legal apprenticeships for paralegals and the growing provision of CILEX qualifications.

Francis describes the current field of legal professionalism as one characterised by fragmentation, change, competition, and a difficult relationship between the professions and universities.⁴⁸⁹ This has led to a 'contingent legal professionalism'⁴⁹⁰, one which may admit a *range* of professionalisms- which in turn could underpin and validate the emerging range of educational options.

Professionalism may be relevant for a 'limited elite' in the future⁴⁹¹, although the claims of professionalism from paralegal groups in England indicate a possible *extension* of professionalism in the legal sphere.⁴⁹²

'Cultural capital' plays a role in career outcomes⁴⁹³, with school career and university reputation often meaning more than degree classification⁴⁹⁴. It may also allow for some institutions to be more free to pursue liberal education aims.⁴⁹⁵

Summary

The law degree has been a site of conflicting demands and played a role in a complex process of professionalization, both for lawyers and academics. A

⁴⁸⁶ Davies n10 16

⁴⁸⁷ Andrew Francis, "Legal executives and the phantom of legal professionalism: the rise and rise of the third branch of the legal profession?" (2002) 9 International journal of the legal profession 5, 6

⁴⁸⁸ Francis 'Legal executives' n487

⁴⁸⁹ Francis *At the edge of law* n20 172

⁴⁹⁰ *ibid*

⁴⁹¹ Muzio 'The professional project' n647

⁴⁹² See for example The Institute of Paralegals <http://www.theiop.org/>; Julia Evetts n22 782

⁴⁹³ Richard Abel n6 138; Francis *At the edge of law* n20 163; Strevens, Welch, and Welch n445

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⁴⁹⁴ Varnava and Burrige n34 3

⁴⁹⁵ Pue n32 279

degree of control was given to academics by practitioners, but this was not a surrender of total control; academics inherited some of the demands of the professional exams in the form of the core.

This has meant that a conflict of aspirations has been built into the law degree; it looks two ways, towards the liberal aspirations of the academy and the practical needs of lawyers. The latter element has been to the fore in recent times owing to the policy priorities of government and the demands of students for returns on their financial investment.

Whilst the law degree inherited the aspirations of the nineteenth century reformers, that there should be an initial academic stage of liberal character, it also inherited the demand for practice relevance. The requirements of the professional examinations found expression in the common elements of the early law degrees, which were then formalised as 'the core' in the post-Ormrod settlement. To adapt the words of Maitland, the ghosts of the professional exams continue to haunt the degree.

The current law degree can be seen to be a solution to a specific set of problems of the 19th century- the lack of status and general education of solicitors and the lack of general legal knowledge of the Bar- and the importance of degrees as markers of professional status in the 20th century. In this sense the professions themselves can be seen to be haunted by their own past; the degree and its lawyers are 19th and 20th century solutions which do not fit well with 21st century realities.⁴⁹⁶

The law degree has something of an identity crisis- it has been a part of diverse professional projects, a site of tension over perspectives on the role of higher education, a vehicle for government policy in areas as diverse as education and the delivery of professional services, and subject of the hopes and desires of students.

With all of these demands, and the changes which fuel them, the very idea of a single form of law degree no longer holds.⁴⁹⁷ The range of work undertaken by solicitors, and the forms of business in which they perform that work has changed even since Ormrod; the Bar has taken to direct access and is looking

⁴⁹⁶ Thornton 'Legal education' n40 19, 26

⁴⁹⁷ Thornton 'Legal education' n40 19, 25

into alternative business structures. CILEX practitioners can go onto become solicitors, paralegals are aiming at professional status. Behind all of this are the competency standards being developed by the legal professions, and the challenges they present to law schools; will they seek to incorporate them, as they incorporated the professional exams of an earlier time?

The changed fee system of higher education and the organisation of law work may make a law degree of any form a less attractive option for many potential students. As fewer law jobs demand degree level education, and learn-as-you-earn becomes more attractive, apprenticeship and CILEX style approaches will draw off some students who in the past may have gone to law school.

Even as student recruitment to law degrees remains steady, their demands on the degree are changing; with the introduction of fees there is pressure to make degrees more practice focused to provide a return on the 'investment.' In Bradney's words

Law schools will become more vocationally driven because this is the easiest way of convincing 'student customers' that the fees that they will pay will be a sound investment.⁴⁹⁸

These effects are likely to be unevenly distributed. Institutions with historically high social-cultural capital can offer their students a share in that capital; practical elements to their learning are of less importance, and new forms of educational delivery could allow students at these institutions to gain practice elements via intensive online modes⁴⁹⁹.

The impact may be felt in both solicitor and barrister professions, but on different bases. As the SRA creates more routes into the profession, so the law degree may become less attractive to some, who can gain the day one knowledge and skills competencies through other routes such as CILEX and other work based modes⁵⁰⁰. To counter this some institutions may feel

⁴⁹⁸ Bradney 'English university law schools' n33 61

⁴⁹⁹ Rebecca Huxley-Binns - *Legal education review – will it affect you? A look at the career paths of three future lawyers* (2014) <http://blogs.lexisnexis.co.uk/futureoflaw/2013/10/legal-education-review-will-it-affect-you-a-look-at-the-career-paths-of-three-future-lawyers/>

⁵⁰⁰ *ibid*

compelled to include practical competency elements alongside the knowledge based ones.

The Bar may develop its historic position of favouring non-law graduates and so for intending barristers the law degree will be less attractive.

Professions and all such 'claims to jurisdiction' are inherently contingent and contestable.⁵⁰¹ Such changeability makes too strong a link between forms of practice and education problematic; to follow the competency standards of today could well simply entrench the contingent settlement of the moment. Moving the law degree away from a formal relationship with qualification for legal practice could allow for a greater degree of flexibility in the degree, whilst leaving room for a critical appreciation of the world of legal work.

The current volatile situation represents an opportunity to positively reimagine the law degree. The proposed shift of management of the law degree to the higher education regulators could make this easier. Universities could move away from an approach rooted in the core subjects and the connection with the practice of barristers and solicitors as the Joint Statement will no longer be what they are assessed against.

Legal work, as discussed earlier, would still be an important part of the degree- but as a topic of discussion and critique, and looking at all forms of law work, not just the forms encoded in the current core. A new law degree could also incorporate the social, technological and international changes affecting the legal professions, offering both experience in and a critique of such developments.⁵⁰²

As we have seen there are approaches to legal education which can support such a re-imagining, which see the liberal and practical education able to exist side by side, and hold out a vision in which practice informs education and education contributes to practice. Practice and education are not seen as inimical elements of a tension which must be resolved in favour of one or the other, but as mutually supportive elements in a creative tension which supports the aims of the academy, the professions, and the legal system as a whole.

⁵⁰¹ Webb 'Turf wars' n471 96; Faulconbridge and Muzio 'Symposium' n12 1342

⁵⁰² The *Law Without Walls* project is an example of this- <http://www.lawwithoutwalls.org/>

Seeing the law school in a systemic light in the manner of the nineteenth century reformers, rather than as providers of employability led qualifications to consumer individuals, is an important element in such a development. Law schools would act as part of the system for producing legal practitioners and they would support the work of the legal system through their wider educational and research work, including study and critique of legal practice.

This approach could also help bring legal academics and practitioners together in a critique of the neoliberal agenda which has challenged the claims of both groups. The link to practice would be developed not simply in narrow terms of 'employability' but in wider terms of personal and social development, and would not be limited to the practice demands of any one professional group.

Developing a shared sense of stewardship over legal education, with the law degree valued as one element in building the 'strong and independent' legal profession called for by the LSA 2007, could provide a base for co-operation between the academy and the professions. Such co-operation- sadly lacking in much of legal education's history- would focus on the value of graduates to the legal professions and the value both of the law degree and of the wider educational and research work of law schools.

In such a vision, the tensions built into the law degree are eased by moving from the problematic embedding of historic practice needs via the core subjects and more recent employability led elements in clinical legal education. The law degree when freed from practice constraints would allow for a greater range of approaches across and within law degrees. There would be no single vision of what a law degree should teach or an assumption that law graduates will enter the legal professions. This would allow law schools to develop degrees as they wish, with some opting to incorporate practice elements and others perhaps stressing elements such as social justice, public legal education, or research. This would realise the vision, repeated from 1846 to the ACLEC, of the law degree as a broad and liberal education focused on law; one which takes legal practice seriously, but is not defined or limited by it.

Law schools and their degrees would act as the many rooms of a varied 'house of intellect' supporting the legal profession⁵⁰³ and the wider legal system.

Further lines of research

There are several areas of research which would complement and develop the work of this thesis.

The nature of the work undertaken by lawyers could be the subject of empirical research; it would be useful to know the kinds of practice in which lawyers are engaged. This would be of value particularly to the providers of vocational education and those running simulated law offices as part of clinical education. It would also provide a base for critical teaching and research about the nature of legal work and legal workers.

The impact of student fees and the moves towards a higher education market could be studied. It would be interesting to see what attitudes students have to higher education, particularly in terms of reasons for their choice of a law degree and what they expect that degree to cover. It would be useful to know if practice elements are critical to students and if and to what extent liberal educational aims feature in student expectations.

The methods of law teachers, and their attitudes towards learning theory, would be an interesting area. Scholars such as Paul Maharg have carried out extensive work on pedagogy in law⁵⁰⁴ and research in law classrooms would see how far such ideas have been adopted and the reasons behind the teaching strategies used. The effects of the introduction of teaching accreditation via postgraduate teaching qualifications and Fellowship of the Higher Education Academy could be an element of such research.

The relationship between legal academics and the legal professions has often been a difficult one. It would be interesting to study how these groups see each other and how that affects attitudes towards the law degree and preferences for qualifications when graduates apply for jobs.

⁵⁰³ Savage and Watt 'A "House of Intellect"' n459

⁵⁰⁴ Paul Maharg, *Transforming legal education : learning and teaching the law in the early twenty-first century* (Ashgate, 2007); Paul Maharg, *The arts and the legal academy* (Ashgate, 2013)

The issues facing lawyers and legal educators in England and Wales are also apparent in several other jurisdictions, and a comparative study would be useful in looking at how different systems are dealing with the problems.

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