

# Legal Education and Training in England and Wales: Back to the Future?

Andrew Boon and Julian Webb

## Introduction

John Henry Merryman observes:

The examination of legal education in a society provides a window on its legal system. Here one sees the expression of basic attitudes about the law: what law is, what lawyers do, how the system operates or how it should operate. Through legal education the legal culture is transferred from generation to generation. Legal education allows us to glimpse the future of the society.<sup>1</sup>

This article outlines prospective changes in English legal education that offer a window on increasingly instrumental and consumerist expectations of professional credentialing processes.<sup>2</sup> These pressures can be traced to the impact of globalization on British political thinking, but they are producing different results from those the MacCrate Commission, a similarly ambitious review of structure for education and training, did in the United States. Our analysis confirms that we are two nations divided by a common language, yet speaking a different language of legal education. We contend that many of the changes and tensions facing English legal education result from both an underlying epistemic uncertainty about the nature of the English legal education project and a tendency to respond ad hoc to national, regional, and globalizing pressures. Many of these pressures, though they may emerge in different ways in different localities, are

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1. John Henry Merryman, *Legal Education There and Here: A Comparison*, 27 *Stan. L. Rev.* 859, 859 (1975).
2. We use *English* purely as a shorthand term for what we should properly call the legal system of England and Wales. A distinctively Welsh dimension has become more significant in substantive and cultural terms following the devolution of greater political and legislative power to Wales in 1998.

not unique to the United Kingdom. Viewed in this light, our analysis may be of more than purely domestic interest and concern.

In charting the story of English legal education and training we take as our starting point the system as it operates today. To North American eyes, there are likely to be some oddities, which first need to be identified.

Legal education in England and Wales involves rigid distinctions between academic, vocational, and continuing stages of training. Law in England is an undergraduate rather than graduate education. Conventionally, entrants begin studying law after completing their secondary education at around the age of eighteen or nineteen. To practice law, students must first complete a three-year “qualifying” law degree or equivalent.<sup>3</sup> The contents of the law degree curriculum are lightly prescribed, relative to many other European jurisdictions. The profession requires a core of knowledge, the “seven foundations of legal knowledge,” and a range of “key skills.” While some flexibility is possible in arranging this content, about two-thirds of an English LLB is comprised of compulsory courses and about one-third may be taken from a wide range of electives. The required courses, or Foundations, are: Contract, Criminal Law, Torts, Public Law, Equity and Trusts, Land Law, and European Union Law.<sup>4</sup> Evidence, Criminal and Civil Procedure, and Professional Responsibility are not required courses. Evidence, along with other more obvious variations on the themes of Tax, Family Law, Labor Law, Corporations, and so on, are commonly offered as electives by English law schools. Civil and Criminal Procedure are rarely offered at the academic stage. Professional Responsibility is even scarcer. Live client clinics, lawyering skills courses, and clinical simulations also are not standard offerings for LLBs, but are nonetheless available to an extent unheard of twenty-five years ago. Discrete Legal Writing courses are also unusual, though widening participation policies have obliged more universities and law schools to deliver generic study skills, writing skills, and learning how to learn in higher education as learning support provision, if not as part of the mainstream curriculum.

3. There are some four-year law degrees that include clinical or work-based elements as an integrated part of the program and a few which include a year studying law in another (usually European) jurisdiction. There are also numerous part-time and some distance learning programs that enable students to complete the equivalent to a three-year full-time degree in four to five years. The professional bodies also permit holders of non-law undergraduate degrees to progress to the vocational stage of training by completing an intensive one-year conversion course covering the Foundations.
4. The Foundations are published in what has variously been called a “joint announcement” or “joint statement” by the branches of the profession following consultation, including with the academy via its main legal academic associations. For the current version, see The Law Society and the Bar Council, A Joint Statement issued by the Law Society and the General Council of the Bar on the Completion of the Initial or Academic Stage of Training by Obtaining an Undergraduate Degree (August 1999), available at <<http://www.sra.org.uk/documents/students/academic-stage/academicjointstate.pdf>> (last visited June 13, 2008). English law schools have developed a variety of modular structures and do not all deliver the foundations as six discrete modules in the way this suggests, though there are degree courses that do so.

After students complete the initial stage of training, they must pass a vocational course and fulfill a period of employment training under the supervision of a qualified practitioner. These elements are the vocational stage of training. The first part involves functionally differentiated programs for aspiring barristers and solicitors, called the Bar Vocational Course (BVC) and Legal Practice Course (LPC) respectively. These are institutionally based as opposed to workplace programs and are most commonly completed over a full year of academic study (though a number of institutions also offer part-time study options).

The curriculum at the vocational stage is more closely prescribed and regulated by the relevant professional body. The main component parts of the curriculum are as follows:

	LPC	BVC
Substantive law	Business law and practice Litigation Conveyancing	Civil Litigation Criminal Litigation and sentencing Evidence
Skills	Advocacy Client Interviewing and advising Practical legal research Writing and drafting	Advocacy Conferencing Fact management Legal research Opinion writing Drafting Negotiation
Conduct	Professional conduct and client care	Professional ethics

As the above table shows, both courses involve a substantial amount of substantive knowledge, and in this respect the English vocational courses are more knowledge-based than other Commonwealth professional training courses, notably those in British Columbia (Canada), New South Wales (Australia), and New Zealand, which are much more skills-oriented and of shorter duration. Second, the range of skills assessed and the relative weighting between skills and knowledge, insofar as these are separable, differs between LPC and BVC. The range of skills taught and assessed on the BVC is wider. This is reflected in a 60 percent minimum assessment weighting in favor of skills on the BVC as compared to a 25 percent minimum for the LPC. The relative emphasis between the skills also differs. Thus, as one would expect, given the Bar's role as a referral advocacy profession, the emphasis on advocacy is far greater in both depth and breadth on the BVC. Professional ethics and conduct is taught as a topic in its own right, though the amount of discrete ethics teaching is limited when compared with U.S.-style Professional Responsibility

courses. It is also assessed pervasively: students are warned that ethics issues can—and do—arise in any skills or knowledge-based assessment.

Both courses require students to take additional specialist electives designed to combine substantive legal knowledge and relevant skills towards the end of the program of study.

The second phase of the vocational stage is an apprenticeship during which trainees undertake supervised practice. This reflects the professional divide between English lawyers. It is served by solicitors in a two year training contract and in one year of pupillage for barristers. Practicing solicitors and barristers thereafter are also subject to compulsory post-qualification (continuing) professional development (CPD). Solicitors may undertake further training to advocate in higher courts and may join specialist panels for personal injury, family, or other areas of work.

Many of these established structures and divisions are coming increasingly into question and, in the process, raising underlying issues about the nature and purpose of a legal education. To understand the background and context of the modern system and the debates associated with it, we need to ground legal education policy and practice in its historical context.<sup>5</sup>

### **The History and Structural Development of English Legal Education**

#### *Training for Legal Practice: Circa 1200-1970*

English legal education and training emerged largely as a creature of the legal profession and particularly the institutions of the Inns of Court. A statute of Henry III, in 1234, prohibited teaching of Civil Law in the London “schools” (presumably the early Inns). Designed primarily to protect the nascent universities of Oxford and Cambridge from their upstart rivals, this measure had the effect of separating the teaching of Civil Law and Common Law and probably helped slow the reception of English common law into the universities.<sup>6</sup> The Inns, which exist today as the base for the Bar, in medieval times trained barristers, solicitors, and attorneys.<sup>7</sup> This was

5. It is worth remembering that, outside of Oxford and Cambridge, higher education as a system in England is very much a modern phenomenon and, in fact, younger than in the United States. “[T]he U.S. organisational revolution took place...roughly between 1870 and 1910; the emergence of the British system is still underway.” Martin Trow, *Comparative Perspectives on Higher Education Policy in the U.K. and U.S.*, 14 *Oxford Rev. Educ.* 81 (1988).
6. See J.L. Barton, *The Study of Civil Law before 1380*, in 1 *The History of the University of Oxford: The Early Oxford Schools* 521 (T.H. Aston and J.I. Catto eds., Oxford, 1984). Barton notes that there is evidence of the Civil Law being taught at Oxford from the early 1200s; both Canon Law and Civil Law were established in Cambridge by the early 1250s. See Damian Riehl Leader, 1 *A History of the University of Cambridge: The University to 1546* 192-93 (New York, 1988). Brand argues that there is some evidence of English Law being taught at Oxford in the 1300s. Paul Brand, *Courtroom and Schoolroom: The Education of Lawyers in England Prior to 1400*, 60 *Hist. Res.* 147 (1987).
7. The English legal profession *qua* profession began to emerge in the second half of the thirteenth

a relatively informal process of training. Students and practitioners lived and dined in the Inns; students learned by observing proceedings in court and taking notes, talking to practitioners and judges, practicing in moots and, by the fifteenth and sixteenth centuries, attending readings and lectures. However, following the English Civil War in the seventeenth century, public lectures at the Inns died out, and professional training for the Bar became largely a matter of, at best, solid apprenticeship or, at worst, serving time and attending dinners. As the Inns of Chancery declined in status and effectiveness, training for attorneys and solicitors similarly came to rely substantially on apprenticeship of varying quality. This position continued until well into the nineteenth century.

Two highly critical government reports pointed to the parlous state of legal education and training at this time, particularly for the Bar. In 1846, a Parliamentary Select Committee reported that all who were interested in the state of legal education recognized “the inefficiency of the present system, the injurious consequences which have resulted from its continuance, and the urgent necessity of immediate alteration” and urged the Inns of Court to unite in creating a law university and to establish preliminary examinations and lecture-ships.<sup>8</sup> Again, in 1854, a Royal Commission was appointed to inquire into the state of education in the Inns of Court and of Chancery and reiterated many of the recommendations of 1846, but to little lasting effect.<sup>9</sup>

More formalized training was gradually introduced on the back of professional examination requirements.<sup>10</sup> Preliminary and intermediate examinations were introduced for solicitors and attorneys in 1860. Initially under the direct control of the judges, responsibility for the examinations was in 1877 handed

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century. Many of its earliest stratifications did not survive into the modern period, though some sub-divisions persisted into the nineteenth century—notably between serjeants-at-law and barristers, who represented the profession of advocates and pleaders in the courts, and attorneys and solicitors, who historically, much as now, undertook mostly non-contentious work and pre-trial preparation. By the late nineteenth century such distinctions had disappeared, leaving the professions of solicitor and barrister essentially in their modern form. For a concise summary of the history of the divided profession, see Judith L. Maute, *Alice’s Adventures in Wonderland: Preliminary Reflections on the History of the Split English Legal Profession and the Fusion Debate (1000-1900 A.D.)*, 71 *Fordham L. Rev.* 1357 (2003).

8. Select Committee on Legal Education, [no. 686] (London, 1846).
9. Report of the Commissioners Appointed to Enquire into the Arrangements in the Inns of Court and Inns of Chancery for Promoting the Study of Law and Jurisprudence, no. 1988 (London, 1855). The idea of a law university limped on into the 1870s without ever garnering sufficient support. See A.H. Manchester, *A Modern Legal History of England and Wales 1750-1950*, at 57-60 (London, 1980). The idea was finally killed off by the Haldane Commission on University Education in London which robustly argued that any plans for a “great school of law” in the metropolis should be advanced in the context of a proper university institution. Royal Commission on University Education in London, *Final Report of the Commissioners*, Cd. 671, ¶ 338 (London, 1913).
10. The following summary is based largely on the historical survey provided by the Ormrod Committee. See Report of the Committee on Legal Education, Cmnd. 4595, ¶¶ 27-28 (London, 1971) (hereinafter Ormrod Report).

over to the Law Society. Exams were introduced as an addition to existing apprenticeship requirements, and so study had to be undertaken around the training period (called “articles”). As the examination requirements became more stringent, the Law Society organized courses of lectures in London and other major provincial centers and then passed regulations allowing clerks to take time to prepare without interrupting their articles.

This more than anything else opened the way to more formal training courses, which were provided initially by private colleges and “law crammers”—the Law Society created its own School of Law only in 1903. In 1922, the Society required all articulated clerks who were not law graduates or managing clerks of more than ten years experience to undertake a full year’s study at its School in London or at a recognized institution. The latter included a small number of private colleges and a growing number of provincial universities. This structure remained in place until the early 1960s, when the Law Society agreed to an amalgamation of its school with the largest of the private tutors, Messrs. Gibson and Weldon, to form the Law Society’s College of Law. At the same time, the license of the provincial universities to teach for the Intermediate Examination was withdrawn, obliging all students to attend the College. As numbers grew to over 2,000 students, this system proved impractical, and, in the early 1960s, the Law Society had to reinstate its externally provided courses. These new courses were not provided by the established universities, however, but at the newer, more vocationally oriented colleges of commerce in Birmingham, Bristol, Leeds, Liverpool, Manchester, Newcastle, and Nottingham—institutions that later became part of the polytechnic sector created in the 1970s to support a massive expansion of higher education.

The picture at the Bar was not that different.<sup>11</sup> After a voluntary examination was instituted in the early 1860s, a compulsory Bar Examination was introduced in 1872.<sup>12</sup> Subject to various modifications, this remained the basis of training for the next hundred years. Attendance at a teaching institution was not initially compulsory, and many students relied on private tutors or independent study. The Council of Legal Education, which had been jointly established by the Inns in 1852, offered some teaching: initially five readers or professors were appointed to each deliver three sets of lectures per year. These appointments were not full-time and tended to be held by distinguished academic lawyers and practitioners. A full-time Director of Legal Studies was appointed in 1905, but teaching continued to be delivered by practitioners and visiting academics until 1967 when the Inns of Court School of Law (ICSL) was established and a permanent teaching staff was appointed. This latter development was largely necessitated by the rapid expansion of student numbers in the post-War period, particularly from newly independent Commonwealth

11. The following paragraph draws chiefly on the Ormrod Report, *supra* note 10, and the summary of the Council of Legal Education Archive produced for the AIM25: Archives in London and the M25 Area Project, available at <[http://www.aim25.ac.uk/cgi-bin/search2?coll\\_id=1569&inst\\_id=4](http://www.aim25.ac.uk/cgi-bin/search2?coll_id=1569&inst_id=4)> (last visited Dec. 5, 2007).

12. Manchester, *A Modern Legal History of England and Wales*, *supra* note 9, at 58.

countries that lacked the resources to provide legal training on a local basis. As numbers grew, the structure and physical resources of the Council became inadequate, and it was obliged to reorganize and relocate to new premises in Gray's Inn (in 1964), where purpose-built teaching accommodation could be provided. As successor to the Council, ICSL remained the sole provider of training for the English Bar until 1997 when a number of universities were finally validated to deliver the successor to the Finals course.<sup>13</sup>

*The Emergence of Academic Legal Education in England: 1750-1971*

Although there is evidence of Roman and Canon Law being taught in the ancient universities from the early medieval period,<sup>14</sup> Common Law legal education was, on the whole, a late starter and slow developer. The first university chair in English (Common) Law—the Vinerian Chair at Oxford—was created in 1758. Despite having Blackstone as its first incumbent, this established neither the Vinerian Chair nor Oxford as the powerhouse of English legal scholarship that Blackstone desired.<sup>15</sup> By the 1840s there were still only two law professors at Oxford, one of whom offered no courses, and the Chair of Canon Law was unfilled. Similarly, even following the founding of the Downing Professorship in English Law (1800), law at Cambridge struggled to become established. Chairs in Law nevertheless followed at the new University College in London in the 1820s (under John Austin and Andrew Amos), and at King's College in 1831. The desire of the new university to increase student numbers, the energy and inspiration of Amos, and University College's proximity to the geographical heart of the profession probably ensured it fared somewhat better than Oxbridge in the early years, though numbers of students remained small and the audiences at lectures consisted largely of articulated clerks and a few barristers.

The universities, however, did not give up. The numbers of university teachers slowly increased and new courses were introduced: the BCL degree was established at Oxford in 1852, followed by the Cambridge LLB in 1855, and the Durham BCL in 1858. From the early 1870s law courses were developed in the new civic universities in the midlands and the north of England. In London, the law schools at University and King's Colleges were followed by the founding of a law school at the newly established London School of Economics (in 1895).

13. In 2001 the ICSL formally became a part of the City University Law School, although until 2008 it continued to deliver vocational training under its original name.
14. The Regius Chairs of Civil Law were founded at Oxford and Cambridge by Henry VIII in the sixteenth century, though Canon law teaching was, by contrast, suppressed for a period following the English reformation.
15. The second Vinerian Professor (Sir) Robert Chambers held the Chair for eight years before gaining a greater reputation as a colonial judge and ultimately Chief Justice of the Supreme Court of Bengal. The third Chair, (Sir) Richard Wooddeson followed in Blackstone's footsteps as a commentator on and systematiser of the Common Law, but is today little remembered in his own jurisdiction, though he is sometimes still cited in the U.S. courts.

By 1909 there were eight law faculties in England and Wales, and a clear demarcation between academic and professional education was becoming established. Student and staff numbers for the most part remained small.<sup>16</sup> It took the Solicitors Act 1922 to increase the number and size of law schools in the wake of additional student numbers and professional support. This did not equate to a substantial increase in law graduates. Articled clerks could still qualify largely by apprenticeship, and those who had completed the so-called “intermediate stage” of a degree were entitled to serve a year’s less time under articles, even if they never graduated. The numbers graduating out of many schools remained, by today’s standards, quite small.<sup>17</sup>

At the same time, intellectually, the place of law in the university remained heavily contested. In the mid-nineteenth century the idea of a modern university was only just beginning to take shape. The liberal visions (for their time) of Cardinal John Henry Newman and Matthew Arnold in the 1850s and 1860s played a role in advancing a model of the university as a place dedicated to learning for its own sake, rejecting narrowly utilitarian and professional agendas.<sup>18</sup> Law struggled to find its place within this emergent liberal tradition. As Sir Frederick Pollock lamented at Cambridge in 1883: “the scientific and systematic study of law [is] a pursuit still followed in this land by few, scorned or deprecated by many.”<sup>19</sup> Insofar as legal scholarship existed, much of it looked outwards for its legitimacy to the courts and the profession, and, although the liberal agenda was sometimes used to advance the cause of university legal education, law remained something of a Cinderella subject until well into the twentieth century. Brian Simpson recalls that even in the early 1950s when he was at Oxford, law did not enjoy a high academic reputation, and most undergraduates at the university who planned to join the Bar did not read law.<sup>20</sup>

It was not until the 1960s that the number of full-time legal academics began to grow. In the provincial universities, much of the teaching continued to be delivered by practitioners. Staff-student ratios were often high, and the

16. This needs to be understood in the context of the global numbers studying at university level: in 1871 there were only 1,840 students studying outside the universities of Oxford and Cambridge: by 1900 this number had risen to 7,943 and to over 26,000 by 1935, by which time there were a total of eleven universities in addition to Oxbridge and London. Leonard Schwarz, *Professions, Elites, and Universities in England, 1870-1970*, 47 *Hist. J.* 941, 941 (2004).
17. At Leeds University, for example, an average of three law degrees per year were awarded in the early 1900s; by 1931-35 that figure had increased to eleven. See P.H.J.H. Gosden and A.J. Taylor, *Studies in the History of a University 1874-1974: To Commemorate the Centenary of the University of Leeds* 266, 280 (Leeds, 1975).
18. See, e.g., Anthony Bradney, *Conversations, Choices and Chances: The Liberal Law School in the Twenty-First Century* (Oxford, 2003) discussing the influence of Newman particularly, but also Arnold and Houseman on conceptions of a liberal legal education.
19. Neil Duxbury, *Judges and Jurists* 70 (Oxford, 2001).
20. A.W. Brian Simpson, Herbert Hart *Elucidated*, 104 *Mich. L.Rev.* 1437, 1438 (2006). See also Brian Abel-Smith and Robert Stevens, *Lawyers and the Courts: A Sociological Study of the English Legal System 1750-1965*, 165-68 (London, 1967).

student learning experience (an inappropriately modern concept in this context) was very much dominated by the lecture. Even the academics seemed painfully aware of their doubtful standing and uncertain role. In 1883, Albert Venn Dicey, a notable successor to Blackstone's Chair, could, perhaps, be excused for asking the question in his inaugural lecture, "Can English law be taught at the universities?" That variations on that question were still being asked in inaugural lectures and presidential addresses into the 1950s is a mark of the historically low (collective) ambition of English legal academics.

Unsurprisingly, given its fledgling status and insecurity, academic law struggled to establish its relationship with the profession. While the Bar introduced a two-year exemption from the qualification period for entrants with a university law degree in 1756—a path followed by the forerunner to the Law Society in 1821—this was at least as much a ploy to attract high status entrants than to reflect any intrinsic value attached to university legal study. Indeed, the Solicitors Act 1821 exempted not only law graduates, but holders of any Bachelor of Arts degree as well. Overall, the regulatory response of both professional bodies to the growing numbers of graduates was extremely cautious. It took more than fifty years from the introduction of professional examinations for exemptions to be extended to law graduates.<sup>21</sup> It was not until after the report of the Ormrod Committee in 1971 that the solicitors' profession became a graduate-entry profession and abandoned five year articles of clerkship as an alternative path to qualification. It took until 1979 for the Bar Council to make a similar rule change.<sup>22</sup>

If the acceptance of academic law was grudging, the legal profession showed no desire for a more developmental relationship with the universities. Attempts by the University of London between 1884 and 1904 to establish a school of law in conjunction with the Inns of Court were repeatedly rebuffed, despite the University's willingness to give considerable control over the curriculum to the Inns.<sup>23</sup> Within the solicitors' profession the concern was not just a desire to maintain traditional privileges and autonomy, but a more fundamental doubt as to the necessity or desirability of a university education for one destined "to attend to the details and routine of business in an office."<sup>24</sup> Even after the Law Society handed over much of its training to the universities in 1921, it sought to retain considerable control over the curriculum and resisted attempts by the

21. The Solicitors Act 1922 exempted law graduates from the Intermediate examination, and, following the 1934 reorganization of the Bar examinations into discrete Part I and Part II examinations, graduates were finally exempted from the whole of Part I. Ormrod Report, *supra* note 10, at ¶ 32.

22. Michael Burrage, From Practice to School-Based Professional Education: Patterns of Conflict and Accommodation in England, France, and the United States, in Sheldon Rothblatt and Björn Wittrock, *The European and American University since 1800: Historical and Sociological Essays* 147 (Cambridge, 1993).

23. See Abel-Smith and Stevens, *Lawyers and the Courts*, *supra* note 20, at 172-77.

24. Samuel Warren, *The Moral, Social, and Professional Duties of Attornies and Solicitors* 90 (Edinburgh, 1848).

universities in the inter- and early post-War periods to make the curriculum more academic and intellectually demanding. Indeed, it was professional concerns that the universities were not adequately preparing students for practice that led to the Law Society's decision to withdraw its courses from the universities and, in Burrage's words, go "down market" to the technical institutions and private colleges that it felt it could more readily control.<sup>25</sup> Even as late as 1959, when the nascent University of East Anglia (UEA) consulted the Law Society about the prospects of teaching law, it was strongly discouraged from doing so.<sup>26</sup>

That the law became a graduate—and predominantly law graduate—profession was not due to professional policy, but reflected the extent to which entrants to the profession increasingly saw value in a university education as the stepping stone to a legal career. Indeed, as Schwarz argues, the attitude of the profession served as a significant block on the expansion, particularly of the newer provincial universities until the 1950s.<sup>27</sup> Only in the context of the enormous changes in state higher education policy that followed World War II could such aspirations be realized.

The underlying point of our historical tour is that the value of a university education long remained questionable to those who regulated the profession. The central position the academy has achieved in initial legal education and training has been primarily the result of socio-political, rather than profession-inspired, change from the 1950s onwards. The construction of the British welfare state heralded in a range of policies that led to a massive expansion in higher education provision. The trickle of new post-War universities established in the 1950s was followed by a seeming flood in the 1960s. A Committee on Higher Education, chaired by Lord Robbins, was established in 1961 and reported to government in 1963.<sup>28</sup> It argued that (economic) progress depended on the development of a sufficiently highly skilled workforce and saw the universities as central to such a policy. Its 178 recommendations left little of British higher education untouched. In particular, it called for the rapid expansion of the university sector. As a consequence a number of recently created Colleges of Advanced Technology (such as Aston, Bath, Brunel, and Loughborough) were immediately given university status and plans to create the "campus" universities of the 1960s—including Essex, Sussex, Kent, Lancaster, Warwick, and York—began to take shape. Expansion was also aided by Education Secretary Tony Crosland's 1965 announcement of a new "binary policy" for higher education, which led to the creation of thirty "polytechnics"

25. Burrage, *From Practice to School-Based Professional Education*, *supra* note 22, at 147.

26. Schwarz, *Professions, Elites, and Universities in England*, *supra* note 16, at 962. As Schwarz notes, the UEA Law School was finally established only in 1977.

27. *Id.* at 943.

28. *Higher Education: Report of the Committee Appointed by the Prime Minister under the Chairmanship of Lord Robbins 1961-1963*, Cmnd 2154 (London, 1963) (hereinafter the Robbins Report).

out of existing colleges of technology and commerce.<sup>29</sup> With undergraduate course fees met by the state and a system of maintenance grants in place, the number of full-time students in higher education grew rapidly. Full-time university student numbers increased from 197,000 in 1967-68 to 217,000 in 1973-74, with almost continuous growth thereafter. By 1988, more than 800,000 students participated in English higher education.<sup>30</sup>

Not surprisingly, legal education was a direct beneficiary of this process. Law schools were established in most of the newer universities, and new departments were added to those that already existed in the polytechnics and colleges.<sup>31</sup> By 1970 there were twenty-two university law schools with seven polytechnics and colleges offering their “own” law degrees. The number of undergraduate law students had topped 5,000.<sup>32</sup> The popularity of law as a first degree coincided with a significant expansion of legal practice, much of it fuelled by the demand for legal services created by the expansion of the state funded legal aid scheme. By 1966, the number of articulated clerks in practice had increased to 7,000, almost double the number of five years earlier.<sup>33</sup> This too, however, was straining the profession’s capacity to provide training.

Despite this picture of growth and development, there was a continuing sense that all was not entirely well in the world of legal education. The system remained largely uncoordinated and unplanned. Indeed, the relationship between the professions and the academy seemed to be shaped by mutual indifference. The professional bodies had retained considerable autonomy over their own spheres and had, to some degree, encountered different problems and come up with different solutions. The academic study of law expanded slowly but steadily—at least until the late 1960s—but with limited institutional connection to the world of practice. Moreover, in the newer institutions law was not an *arriviste* discipline, and in some it was beginning to develop an ethos and sense of identity very different from that which had prevailed.

#### *Embedding or Blurring the Boundaries? Legal Education: 1971-2001*

This context sets the scene for the next critical historical phase: the Ormrod Committee on Legal Education. The Ormrod Committee framed

29. See generally John Pratt, *The Polytechnic Experiment 1965-1992*, at 3 (Buckingham, 1997). The polytechnics collectively were granted university status by the Further and Higher Education Act 1992.
30. Lorenzo Dubois Baber and Beverly Lindsay, *Analytical Reflections on Access in English Higher Education: Transnational Lessons across the Pond*, 1 *Res. Comp. & Int’l Educ.* 146, 148 (2006).
31. A number of these institutions evolved from colleges teaching the Law Society Part I and Part II courses, and several of them had also provided teaching for the University of London’s External LLB program for a number of years. See generally Patricia Leighton, *New Wine in Old Bottles or New Wine in New Bottles?*, 25 *J. L. & Soc’y* 85 (1998).
32. Ormrod Report, *supra* note 10, at ¶ 35.
33. *Id.* at ¶ 36.

its perception of the problem facing legal education as one of inefficiency and overlap. The emphasis on professional control, exercised through examination, meant that the law degree had not achieved any significant status as a professional qualification in its own right and that there was little coherence across the work of the academic and professional schools. The professional curriculum was becoming a constraining factor on the development of law in the universities and colleges. The construction of the professional examinations too had come to dictate both the content and methods of professional preparation, leading to “coaching” and “cramming” for the examination and too little emphasis on the actual skills required of an intending practitioner.<sup>34</sup>

Ormrod’s solution to the perceived inefficiencies was to emphasize the need for a planned training regime involving academic, vocational, and continuing stages. The normal academic stage of training was to become the law degree “or its equivalent,” while the vocational stage was to involve both “institutional training” and supervised practical experience. The critical point was that the relationship between these two stages should become more planned. Arrangements for training the profession had been shaped primarily for non-graduate entry; this needed to change. Future arrangements for the vocational stage “ought to be planned with the specific needs and the attainments of the law graduate in view.”<sup>35</sup> The amount of additional substantive law learning should be kept to a minimum at this stage. The purpose of vocational training should be “to lay the foundations for the continuing development of professional skills and techniques throughout [the lawyer’s] career.”<sup>36</sup>

The Ormrod Committee’s recommendations were largely welcomed, and, although a number of them were never acted on, the Report created a framework and discourse that was broadly endorsed by subsequent reports, including the Benson Commission in 1979 and the Lord Chancellor’s Advisory Committee (ACLEC) in 1996.<sup>37</sup>

34. *Id.* at ¶¶ 83-86, 100.

35. *Id.* at ¶ 124.

36. *Id.* at ¶ 125.

37. The Royal Commission on Legal Services, *Final Report*, Cmnd. 7648 (HMSO, London, 1979). Sir Henry Benson (chair of the Royal Commission) was asked to inquire into changes to “the structure, organisation, training, regulation of and entry to the legal profession” that were desirable in the public interest. *Id.* at ¶ vi. As regards legal education, it essentially endorsed the Ormrod approach and added relatively little of substance. The Lord Chancellor’s Advisory Committee on Legal Education and Conduct, *First Report on Legal Education and Training* (London, 1996) (hereinafter *First Report*). The Advisory Committee was created under the Courts and Legal Services Act 1990 *inter alia* “to keep under review the education and training of those who offer to provide legal services.” *First Report*, *supra*, at sched. 1, ¶ 1. The Committee was chaired by a senior member of the judiciary and comprised representatives of the practicing and academic professions. Although its function was advisory rather than directly regulatory, its advice was influential and the Committee was distinctive in introducing an element of lay oversight of legal education matters. It was abolished by the Access to Justice Act 1999 following a dispute with the government concerning the extension of rights of audience.

Ormrod's impact is difficult to gauge. Its vision of undergraduate legal education as an increasingly cross- or interdisciplinary venture, its commitment to pluralism, and its recognition of the need to free law schools from the constraints of the exemption approach to the curriculum have probably helped ensure that English legal education is a more diverse and intellectually challenging experience than it was thirty-something years ago. Moreover, the subdivision of legal education certainly supported, though it has not been sufficient of itself to explain, the greater integration of law schools into the university mainstream.<sup>38</sup> Concerns that the Ormrod Report might go too far and "professionalize" academic legal education and make it more like the American model proved largely ungrounded. In retrospect, critics underestimated the extent to which academic law teaching in England (and in North America) would increasingly dance to a different tune. As Abel observes, "Law teachers have...grown apart from practitioners."<sup>39</sup> The academic profession has increasingly developed its own career path, with the PhD becoming the primary qualification to teach and research in university legal education. Academics have developed a growing confidence in their own perspectives on law, and law schools have expanded into new graduate markets for LLM and other academic programs that were not tied to the entry needs of the profession.

At the same time, and quite paradoxically, Ormrod has had two other related consequences. First, while stressing the need for a continuum, it succeeded in establishing an often tense dynamic around academic legal education. Second, it marginalized academic legal education in professional formation.

The construction of a system of joint responsibility between the universities and the profession has reinforced certain structural divisions between academic and vocational stages. The post-Ormrod settlement hit a wall on the issue of generic recognition of all law degrees for the purpose of professional recognition. The professional bodies refused to accept any degree that did not include the then six core subjects required by the professions in their Part I examinations. A mechanism for publishing and reviewing these requirements was negotiated by the law schools and the professional bodies through the periodic Joint Announcements/Statements on Qualifying Law Degrees. Until 1990, compliance with model syllabi was required; assessment methods and minimum teaching hours allocated to the core were also prescribed. Ormrod did not have the desired effect on the vocational stage, which continued to include some subjects required in degrees, together with some new procedural and substantive material. Neither skills nor, surprisingly, ethics made it on to the agenda.

Throughout these changes, the idea of the "core" itself remained sacrosanct, undisturbed because it was easier than disturbing the status quo. Yet this prescribed academic core, in truth, acted as a millstone for both academics and

38. See, e.g., William Twining, *Rethinking Law Schools*, 21 *L. & Soc. Inq.* 1007, 1009 (1996).

39. Richard L. Abel, *The Legal Profession in England and Wales* 268 (Oxford 1988). Compare Robert Stevens, *American Legal Education: Reflections in the Light of Ormrod*, 35 *Mod. L. Rev.* 242, 243-44 (1972).

vocational teachers. It constituted a relatively narrow knowledge base on which vocational training could build, and, as a consequence, vocational courses have felt obliged to deliver a large amount of substantive law and procedure, leading to concerns that the vocational curriculum was overloaded. Many academics saw it as a conservative influence on the development of academic legal education. When the profession mooted adding more material to the core, the university law schools tended to be wary, treating this as an intrusion on their autonomy and raising by no means illegitimate concerns over its effect on the breadth, depth, diversity, and coherence of student learning experiences.<sup>40</sup> They have also pointed to the growing proportion of students who do not eventually join the profession, maintaining the Robbins argument that law degrees should provide a liberal education rather than vocational preparation.<sup>41</sup> Various official enquiries have nevertheless continued to support this partnership model of professional preparation, which maintains the autonomy of the interest groups for the stages and the sense of distinctiveness about their modes of learning; inquiry, instruction, and performance.

Ignoring the commotion over the academic core, the profession turned its attention to the vocational stage over which it had retained ultimate control. The vocational courses had, as we have shown, been crammers for elective subjects considered indispensable for practice, such as evidence and company law. Teaching in the professional courses remained, at least until the end of the 1980s, largely didactic and often unimaginative. Assessment was dominated by nationally set and externally assessed unseen examinations. As understandings of the complexity and fluidity of legal work in the late twentieth century increased, so concerns grew that the vocational courses created “a climate not conducive to this kind of flexible attitude.”<sup>42</sup> Their style had become antiquated as university education swung towards education for capability focused on student-centered, active, and lifelong learning.<sup>43</sup> This change was mirrored in university law schools in a small but influential clinical movement, which had taken root in the 1970s, and an emerging skills movement, particularly in

40. See, e.g., Peter Birks, *Compulsory Subjects: Will the Seven Foundations Ever Crumble?*, 1 *Web J. Current Legal Issues* (1995), available at <<http://webjcli.ncl.ac.uk/articles1/birks1.html>> (last visited Feb. 29, 2008).

41. The proportion not entering the profession is near to 50 percent or may even exceed that figure. See Andrew Holroyd, *Setting the Standards*, *The Law Society's Gazette*, Nov. 23, 2001, at 3. While there has been significant growth in the number of students taking the LPC over the last five years (8,262 students enrolled in the LPC in 2005-06), the number of available training contracts has consistently lagged behind. In 2000-01 there were 5,162 places, and in 2005-06 there were 5,751. Bill Cole, *Trends in the Solicitors Profession*, *Annual Statistical Report 2006*, 39, 41 (London, 2006).

42. ACLEC Review of Legal Education, *Consultation Paper: The Vocational Stage and Continuing Professional Development* ¶ 1.4 (London, 1995).

43. See Andrew Boon, *Enterprise in Higher Education: A New Agenda for Institutional Change?*, 24 *L. Teacher* 14 (1990).

the newer universities.<sup>44</sup> The clinical and skills movements, combined with examples from the United States and British Columbia, and the aspiration for the competent, reflective practitioner created the climate for more practically orientated vocational courses.<sup>45</sup>

In the late 1980s the Bar proposed refashioning the Bar Vocational Course to include the practical dimensions of drafting, research, advocacy, conference skills, and negotiation. This move was endorsed by a committee established by both branches under the leadership of Lady Marre, the main purpose of which was to consider extending the rights of audience to solicitors.<sup>46</sup> In May 1990 the Law Society announced that it would steer its vocational course for intending solicitors away from its emphasis on factual knowledge and towards the analytical and practical skills and competencies needed to be an effective member of the profession. In 1993 the Law Society followed the bar, launching its Legal Practice Course and focusing on similar skills to those in the Bar Vocational Course.<sup>47</sup> Both courses retained the substantive legal material considered appropriate to that branch. The Bar Course, not surprisingly, had a heavier accent on litigation and evidence, whereas the LPC focused on conveyancing (land transfer) and probate (a reserved area of business for solicitors), business law, and litigation. Both courses had pervasive subjects like professional ethics. Many students welcomed the practical focus of the new courses: advocacy, basic ethical issues, and dealing with clients and other professionals were sources of anxiety. But there were also critics. Some students found the skills training rudimentary and thought, with hindsight, that the examples used were too context specific.<sup>48</sup> Academics who welcomed the new direction of the vocational courses thought that black letter law still dominated while practitioners criticized the emphasis on practical skills at the expense of black letter law.<sup>49</sup>

During this time the academic law schools had been largely quiescent, despite dire warnings from the more far sighted of the potentially radical

44. See, e.g., Neil Gold, Karl J. Mackie, and William L. Twining, *Learning Lawyers' Skills* (London, 1989).

45. Donald A. Schön, *The Reflective Practitioner: How Professionals Think in Action* (New York, 1983).

46. *The Committee on the Future of the Legal Profession, A Time for Change* ¶ 12.1 (London, 1988) (hereinafter *Marre Committee Report*).

47. It was hoped that the LPC and mandatory CPD would be informed by two research reports, Avrom Sherr, *Solicitors and their Skills* (London, 1991) and Kim Economides and Jeff Smallcombe, *Preparatory Skills Training for Trainee Solicitors* (London, 1991), but neither was reflected in the scheme. Alan A. Paterson, *Professionalism and the Legal Services Market*, 3 *Int'l J. Legal Prof.* 137, 149 (1996).

48. Andrew Boon and Avis Whyte *Looking Back: Analysing Experiences of Legal Education and Training* 41 *Law Teacher* 169 (2007).

49. See Hugh Brayne, *LPC Skills Assessments—A Year's Experience*, 28 *L. Teacher* 227 (1994) and Tamara Goriely and Tom Williams, *The Impact of the New Training Scheme: Report of a Qualitative Study* (London, 1996).

effects of rising agendas of access, skills, new teaching methods, specialization, European integration, demand for public sector lawyers, and the threat of an increasingly powerful private education sector.<sup>50</sup> In truth, academic attention was focused inwards. Law schools were expanding rapidly, both in number and scale. They had grown from forty-eight in 1975 to eighty-six by 1996.<sup>51</sup> The popularity of law as an undergraduate discipline also meant that the law schools absorbed a significant increase in students as the United Kingdom university system moved, in the late 1980s and early 1990s, from an elite to a mass system of higher education, at the same time as the *per capita* unit of resource for teaching tumbled.<sup>52</sup> Universities were reviewing and restructuring degree programs virtually wholesale. Modularization and semesterization were in vogue in the mid to late 1980s, generating an enormous volume of program and course reviews. The first national Research Assessment Exercise, the basis for allocating government money for university research, took place in 1986, and government plans for a new national Teaching Quality Assessment were announced in 1991, with law as one of the first disciplines to be reviewed.<sup>53</sup>

Work had been going on behind the scenes to review the Joint Announcement, and a revised version was published in 1990.<sup>54</sup> This looked like a moderate victory for the university law schools. The detailed syllabi were replaced by broader subject statements, and the prescriptions of teaching hours and assessment were relaxed. The 1990 statement warned, perhaps rather optimistically in retrospect, that the core would continue to require periodic review. In 1990, in the same report that signalled the desire for a new Finals course, the Law Society's Training committee expressed its wish to "encourage law schools to improve their students'" oral and written powers of communication and their skills of initiative, leadership, and teamwork, particularly where this can be done in a legal context,<sup>55</sup> develop their students' understanding of the practical application of law, and "ensure that their students proceed to the

50. Patrick McAuslan, *The Coming Crisis in Legal Education*, 16 *J. L. & Soc'y* 310 (1989).

51. Phil Harris and Martin Jones, *A Survey of Law Schools in the United Kingdom*, 31 *L. Teacher* 38 (1996).

52. Between 1989 and 1994 total university enrolments across all subjects rose by over 5 percent and expenditure per student fell by 30 percent. Gareth Williams, *The Market Route to Mass Higher Education: British Experience 1979-1996*, 10 *Higher Educ. Pol'y* 275, 283 (1997). Between 1979 and 1997 average staff student ratios (across all disciplines) fell from 1:9 to 1:17. Robert Bocking Stevens, *University to Uni: The Politics of Higher Education in England since 1944* 76 (London, 2004).

53. The proposals for the Teaching Quality Assessment (TQA) were put forward in the same government White Paper, *Higher Education: A New Framework* (London, 1991), that announced the abolition of the binary divide. Legislation followed in 1992, and the first TQAs took place early in 1993.

54. Except where indicated otherwise, the following summary draws on events as reported in ACLEC, *Consultation Paper, Review of Legal Education: The Initial Stage* (London, 1994) ¶¶ 1.12-1.15.

55. *The Law Society, Training Tomorrow's Solicitors* (London, 1990) ¶ 4.1.

Final Course with an adequate knowledge of...the skills of legal research and problem solving.”<sup>56</sup>

This report had no significant regulatory effect at the time. It was followed in 1992 by a consultation paper from the Law Society indicating that it considered the emphasis on undergraduate core subjects to be untenable in the new modular environment and that it wished to move to the prescription of a set of fundamental principles that did not need to be contained in a specified subject structure. Building on the 1990 report, the consultation paper identified a range of skills that should be assessed as part of the new academic stage. During 1992-94 negotiations continued between the law schools and the professions. While there was widespread agreement about the need to move away from core subjects, the academic responses on the whole were not sympathetic. Some expressed concerns about the definition of these principles and their weighting within the degree scheme. A complicating feature was the possible government intervention in the debate. Under the Courts and Legal Act 1990, the Lord Chancellor, informed by the views of the Lord Chancellor’s Advisory Committee on Education and Conduct (ACLEC), was to approve regulatory changes.<sup>57</sup> After the ACLEC Review of Legal Education was announced in November 1992, the academic associations sought to delay the Joint Announcement amendment until the review was complete. The professions, ultimately, were not convinced, and ACLEC was persuaded to recommend a new Joint Announcement to the Lord Chancellor. The finalized version was published in January 1995, encompassing a somewhat more flexible definition of the “Foundations of Legal Knowledge,” as they were now to be called, and adding European Community Law to the foundations.<sup>58</sup> A limited set of legal research skills were introduced into the statement.

This experience undoubtedly informed the first report of the Lord Chancellor’s Advisory Committee on Legal Education and Conduct, which marked a departure from the conservatism of earlier reports on legal education and training.<sup>59</sup> It was a warning shot that the Lord Chancellor’s powers under the Courts and Legal Services Act 1990 might be used for something more than confirming the professional and academic consensus on legal education.

The ACLEC Review took place in the wake of a barrage of alarms, both great and small. The mid to late 1980s had seen the professions struggle with a recruitment crisis as the housing market went into overdrive and corporate work expanded rapidly in the wake of the City of London’s Big Bang. The boom then rapidly collapsed; 1992 became the worst year for graduate

56. *Id.* ¶ 5.1.

57. See Courts and Legal Services Act, 1990, c. 41, § 29(4), sched. 4.

58. See Birks, Compulsory Subjects, *supra* note 40. Further revisions of the 1995 Joint Announcement were agreed to in 1998/99 and came into effect on Sept. 1, 2001.

59. See ACLEC, First Report, *supra* note 37, at ¶¶ 2.3-2.8.

recruitment since the 1930s.<sup>60</sup> From dearth the profession found itself facing excess. As the number of law graduates continued to grow, in 1992 the ICSL recruited 1,100 students onto the BVC, while, between 1992 and 1995, the Law Society validated record numbers for the new LPC.<sup>61</sup> Concerns both that entry controls at the vocational stage could be deemed anti-competitive and a recognition that it was now access to training contracts and pupillages that was the real bottleneck created significant regulatory and public relations problems for the professional bodies in the early to mid-1990s, problems that have yet to be satisfactorily resolved. With increasing student numbers and growing competitiveness in the job market, problems around access and perceptions of class and ethnic barriers in recruitment became more apparent. The practice environment itself was changing rapidly. Law firms and even barristers' chambers were becoming increasingly differentiated in terms of clients served. Large firms were relatively huge, wealthy, and commercialized, whereas areas of high street lawyers were under extreme pressure and poorly remunerated, indeed becoming deprofessionalized. Educational responses to these changes were seen to be largely "unplanned and uncoordinated."<sup>62</sup> Added to this, political and professional concerns were growing over the (perceived) declining reputation and ethical standards of the profession.

The ACLEC Report addressed some of the emerging problems. It asserted that legal education should develop students' capacities in five key areas: intellectual integrity and independence of mind, core knowledge, contextual knowledge, legal values, and professional skills.<sup>63</sup> It proposed greater integration of the academic and vocational stages, arguing that lawyers must appreciate "the essential link between law and legal practice and the preservation of fundamental democratic values."<sup>64</sup> It urged that degrees take more responsibility for developing legal values, like commitment to the rule of law, to justice and fairness, and professional values, such as high ethical standards and awareness of codes of professional conduct.<sup>65</sup> Citing Twining's observation that English legal education represents an uncomfortable compromise between the profession and academy, ACLEC adroitly avoided specifying a curriculum.<sup>66</sup> This was partly because it recognized the potential for conflict

60. Richard L. Abel, *English Lawyers between Market and State: The Politics of Professionalism* 105 (Oxford, 2003).

61. *Id.* at 100, 107.

62. ACLEC, *First Report*, *supra* note 37, at ¶ 1.10

63. *Id.*

64. *Id.* at ¶ 1.5.

65. *Id.* at ¶ 1.10 and 1.21.

66. See William L. Twining, *Blackstone's Tower: The English Law School* 47, 53, 162-66 (London, 1994) and ACLEC, *First Report*, *supra* note 37, at ¶ 2.5.

with university law schools, but also because of its advocacy of a policy of freeing them from the shackles of the profession's compulsory core.<sup>67</sup>

The Report was, for the most part, welcomed by commentators on academic legal education—albeit not without qualification; the same could not be said for its suggestions for the vocational stage.<sup>68</sup> ACLEC envisaged deconstructing the vocational stage into a common professional legal studies course (to be called a “licentiate in professional legal studies”) of fifteen to eighteen weeks that would provide a foundation for the integrated learning of professional legal skills and values.<sup>69</sup> For those who wished to proceed to qualification as a solicitor or barrister specifically, a further fifteen- to eighteen-week period would need to be undertaken on a more specialized LPC or BVC.<sup>70</sup> Courses could be studied back-to-back or separated by an elective in-service training period of up to six months. After completing an LPC/BVC, trainees would complete another period of in-service training.<sup>71</sup> The proposals sought to broaden the initial base of vocational education and create greater flexibility, both through constructing multiple entry and exit points and developing the Licentiate as a paralegal qualification. These recommendations found little favor with either the profession or professional educators, however. Concerns were raised that the fragmentation of training, and particularly the provision of common training, might dilute the overall quality of the profession. The viability and standing of the Licentiate as a qualification in its own right was questioned. The proposed reduction of time served under the training contract for solicitors and the possibility of combining studying and training in a kind of sandwich model also failed to find widespread favor.

Although the ACLEC report had little apparent effect, it did shape subsequent events. The profession could not ignore the possibility of further weakening its control over education and training, together with the looming presence of government. In 1998 the professional bodies adopted ACLEC's position that the law degree should stand as an independent liberal education not tied to any specific vocation.<sup>72</sup> Also following ACLEC, a list of general

67. ACLEC, *First Report*, *supra* note 37, at Recommendation 4.2 and 4.4.4.

68. See, e.g., Harry W. Arthurs, *Half a League Onward: The Report of the Lord Chancellor's Advisory Committee on Legal Education and Conduct*, 31 *L. Teacher* 1 (1997); Patricia Leighton, *The First ACLEC Report: What Might it Mean for Law Teachers?*, 30 *L. Teacher* 201 (1996); Julian Webb, *Ethics for Lawyers or Ethics for Citizens? New Directions for Legal Education*, 25 *J. L. & Soc'y* 134 (1998). A number of critics registered concerns that ACLEC had failed to take the idea of a continuum of academic and vocational education sufficiently seriously. See, e.g., Andrew Boon, *Ethics in Legal Education and Training: Four Reports, Three Jurisdictions and a Prospectus*, 5 *Legal Ethics* 34, 39 (2002); Stephen Nathanson, *The Real Problem with the Legal Practice Course*, *New L. J.*, May 24, 2002, at 785.

69. ACLEC, *First Report*, *supra* note 37, at ¶¶ 5.11-5.18.

70. *Id.* at ¶¶ 6.2-6.14.

71. *Id.* at ¶¶ 6.15-6.27.

72. *The Law Society and the General Council of the Bar, A Consultation Paper on the Revision of the Joint Announcement on Qualifying Law Degrees* (Sept. 1998), on file with authors.

transferable skills was added to the joint announcement, and a suggestion was made that legal education and training should aim to achieve contextual knowledge that “involves an appreciation of the law’s social, economic, political, philosophical, moral and cultural contexts.”<sup>73</sup> There was some mention of these contexts in the introductory remarks on the 1995 Joint Announcement, but they found entry merely as “an appreciation of the social and other pressures that shape the development of the law in England and Wales.”<sup>74</sup> This movement towards a more overtly academic agenda seemed, for a while at least, to herald a new period of cooperative coexistence between the academic and practicing professions.

The ACLEC proposals for the vocational stage, by contrast, seemed to disappear largely without trace. The professions turned to tending their own patch, but controversy continued with many students critical of the cost of the vocational year and the cost of the Bar Vocational Course in particular. Though similar in cost to the LPC and despite the fact that it was widely seen as an improvement on what went before, the BVC suffered from considerable sniping by pupils and recently qualified barristers, particularly in its early, experimental years.<sup>75</sup> For the Bar these concerns justified some process of technical consolidation and refinement. However, a greater spur to change lay in two much bigger defensive problems for the Bar that came home to roost in the late 1990s.

First, despite opposition from the judiciary and the independent bar, the government via the Access to Justice Act 1999, had finally pushed through extensions to rights of audience before the higher courts for solicitors and the employed Bar.<sup>76</sup> The Act removed one of the last major intra-professional restrictive practices and, as the Bar’s own Collyear Committee acknowledged, “remove[d] some of the functional differences between the professions that

73. ACLEC, *First Report*, *supra* note 37, at 138 (London, 1996).

74. Law Society and Council of Legal Education, Notice to Law Schools regarding Full-time Qualifying Law Degrees, ¶ iii (January 1995). The full text of this version of the Joint Announcement is appended to Birks, *Compulsory Subjects*, *supra* note 40. The 1995 Joint Announcement was superseded by the 1999 Joint Statement, *supra* note 4, which is applicable to degrees commenced after September 1, 2001.

75. There is no specific limit on the number of students who can enrol on The Bar Vocational Course and currently approximately 2,000 take the course each year, The Neuberger Report (2007) Entry to the Bar Working Party: Final Report, 52 (2007), available at <<http://cms.barcouncil.rroom.net/assets/documents/FinalReportNeuberger.pdf>> (last visited June 24, 2008), whereas 9,850 enrolled on the LPC in 2007. The number of pupillages available fell from 695 to 556 between 2000-2001 to 2004-2005, The Bar Council Statistics, available at <<http://www.barcouncil.org.uk/trainingandeducation/careers/statistics/>> (last visited June 24, 2008). In the year ending July 31, 2007 there were 6,012 new traineeships registered with the Society, representing an increase (4 percent) on the previous year’s registrations of 5,751. Law Society, *Trends in the Solicitors’ Profession: Annual Statistical Report* ¶ 8.6 (London, 2008). The average fees for the LPC are £10,500 and for the Bar up to £13,000.

76. See Abel, *English Lawyers*, *supra* note 60, at 174-84.

were hitherto the justification for distinct vocational courses.<sup>77</sup> This did not encourage the Bar to embrace ACLEC's (or any other) vision of common vocational training. In fact, the Collyear Committee rejected the case for any change to the Bar's established policy on common vocational training and reinforced the view that "the future of the Bar is as a profession of specialist advocates."<sup>78</sup> The Bar Council established a working party chaired by Sir Patrick Elias, a High Court judge with a background in academia as well as practice, to review the course specification and guidance for the BVC, the template of standards that had to be followed by course providers. While the working party made a number of detailed and technical changes, its main thrust was to strengthen and enhance the amount and quality of advocacy training on the BVC in line with the Collyear vision. It thereby sought to increase rather than reduce the distinctiveness of the BVC as a model of vocational training.

Second, research into educating and training both branches notes high rates of attrition of ethnic minorities. Explanations included the high cost of courses.<sup>79</sup> This forced the profession to justify the utility, duration, and expense of its education and training requirements. The Bar was particularly troubled because newly qualified barristers found it difficult to build a client following, often suffering the lack of a solid income for years. The cost and uncertainty of ever building a viable practice, combined with a heavy burden of student debt, particularly deterred students from poorer backgrounds, but also made the Bar generally less popular with prospective lawyers than the solicitors' branch. Concerns were expressed that the Bar was losing significant talent to the solicitors' profession. The Bar Council therefore imposed a very unpopular requirement that barristers' chambers fund their pupils and increase the scope for its trainees to count a greater variety of work experience towards the formal pupillage requirements.

For the LPC, the mid to late 1990s was a period of substantial and continuing upheaval. Under pressure from the large law firms, the amount of Business Law and Practice was doubled, while Negotiation was effectively dropped from the skills areas taught, and Probate, despite its status as a reserved area of practice, was increasingly marginalized. Vocational teachers aired reservations about the changes and their concerns at the overall quality and volume of assessment on the course.<sup>80</sup> In 1999, eight City of London law firms added fuel to the flames by agreeing on a tailored LPC with three course providers. The eight criticized the existing LPC for a lack of rigor, for failing sufficiently to develop research

77. Sir John Collyear, *Education and Training for the Bar: Blueprint for the Future* ¶ 5.2.1 (May 2000), on file with the authors.

78. *Id.* at ¶ 5.2.2.

79. Michael Shiner, Young, Gifted and Blocked! Entry to the Solicitors' Profession, *in* *Discriminating Lawyers* 87 (Philip Thomas ed., London, 2000).

80. See, e.g., *LPC's End-of-Term Assessment*, *The Lawyer*, Jan. 21, 1997, at 9; Hugh Brayne, *LPC Skills*, *supra* note 49.

and drafting skills, and for an insufficient emphasis on commercial practice.<sup>81</sup> While the curriculum approved for the City LPC was accommodated within the structures of the existing LPC, the move by the eight was widely seen as a significant challenge to the Law Society's continuing commitment to the LPC as a common platform for practice. In an atmosphere already charged with a growing sense of professional segmentation, the possibility of a fragmenting and increasingly specialized vocational training raised questions about the Law Society's capacity to represent solicitors as members of a unitary profession.

Concern was not limited to vocational courses. Despite ACLEC's efforts, some vocational trainers aired doubts about the qualitative outcomes of law degrees.<sup>82</sup> Recognition of the emergence of an increasingly global market in legal education generated new fears about the quality and competitiveness of English training in comparative terms. London, in particular, as a global legal center had become a magnet for young lawyers from Commonwealth and, increasingly, European jurisdictions.<sup>83</sup> This provided the immediate context to the most recent stage in our story: the profession's ongoing training reviews.

### **The Profession's Reviews of Education and Training: 2001 to 2007**

The Law Society set the ball rolling, announcing a Training Framework Review (TFR) and issuing a consultation paper proposing that key elements of legal education and training—knowledge, skills and ethics—should pervade from cradle to grave.<sup>84</sup> The precise motive for the review was never made explicit, though criticisms of the law degree and the LPC were undoubtedly relevant factors. Since knowledge and skills did arguably “pervade” the existing stages, the only significant change signalled was the introduction of ethics. This had been championed by ACLEC, and the feasibility of the idea had been brought closer by the publication of academic texts on the subject and the launch of a new English legal ethics journal.<sup>85</sup>

81. Anne Mizzi, *Top City Law Firms Unveil Plans to Introduce “Enhanced” Training*, *Law Society's Gazette*, Feb. 17, 2000, at LSG 97.07(5), Jon Robins, Tom Blass, Jeremy Fleming, and Jessica Smerin, *City of the Future*, *Law Society's Gazette*, Mar. 9, 2000, at LSG 97.10(20).
82. Alison Clarke, *Student Angst*, *Law Society's Gazette*, July 20, 2000, at LSG 97.29(34) (noting corporate law firms' concerns at the “inadequate standards of legal education that all firms are seeing now, coming out of the academic stage”). Clarke similarly quotes Melissa Hardee and Bernard George, two City law firm training directors, who express fears that the LPC was “in danger of becoming a ‘remedial course.’”
83. For example, in 2006, 1,075 admissions to the Roll of solicitors were by way of transfer in from other jurisdictions—over 12 percent of the total admissions for that year. Twenty-nine percent of these were from Australia and New Zealand alone. See Cole, *Trends in the Solicitors' Profession*, *supra* note 41, at 51.
84. Law Society, *Training Framework Review: Consultation Paper ¶ 1* (October 2001), on file with authors.
85. Ross Cranston, *Legal Ethics and Professional Responsibility* (Oxford, 1995); *Legal Ethics and Legal Practice: Contemporary Issues* (Steven Parker and Charles Sampford eds., Oxford, 1995); Andrew Boon and Jennifer Levin, *The Ethics and Conduct of Lawyers in England and Wales* (Oxford, 1999); Donald Nicolson and Julian Webb, *Professional Legal Ethics: Critical*

The specific items consulted on, however, were largely unremarkable, and a meeting between the Law Society and various interest groups, including academics, welcomed the initiative. Having launched the consultation, the then Head of Education and Training left the Law Society and independent consultants were briefed to analyze responses to the consultation and advise on the direction of the review.<sup>86</sup> Following receipt of their report the Law Society established a Training Framework Review Group (TFRG) to progress the review.

The General Council of the Bar announced a review of its Bar Vocational Course in 2004. The Bell Working Party, charged with producing recommendations and a consultation paper, surveyed pupils and first year tenants at the Bar. Surprisingly, given reported antipathy among practitioners, the need for a vocational course was endorsed. Also surprising was the fact that, despite distinctly average ratings for areas like negotiation and conference skills, most areas of the course were positively rated, particularly the advocacy training. The Working Group was therefore free to consider whether any adjustments might reduce the length and, therefore, the cost of the course. The working party decided that this could not be achieved without acceding to the argument that the course be offered with an orientation to either criminal or civil work. Since, it decided, a common platform was an important dimension of the training of barristers, this idea was rejected. The consultation paper that finally appeared contained some similar ideas to the Law Society's proposals, but no radical change to either the requirement for, or content of, the BVC was indicated.

Although Bell was not precluded from considering other aspects of the training process, no recommendations were made. These were however, more likely to have referred to pupillage than the degree, given the nature of Bell's remit. A further working party has been constituted to consider the future of the BVC, but only modest changes are anticipated when it reports in Summer 2008.<sup>87</sup> The difference in approach taken by the TFR could be explained by the different circumstances of barristers. The package of the Bar Vocational Course and pupillage are more mutually supportive than the Legal Practice Course and traineeship. Overall, barristers undergo shorter training than solicitors. As barristers are *de jure* sole practitioners, imposing training obligations and ensuring that they are met is more difficult than in solicitors' firms. The result for training at the Bar has, so far at least, been

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Interrogations (Oxford, 1999); Richard O'Dair, *Legal Ethics: Text and Materials* (London, 2001). The journal, *Legal Ethics*, was launched in 1998 by Hart Publishing.

86. Andrew Boon and Julian Webb, Report to the Law Society of England and Wales on the Consultation and Interim Report on the Training Framework Review (Feb. 2002) (on file with authors).

87. The Wood Committee reported as this paper was in proof stage (July 2008). As anticipated, the BVC course survived relatively intact, although the recommendations included renaming it the Bar Professional Training Course, and introducing an entry test, centralised examinations and teaching ethics as a discrete, examinable subject rather than as a pervasive.

fairly unremarkable. The same cannot be said—at least potentially—for the Law Society review. Consequently, the remainder of this section focuses on the TFRG's proposals.

*The Law Society's TFR: Context, Process, and Outcomes*

Since 2001 the TFR rumbled on through a multiplicity of consultations and consultants' reports.<sup>88</sup> Following the first consultation, there have been three further public consultations on the TFRG's proposals, in 2003, 2005, and 2006. Further consultations, on proposals for work-based learning, are planned or in progress. As the review group began work, other agendas emerged; notably growing concerns about minority access to the profession, the difficulty of attracting recruits to legal aid practice under the heavy burden of debt, the cost and effort of monitoring standards of vocational course delivery, and the regulatory implications of European integration and recognition of qualifications from other jurisdictions. There was also a broader national political picture to consider. Much of the TFRG's work was contemporaneous with Sir David Clementi's review of the market for legal services.<sup>89</sup>

The Clementi Review represented a significant development in debates over professional regulation and supervision. It was the first independent review of the legal services market since the Benson Commission in 1979, and the first ever, to our knowledge, to focus specifically on the issue of regulation. Moreover, it is significant that Clementi's remit was *not* to review the regulation of the legal profession as such. It was a significantly wider brief: to review the regulation of the *legal services market as a whole*. This is an absolutely fundamental distinction as it opened up the question of whether one could—and should—move to a market system as opposed to provider-based regulation. Whatever direction Clementi moved, the future of self-regulation for the legal profession, and perhaps even of the profession itself, appeared at risk.

Clementi's early statements and subsequent consultation paper conveyed considerable doubts about the case for self-regulation. Clementi thought that the representative and regulatory functions of the professional bodies should be separated, but he also sought views on whether the profession should lose regulatory power or exercise it only under the supervision of a super-regulator. This must have impressed on the professional bodies the importance of addressing a number of key themes urged on them by government. An item high on the government's agenda was the issue of entry into the profession, perhaps

88. Consultation papers, consultants' reports, analyses of consultation papers, and some other miscellaneous documentation on the TFRG can be found on the Law Society's website, <<http://www.lawsociety.org.uk>> (last visited Dec. 6, 2007). A fuller summary of the process up to September 2004 can also be found in Julian Webb and Amanda Fancourt, *The Law Society's Training Framework Review: On the Straight and Narrow or the Long and Winding Road?*, 38 *L. Teacher* 293, 307-09 (2004).

89. Sir David Clementi, *Review of the Regulatory Framework for Legal Services in England and Wales: Final Report* (December 2004) (hereinafter the Clementi Review)) available at <[www.legal-services-review.org.uk/content/pubs.htm](http://www.legal-services-review.org.uk/content/pubs.htm)> (last visited Mar. 14, 2008).

underpinned by its desire to create a competitive legal services market and the suspicion that education and training requirements were still being used to artificially limit numbers of lawyers. Undoubtedly the TFRG was also aware of the need to, so far as possible, ensure that its proposals would ultimately satisfy the standards of regulatory probity and public interest that were likely to underpin any reforms proposed by Clementi.

Turning to the product of the review process, the 2003 consultation proposed focusing on the outcomes of education and training, represented in the skills, knowledge, and ethics of the newly qualified solicitor. These were to be framed as the “day one” outcomes for solicitors’ training, representing what a prospective solicitor should know and be able to do on the first day of a training contract. Anticipating further European educational harmonization, as proposed by the Bologna Declaration, a first degree was accepted as the cornerstone of professional entry. Similarly, tradition, considerable grass roots support, and the balance of educational argument suggested retention of a prescribed period of work-based learning. The TFRG nevertheless proposed that existing requirements to serve under a training contract in a solicitors’ firm should be relaxed to enable training in a wider range of potential organizations to count towards final qualification. This would both facilitate access to the legal profession to those rejected by conventional employers and counter the decline in training provided by conventional high street and legal aid practices by allowing the option of qualifying by providing evidence of a portfolio of experience with several organizations.

The day one outcomes (see Appendix), which received Law Society Council approval in July 2005, underwent several revisions, evolving from four groups to six.<sup>90</sup> Group A now comprises the core knowledge and understanding of the law applied in England and Wales, including the knowledge requirements associated with the initial or degree stage. Additionally, however, it requires knowledge of the jurisdiction, authority, and procedures of legal institutions and professions administering the law, as well as their rules of professional conduct. Group B comprises generic intellectual, analytical, and problem-solving skills, which presumably pervade all levels of legal education. Group C focuses on transactional and dispute resolution skills, such as establishing business structures and drafting legal documentation while Group D complements this, dealing with legal, professional, and client relationship knowledge and skills, such as client relationship management and advocacy. Groups C and D contain the material associated with vocational legal education and currently contained in the LPC. Group E covers personal development and work management skills, and outcomes such as recognizing professional strengths and weaknesses and working effectively as a team member. The Group F outcomes are concerned with professional values, behaviors, attitudes, and ethics, and the outcomes include behaving professionally and with integrity. The

90. For the latest version (2), see Solicitors Regulation Authority website “Day one outcomes for qualification as a solicitor,” dated April 2007, available at <<http://www.sra.org.uk/securedownload/file/229>> (last visited Mar. 14, 2008).

original intention of the TFRG, however, was that the kinds of outcome covered in Groups E and F would bridge the vocational course and the period of work-based learning, but that they could only be fully met in the workplace.

The revisions of the day one outcomes appeared to somewhat reestablish the old boundaries, but they were still more fluid than that. Knowledge and skills are implicit in all of the outcome groups. The knowledge requirements start with a reformulation and expansion of the seven foundations of legal knowledge. The day one outcomes do not specify the time that must be spent on each element, creating the possibility that some of these knowledge outcomes would be deliverable in less time than is taken over the current subjects. Since there is no formal division within the knowledge requirements between the initial and vocational stages, a range of possibilities can occur. For example, it might be expected that the part of the curriculum that constitutes transmission of proprietary interests, currently dealt with as conveyancing, will continue to be reserved to the vocational stage. But the possibility of seeing greater pluralism and differentiation between LLB providers cannot be ruled out. Some degree providers could aim to cover more, or even all, of the professional knowledge requirements. Two things, however, may militate against that: the continuing delivery of relatively standardized vocational courses (so that there is little or no market advantage to LLB providers in undertaking radical curriculum reform), and concerns that such developments could only take place at the expense of other, non-vocational degree subjects.

The promise to make ethics central throughout the whole regime was partially delivered by introducing the Group A knowledge requirement that students cover “the jurisdiction, authority and procedures of the legal institutions and the professions that initiate, develop and interpret the law...,” “the rules of professional conduct,” and the “values and principles on which professional rules are constructed,”<sup>91</sup> but also by the Group F emphasis on professional values, behaviors, attitudes, and ethics. The inclusion of the substantive and behavioral element of the ethics curriculum responded to calls that legal education attend to the ethical dimension of legal work and to reinforcing the common identity of lawyers, but the separation of these elements in the framework may not be significant. The outcome statement does not make explicit the stage at which these ethical outcomes must be met. By implication therefore it opens up the possibility that some could be satisfied at the academic stage of training. This would be a radical departure for most English law schools. The only other Group to contain ethical elements, albeit integrated in the other outcomes, is D. So, for example, different outcomes require that on day one of qualification, solicitors must be able to recognize clients’ financial, commercial, and personal priorities and constraints and act appropriately if a client is dissatisfied with advice or services provided.

91. *Id.* at 1.

The implications of the TFRG's approach and the refusal to allocate outcomes to stages mean that a multiplicity of routes to qualification can be envisaged. These could include combined degree and conversion courses incorporating the Group C transactional outcomes, and degree courses incorporating some, or vocational courses incorporating all, of the group D outcomes, by introducing work-based learning and clinical experience into the curriculum. Some universities could provide integrated degrees incorporating the vocational and training phases and incorporating the outcomes in groups B to F over a five or six year period. Conversely, firms, individually or in groups, could incorporate the Group C and D vocational outcomes in the period of work-based learning. While this would increase flexibility, such a plethora of routes could increase the need for regulatory oversight in, for example, tracking progress and ensuring commonality of outcome for individual students.

The greatest risk of the TFRG as proposed was reduced confidence in student standards. This was already an issue, since both vocational courses had abandoned centralized examinations in favor of locally set and marked assessment. The situation was managed by a small and rotating group of external examiners approved by the Law Society, but there was concern that standards across the sector were variable. The TFRG's solution was to centralize assessment of most of the transactions and skills work associated with the vocational stage, except those like advocacy and interviewing that would be more conveniently assessed locally. The favored method of centralizing assessment was through work completed at test centers. This would have been a dramatic departure from conventional assessment methods, though both the LPC and BVC have made extensive use of multiple choice and short answer formats in their assessment regimes. Additionally, the TFRG proposed a test that was intended to be a final check on readiness for practice. The TFRG recommended that a pilot of the online assessment of probate and the administration of estates and of the final, pre-qualification test be conducted as a prelude to more extensive adoption.

The work-based learning regime that would replace the existing training contract was to have a revised assessment framework, comprising more rigorous supervision, including periodic appraisal, completion of a portfolio or learning log, a more demanding role for supervisors, and Law Society monitoring and reporting processes. The TFRG also recommended that the LPC elective subjects, which normally take up a little less than a third of the teaching time, be disengaged from the LPC, so students could take them when a little clearer about their career paths.

#### *Progress since the Reviews*

The government committed to implementing Clementi's 2004 proposal that the regulatory and representative aspects of the profession's activity be separated

and that the branches exercise their regulatory function under the umbrella of a statutory Legal Services Board.<sup>92</sup> In anticipation of these changes, both branches have redesigned their committee structures to separate regulatory and representative functions. Consequently, education became the fiefdom of regulation, under the control of the new Bar Standards Board and Law Society Regulation Board (renamed the Solicitors' Regulation Authority (SRA) in January 2007). These were not simply cosmetic changes. They involved significant changes of personnel and new divisions of responsibility. For education they have signalled a possible prioritization of the regulatory function, ensuring minimum standards of education and training in the public interest over other more developmental activities. Finalization of the membership of both the new Bar Education and Training Committee and the SRA revealed increased academic representation among the new lay memberships. The Legal Services Board to be established under the Legal Services Act 2007 must include in its membership a person or persons with knowledge and understanding of legal education and training,<sup>93</sup> but there is nothing to say that this has to be an academic. Taken together with the likelihood that the Standing Conference on Legal Education will also be abolished, it remains to be seen how central the academy will be in the new regime.

The Law Society's TFRG was disbanded during the post-Clementi restructuring, and the Bell Working Group delivered its final consultation into the Bar's fledgling new committee structure. The Law Society's proposals evoked enormous uncertainty and ambivalence. In the final stages of its work the TFRG recommended the gradual introduction of the proposed changes, beginning with ending the requirement that LPC options be studied as part of the course and the piloting of centralized assessment and further work on the monitoring and assessment of work-based learning. The Law Society's education committees and Council had consistently supported the TFRG's proposals throughout the three years of the TFRG, although the Council insisted on a third consultation before endorsing the final proposals. The Law Society's chief executive had defended the proposals as facilitating access by providing cheaper routes into practice,<sup>94</sup> receiving in the process some support from the Trainees Solicitors' Group, but the recommendations also encountered fierce opposition from, among others, providers of the LPC<sup>95</sup> and the Legal

92. See now Part 2 and schedule 1 of the Legal Services Act 2007 c.29 which received the Royal Assent on October 30, 2007. The Legal Services Board is expected to be fully operational by Spring 2010.

93. See Legal Services Act, *supra* note 92, at Schedule 1, ¶ (3)(b).

94. Claire Sanders, A Motivator Who has Shaken Up "Crusty Old Dinners" and More, *The Times Higher Educ. Supplement*, Feb. 4, 2005, at 4. For comment on Paraskeva's TFR views, see Janet Paraskeva, A Good Outcome, *Law Society's Gazette*, Dec. 16, 2005, at 9.

95. See Rachel Rothwell, Training Reform Furore, *Law Society's Gazette*, Jan. 20, 2005, at News 3; Claire Sanders, Bending Over Backwards to Become More Flexible, *The Times (London)*, May 24, 2005, at 7; Brendan Malkin, Market Slams Law Soc Plans to Abolish Vocational Training, *Lawyer 2B*, Feb. 10, 2005, Nick Johnson, The Training Framework Review—What's All the

Education and Training Group, which represented training directors in 150 of the larger law firms.<sup>96</sup> Much of this opposition stemmed from the uncertainty caused by the TFRG's refusal to allocate stages or time to the outcomes and its refusal (by a majority) to require the Legal Practice Course.

The chief executive's departure and the creation of a new committee structure was an opportunity to reappraise the direction suggested by the TFRG. There was no public announcement of any departure from the template, but the Law Society's Regulation Board seemed ambivalent. In May 2006 it agreed to pilot a common assessment in professional responsibilities to assess outcomes relating to business skills, client care, and professional standards, but it appeared to backpedal on the idea that students would not have to attend an LPC provider institution. It suggested instead a number of relatively modest revisions, largely built around mapping course provision against revised written standards, which would not only reflect the competencies of the new day one outcomes, but also allow partial exemptions from the LPC for domestic students with equivalent prior experience. This could have been a first step along the route indicated by the TFRG or the liberalization of the existing vocational regime favored by a minority TFRG report from two members drawn from LPC providers, but some of the Board's proposals had no basis within the TFRG's work. Thus the LSRB proposed substantial changes to LPC skills assessment, whereby writing and drafting, client relationship, and research skills would need to be assessed in the context of the core areas of business law and practice, property, and litigation. This significant increase in the volume of assessment took many by surprise,<sup>97</sup> not least because one of the original concerns amongst LPC providers at the start of the TFR had been the perceived over-assessment of the course.

There was no clue whether this tinkering with the TFRG blueprint indicated a general cooling towards the TFRG's proposed structure, a deliberate step in the sequence of rolling out the reforms, or an effort to delay the more radical moves until the new regulatory body is in place. The signs of a rethink became initially more compelling in August 2006, when the LSRB issued a paper proposing further consultation on the TFRG's plans for portfolio-based workplace training with legal employers.<sup>98</sup> However, if this looked like another

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Fuss About?, *New L. J.*, Mar. 11, 2005, at 357.

96. Rachel Rothwell, *Flexible Training Plans Slammed*, *Law Society's Gazette*, Feb. 24, 2005, at News 3.
97. The idea was roundly attacked by the Association of LPC Providers (ALP)—a new interest group established in 2006 and chaired by Melissa Hardee, until recently LPC Course Director at the Inns of Court School of Law. Hardee was also co-author, with Professor Phil Knott, of the TFRG minority report. ALP asserted that, without more, the increase in assessments would not address the problems of poor research and writing skills, but would risk lowering the standard of teaching and potentially increase the cost of the LPC by as much as £1000 per student. Jon Parker, *Law Society to Finalise Qualification Overhaul*, *Lawyer* 2B, Nov. 7, 2006.
98. The Law Society, *Education and Training Unit, A New Framework for Work Based Learning: Consultation Paper* (Aug. 11, 2006), available at <<http://www.lawsociety.org.uk/documents/>

case of second thoughts, it is perhaps significant that, even before the results had been analyzed, the chair of the Education and Training Committee had already asserted a strong commitment to piloting the proposals.<sup>99</sup> Consistent with that commitment, consultants have since been appointed to develop the portfolio model, and, as indicated already, a further consultation took place in 2007. The consultation received few responses, mostly from larger firms. These tended to express continuing doubts, both about the appropriateness of the portfolio approach, and the prescriptiveness of the new assessment regime. The SRA clearly paused for thought. It announced that while it proposed to go ahead with a pilot project for the work-based learning phase of training in 2008, it did not now intend to develop a standard portfolio or assessment tool, and would instead focus on developing outcomes, leaving the method and means of assessment up to individual firms and accredited learning and assessment organizations.<sup>100</sup> As a consequence of these developments, it is currently uncertain when the new system of work-based learning will be rolled out for all trainees.

When the SRA's LPC consultation paper was published in February 2007, the first tranche of proposals suggested that the TFRG's vision was back on track. The SRA expressed determination to depart from the "linear approach" to training and to develop a system that "is flexible but rigorous," confirming its desire that LPC providers have more freedom in delivery.<sup>101</sup> In addition to endorsing the day one outcomes, it sought views on disengaging the electives from the LPC, exempting students from some or all of the LPC, and a more permissive approach to LPC content. Requirements for resourcing would be relaxed so that the regulatory focus switched to consistency of outcomes. Although minimum learning hours would be attached to each outcome, contact hours would not be specified. These proposals survived as the concrete requirements adopted by the profession,<sup>102</sup> mirroring the approach of the TFRG far more closely than earlier indications suggested possible. The SRA suggested that vocational electives might be studied at the academic stage before the LPC had been passed, a move more radical than the TFRG had proposed. This leaves open the possibility that some of the innovations signalled by the TFR, like three-year degrees including vocational elements, will eventually

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downloads/becomingtfrconsultationwbl.pdf> (last cited June 24, 2008). Law Society press release, *New Training Pathway for Solicitors*, Aug. 11, 2006.

99. Jonathan Spencer, *Consultation—A New Framework for Work Based Learning: Statement from the Chair of the Education and Training Committee* (Oct. 2006), available at <<http://www.law-society.org.uk/becomingtfrconsultationwblstatement.pdf>>.
100. *Solicitors' Regulation Authority, Moving Forward with a New Framework for Work Based Learning* (Oct. 25, 2007) available at <[www.sra.org.uk/securedownload/file/332](http://www.sra.org.uk/securedownload/file/332)> (last visited March 14, 2008).
101. Melissa Askew and Jim Daniell, *The Law Society, Consultation on the Future Structure of the Legal Practice Course* (Jan. 23, 2007), at ¶ 1.1.
102. *The Law Society, Legal Practice Courses: Framework for Authorisation, Delivery and Assessment (Version 1)* (London: The Law Society, 2006).

come about. The SRA plans to begin authorizing the new model LPC in 2008, ready for full-scale introduction by September 2010 at the latest.<sup>103</sup> And this, for now, is as far as the story goes.

### **Analysis: What Does the TFR Tell Us about Recent Developments in English Legal Education?**

#### *Educational Trends*

The proposed solicitor training framework has the potential to depart from the tradition of approved courses.<sup>104</sup> It offers a solution to the problem that one size, increasingly, doesn't fit either all students or all employers. In this section we analyze some of the issues the proposed framework addresses and the influences it reflects. The proposal to focus on outcomes rather than processes has been a central plank in the training framework. In this regard, the TFR has followed a strongly scented path in English legal education and training. Competencies and outcome-based learning and assessment have become increasingly in vogue since the 1980s, and elements of outcome-based approaches have been apparent in the move to undergraduate subject Benchmarks as well as in the written standards for both LPC and BVC.<sup>105</sup> None of these, however, has moved legal education into adopting a pure competency approach, based on detailed performance specification.

The TFR day one outcomes continue that trend, albeit at a relatively abstract level of specification. The new LPC Written Standards provide a heavy gloss on the outcomes, making them more restricting than were anticipated, though perhaps less cumbersome than the previous Standards. The question of degree matters. The closer to a pure outcomes approach the less specification of, and control over, educational processes can be exercised by the regulatory bodies. Provided courses deliver the outcomes, the where and

103. Solicitors' Regulation Authority, *Information for Providers of Legal Practice Courses* (Jan. 30, 2008) available at <[www.sra.org.uk/documents/students/lpc/info-pack.pdf](http://www.sra.org.uk/documents/students/lpc/info-pack.pdf)> (last visited Mar. 14, 2008). Providers have the option of introducing the changes a year ahead of the deadline, that is, in time for the academic year commencing September 2009.

104. This potential has not been fully realised. As this article went to proof stage the Law Society issued the accreditation and validation arrangements for the new LPC. As anticipated, it did split the LPC into two stages (the core course comprising Stage 1 and the elective subjects Stage 2), requiring providers to bid if they wished to offer both stages. It also specifically provided for bids for exempting degrees, courses merging the academic and vocational stages, and invited new providers into the market. However, the allocation of minimum 'notional hours' to LPC elements, and an onerous bidding regime, contradicted the rationale of the outcomes approach and somewhat limited the possibilities for flexible arrangements. Nevertheless, future loosening of these constraints is a distinct possibility.

105. Benchmarks were introduced in 1999 as a way of defining a set of standards or outcomes that would be indicative of "graduateness" in a discipline. They specify both knowledge- and skills-based outcomes. See John Bell, *Benchmarking: A Pedagogically Valuable Process?*, *Web J. Current Legal Issues* (1999), available at <<http://webjcli.ncl.ac.uk/1999/issue2/bell2.html>> (last visited June 24, 2008).

how are, in theory, irrelevant. This can be a good way of delivering flexibility, both at the academic and vocational stages, but whether such an approach can be adopted without taking additional risks with the quality of student learning experiences—particularly at the vocational stage—remains a moot point.

Focusing on outcomes rather than courses would unravel the extensive quality assurance mechanisms established to police the LPC. The requirement that providers have a member of staff for every twelve students, a demand that has supported the development of a high quality offering but that has also kept delivery costs relatively high, has, effectively, been abandoned. The level of prescription and the susceptibility of the course specification to tinkering, however, has led to lack of coherence, stultification, and inhibition, but relatively uniform, high standards of delivery.

### *Specialization*

The need for an increasing degree of specialization in practice has been recognized since at least the early 1980s when the Law Society began establishing panels for areas with consumer or competitive need to identify specialist practitioners.<sup>106</sup> The pressure of specialization magnified by the increasing differentiation of the content, location, and rewards of different kinds of legal practice, the poles being represented by the large commercial and corporate law firms and the so-called high street firms, which deal with local populations. This has arguably rendered a large common platform of legal knowledge redundant. It is difficult to defend the breadth of subject coverage on the LPC, where half the students may be headed for welfare practice and yet half the core curriculum is Business Law and Practice. The growing desire for consortia of large firms, and even individual firms, to design their own LPCs is a significant result of this drive toward specialization. One reason advanced for this was the need to induct trainees into the work and culture of the firm, thus calling into question the proposition that a common vocational platform is essential.<sup>107</sup>

The LSRB/SRA's stance on specialization tries to have it both ways: preserve the idea of an LPC as a common platform while allowing more specialization. The present direction may help, in the longer term, to manage the tensions between breadth and specialization by allowing more flexibility in the construction of training packages. These may encourage more training routes geared to particular kinds of practice. This, however, assumes that the flexibility of the outcomes approach is retained and that the SRA remains determined not to allocate outcomes to stages or time to outcomes. The adoption of a relatively standardized LPC is unlikely to facilitate a truly radical market differentiation between the training for

106. Lynda Young, *Specialisation: The Way Forward—Law Society Consultation Paper*, *Law Society's Gazette*, May 2, 1990, at 36.

107. Webb and Fancourt, *The Law Society's Framework Training Review*, *supra* note 88, at 299.

corporate, high street, and legal aid practitioners. The proposals for work-based learning will also have an impact in this regard. Allowing a shorter period to qualify could create space to introduce a post-qualification education regime more responsive to specialization. This would almost certainly involve further education and training and might also include specialist licensing. There is little evidence of this in current thinking, and, indeed, the idea of specialist training was originally resisted because of an expected backlash from potentially excluded general practitioners.<sup>108</sup>

The stakes in this game, however, may be higher than just education and training. Sectoral differentiation in training could prove to be the thin end of a wedge that threatens both the ideal of a unified profession and the Law Society's own legitimacy as the voice of that profession. Whether the fundamental tensions in its position will finally force the Society to give way, and with what consequences, remains to be seen. In this context the contrast with the Bar seems stark. Why has the Bar not sought the flexibility offered by the outcomes approach? And why is it proposing to retain a compulsory and generalist vocational course? One reason is that the Bar's core work is less subject to the pressure of specialization. All barristers need to be familiar with litigation procedures, and particularly evidentiary requirements, to draft advice and to provide oral advocacy, the core of the Bar Vocational Course. Specialization was raised in the Bell Working Party in relation to the need for barristers to understand both civil and criminal litigation when they choose one of these paths. It was successfully argued, however, that barristers benefited from the common platform and that introducing twin routes would have only a marginal impact on the course duration or fees.

It could be argued that specialization has implications for the organization of the degree curriculum. Academics, of course, have long argued over the need for or nature of a specified curriculum. The classical justification of the degree foundation subjects has never simply been that they are vocationally useful, but that they introduce students to areas of law with distinctive approaches, areas that are in some way foundational within the Western legal tradition. Others question the extent to which the subject matter itself makes the difference; what matters are the underlying cognitive skills and/or the understanding of legal reasoning and legal values that develop through the process of a liberal legal education.<sup>109</sup> This, it is said, could be achieved as readily by the study of law and literature, or world trade law, as it could by contract or tort.

Specialization adds some new pressures to that debate. Large parts of the traditional law degree have been rendered *de facto* redundant. Many of the most academic subjects—such as legal history, jurisprudence, sociology of law—have declined in availability and popularity. Demand for professionally oriented

108. Young, *Specialisation*, *supra* note 106.

109. See, e.g., Bradney, *Conversations*, *supra* note 18, at 86-87.

skills courses has grown and, even within substantive fields of law, seven of the ten most popular undergraduate options “concern the study of areas of law linked far more explicitly to professional legal practice than to the academic study of law in its own right.”<sup>110</sup>

Even if the basic idea of a core curriculum remains valid, the traditional organization of degree schemes is not well geared to modern vocational requirements. This is illustrated by the example of contract law, which is usually taught as a first-year degree subject. This means that it may be four years before commercial lawyers apply it again in practice, even as trainees. It is, unsurprisingly, a frequent complaint of commercial law firms that trainees do not remember basic contract law well enough. This might have mattered less when relatively little was expected of trainees and their performance was less critical but, now that large firms pay their trainees’ training expenses as well as significant salaries and post-qualification retention has become more competitive, it is arguably more important that commercial lawyers have a good grasp of concepts that first-year undergraduates may struggle with, let alone forget later. In the world of the enterprise university, where the employability agenda is writ increasingly large, these are arguments that will count. In this context, even the traditional core may be threatened either by accretion, as the profession finds ways to expand the foundations, or by calls for substitution, reconfiguration, and further specialization.

#### *Access*

The impact of the TFRG’s proposals on access to the profession is unknown and difficult to predict. The aim of opening up multiple routes into the profession creates numerous possibilities. Undergraduates might clear (some) vocational outcomes in their degree; LLB or LPC courses might be able to offer a period of supervised clinical education that could count towards a trainee’s period of work-based learning; alternative vocational qualifications may be developed that could be treated as equivalent to an academic degree. In all these scenarios it is possible that barriers to entry, including the duration and cost of training, could be reduced and access enhanced. On the other hand, flexibility can also increase complexity—both in terms of regulation (discussed below) and in the nature of information and advice that needs to be given to potential applicants. If the system becomes too complex, this in itself might act as a deterrent to potential non-traditional entrants to the profession. But again, so long as the LLB-LPC route remains a norm, critics of the proposals suggest, solicitors’ firms may be less likely to hire solicitors qualifying by unconventional routes, which may be deemed inferior.

Similar controversy surrounds the proposal to replace the training contract by work experience. Finding a firm of solicitors for the final stage of training has undoubtedly caused a bottleneck for LPC graduates,<sup>111</sup> and students from

110. Harris and Jones, *A Survey of Law Schools*, *supra* note 51, at 52.

111. I. Rowley, *New Training Pathway for Solicitors*, *Law Society Gazette*, Aug. 11, 2006. Though

working class backgrounds, including ethnic minorities, probably suffer disproportionately in this process.<sup>112</sup> Creating more newly qualified solicitors may exacerbate the problem. Solicitors' firms' willingness to employ those who have not worked in a conventional firm will be the test of whether access has improved. This assumes that the outlet for qualified solicitors is employment in firms. If, on the other hand, the government's aim is to create lawyers to operate as market competition for the private sector, firms' employment intentions will probably matter less.

### *Standards*

Critics of the TFRG's proposals argue that the retreat from monitoring the process or delivery of courses, as currently happens with the LPC, would lead to falling standards. One reason for this would be that opening the vocational education market to unregulated and unscrupulous providers is the logical consequence of the outcomes approach. Ceasing to prescribe staff-to-student ratios, as the LPC validation regime currently does, would create an examination-centered culture. Existing providers, particularly of the LPC, see this spectre and its potential as a fresh source of criticism of professional regulation very clearly.<sup>113</sup> Whether their predictions prove well-founded depends on the success of the centralized assessment process for the vocational stage outcomes in commanding confidence and maintaining standards. If it proves possible to create sufficiently rigorous and reliable means of assessing a range of intellectual and practical skills online, there may be significant advantages over the current system. This, however, is one of the issues on which the SRA has maintained silence. If cost or difficulty has caused this TFRG recommendation to stall, the ability of course providers, even with the help of external examiners, to ensure commonality of standards is doubtful. Were central assessment to be introduced, critics of the outcomes approach suggest that turning the focus of quality assurance from courses will force providers to teach for the examination, with deleterious effects on the process of education.<sup>114</sup>

### *Regulation*

The TFRG's proposals present a mixed bag for regulation. At the academic stage, the TFR begs significant questions about the future status of the Joint

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this has not always been consistently the case. See Abel, *English Lawyers*, *supra* note 60, at 96-119 (discussing the profession's responses to the variable pressures on the recruitment market in the period 1989-99).

112. Andrew Boon, Liz Duff, and Michael Shiner, *Career Paths and Choices in a Highly Differentiated Profession: The Position of Newly Qualified Solicitors*, 64 *Mod. L. Rev.* 563 (2001).

113. *The Law Society, Education and Training Unit, Training Framework Review: Qualifying as a Solicitor—A Framework for the Future: Summary of Responses from Individual Solicitors, Students and Teachers 9* (version 1 Oct. 2005) (Mar. 2005), available at <<http://www.lawsociety.org.uk/becomingtfr3respindiv.pdf>>.

114. *Id.*

Announcement and the negotiated nature of the academic curriculum. The TFR was initially welcomed by academics as a further liberation from the core curriculum. This is now looking increasingly like a mixed blessing. Do the day one outcomes negate the need for the Joint Announcement with the Bar? There is undoubtedly substantial overlap of the day one outcomes with the current statement, and adoption of the day one outcomes might well be interpreted by the Law Society as a *de facto* substitute. This makes it difficult for the Bar and Law Society to make a joint announcement. The Law Society is moving towards knowledge requirements geared more specifically to solicitors' practice and may be unwilling to make a sharp delineation between academic and vocational outcomes. The Bar has made no move from the seven Foundations and retains a distinct identity for its vocational standards. The divisions between Law Society and Bar, engendered by their very different reviews, may necessitate separate negotiations with each professional body, raising the spectre of law degrees seeking to comply with two sets of professional objectives rather than the present one. The legal position is likely to be more complex, not least because of the Clementi reforms and the still to-be-determined functions of the oversight regulator.

For the profession too, the TFR may yet prove to be a very mixed bag. One of the advantages is that an outcomes approach makes it easier to comply with the European Court decision in *Morgenbesser*, which confirmed that European professions must consider the equivalent of the qualifications and experience of trainees from other European jurisdictions, rather than demand that they take the courses prescribed under national qualification regimes.<sup>115</sup> The advantages are that an outcomes framework makes it easier to determine *Morgenbesser* applications by providing a framework of exemptions based on evidence of specific educational and work experience rather than course qualifications. Under the most recent Law Society proposals, the opportunity to make claims based on equivalent experience will be extended to domestic applicants. The Bar, however, will continue to treat *Morgenbesser* applicants on a case-by-case basis, retaining course-based components as a likely way of meeting any qualifications shortfall. Either way, an increased regulatory burden is one of the consequences of handling *Morgenbesser*-type applications.

Moreover, the prospect of an increased regulatory burden is not simply a *Morgenbesser* problem. Creating more flexible pathways and moving towards greater assessment of the training contract/work-based learning phase will inevitably impact on regulatory costs. Pathways may be combined in unforeseen ways. The more complex the system, the greater the potential burden of both advising individual entrants and checking that applicants for qualification have met the outcomes. The question of who will bear those costs and the potential impact of any such increases on access has been a matter of considerable concern to consultees and commentators thus far.

115. Case C-313/01, *Morgenbesser v. Consiglio dell'Ordine degli avvocati di Genova*, 2003 ECR I-13467; Case C-340/89, *Vlassopoulou v. Ministerium für Justiz*, 1991 ECR I-2357.

### Competition

Even by 2000, the politics of legal education and training provision had become complex. This, in part, reflected the diversity of the sector, where some providers were vying to be full service, offering the full suite of available courses, whereas others specialized in niche areas.<sup>116</sup> Universities offered the theoretical component in degree courses and one-year graduate diplomas for holders of non-law degrees. Some offered the vocational courses, the LPC, and BVC. The professional schools were offering graduate diplomas and vocational courses and, having obtained degree-awarding powers, were awarding law degrees to those completing their own graduate diploma and vocational courses.<sup>117</sup> Competition within and between these markets was intense and many providers were concerned about the impact of change on existing markets. Although the Law Society repeatedly emphasised that the LPC or a similar course would be available to those who wished to take it, providers mobilized student opposition to the changes. In their new accreditation and validation arrangements for the LPC, the Law Society has invited new providers into the market, but imposed heavy threshold burdens. They must demonstrate the experience, competence and resources to offer the course.<sup>118</sup>

### Politics

The TFRG's silence on the amount of time it expects to be allocated to its academic knowledge outcomes has maximized opposition to the proposals from the academic lobby. Many academics have a career investment in a core subject and would not like its status downgraded. While others would generally welcome reduction of the core, they will bitterly resist proposals that add areas without reducing compulsory elements. In any event, many academics would resist the idea of a new professionally relevant core being substituted for an old one. The higher education milieu has become increasingly theoretical, multi-disciplinary, and research-based. The conception of a law degree as providing a liberal education is consistent with this direction. One particular consequence of the older profession-centric vision of legal education was that the Ormrod Report failed entirely to discuss the (potential) significance of research and scholarship to the development of not just the academic discipline of law, but to the objectives of legal liberalism more generally. This contrasts markedly with the approach of the Arthurs report in Canada a decade later. The latter saw research and scholarship as central to the development of a healthy academic legal education, and recognized

116. Only Cardiff, Manchester Metropolitan, Nottingham Trent, Northumbria, and West of England universities managed this.

117. Press Release, The College of Law of England and Wales, The College is the First Private Institution to Get Degree Awarding Powers (May 2, 2006) <<http://www.college-of-law.co.uk/news/article-1566.html>> (last visited June 10, 2008).

118. See *supra* note 104.

that academic law actually needed to maintain a critical distance from the professional project if it was to contribute to law as a liberal, humane profession.<sup>119</sup> Even ACLEC, informed as it was by the Arthurs' report, failed to connect this explicitly to the future health of legal research and scholarship. Much of the direction of the TFR in this regard might be seen as regressive; to make degrees more vocational or practically orientated would run counter to the broad acceptance of Llewellyn's proposition that the study of law as a liberal art builds "vision, range, depth, balance and rich humanity."<sup>120</sup>

The TFRG's attempt to infiltrate ethics into the knowledge outcomes is an example of the difficulty with the approach. If ethics are to be present from the cradle to the grave, they must be present in the initial stage. If a subject takes the form of general system ethics at the initial stage knowledge outcomes will be potentially split between the initial and vocational stages with unclear lines of responsibility. If ethics makes its entry to the degree in the form advocated in the knowledge outcomes, including rules of conduct, there will be criticism of adding to an already overcrowded undergraduate curriculum. Many in the academic lobby may fall back on familiar slogans, including the proposition that a liberal legal education should not seek to "indoctrinate" students.<sup>121</sup> Although the profession could threaten to withdraw recognition from degrees that do not match its prescription, it is doubtful that it will want a war with the academics with the Clementi super-regulator on the horizon.

### Conclusions

What exactly does our glimpse through a window on the transformations within English legal education tell us about the state of English legal education and perhaps about English (legal) culture more generally?

English academic legal education has been distinguishable from its U.S. counterpart because of two key, but related features. First, the law degree, as in most Continental European legal systems, has been seen as a program of general liberal education rather than a matter of professional formation. The conventional law degree exists as a part of the general system of undergraduate education in England and Wales—again like most of Europe, South America, and Australia. It has come to be defined at least as much—probably more—by its relationship to the rest of the academy than by its relationship to the profession. Vocational preparation has evolved in a relatively distinctive manner, with the evolution of

119. See Julian Webb, *The "Ambitious Modesty" of Harry Arthurs' Humane Professionalism*, 44 *Osgoode Hall L.J.* 119, 125-28 (2006) (commenting on Social Sciences and Humanities Research Council of Canada, *Law and Learning: Report of the Consultative Group on Research and Education in Law* 137-38, 40 (Ottawa, 1983)).

120. Karl Llewellyn, *The Study of Law as a Liberal Art*, in *Jurisprudence: Realism in Theory and Practice* 736 (Chicago, 1962).

121. William Twining, *Law in Context: Enlarging a Discipline* 159 n. 54 (Oxford, 1997) (citing Sir Thomas Erskine Holland's *The Elements of Jurisprudence* as the first textbook on jurisprudence).

increasingly sophisticated and, by comparison with many jurisdictions, lengthy specialist training. The curiosity of this system, however, lies in the extent to which each has evolved in a climate often characterized by mutual inattention (at best) or suspicion (at worst) and, until recently, a culture of more or less benign neglect.

One of the vague promises of the TFR is to bring the English system closer to the continuum envisaged by Ormrod and others since, including, in the United States, the MacCrate Commission. This might not be a bad thing. The current division lacks epistemological coherence and creates an artificially sharp divide between theory and practice that, arguably, benefits neither the academy nor the profession. The structures currently in place still strongly reflect their origins in the politics of a pragmatic alliance between an expanding but, in design terms at least, still elite higher education system and a profession that has faced significant and repeated struggles to modernize and maintain its status. In an increasingly fast-moving post-professional world, the relative inflexibility of the system, its failure to take sufficiently seriously at any stage the ethical formation of students, and the barriers to access it creates raise some genuine questions about legal education's fitness of purpose. On the other hand, the TFR's focus on more vocationally driven courses as the solution raises equally significant questions about the role of legal education in civil society and the archetypal distinction between the lawyer statesman ideal and the lawyer as mere technician. The TFR may also risk aggravating some of the problems it has identified. For example, by creating multiple pathways, it risks creating new distinctions between first- and second-class training modes and hence new access problems; by fragmenting the learning experience even more it could also further reduce the educational coherence of education and training as a whole. In short, if the TFR achieves its desired ends it has the potential to transform many of the processes by which legal culture is constructed and transmitted for the future, and by no means all of these for the good.

The second fundamental distinction between the U. S. and English systems lies, almost paradoxically, in the imbrication of the profession within the whole of education and training—an opportunity more present in the English context than in the U.S. context because of the smaller scale of operations and the single jurisdiction. The continuing domination of legal education and training by the profession may depend on how well it manages its regulatory powers in the near future. The TFR fits conceptually with much current policy stressing the need for learning systems that effectively commodify knowledge and deliver it to meet the needs of a market of flexible, lifelong learners.

If it succeeds in rolling out the TFR proposals, the Law Society could establish a system of expert accreditation that can absorb new groups of aspiring professionals, thus becoming a meta-regulator of domestic and European professions in the U.K. marketplace.<sup>122</sup> If it is seen to fail, government may

122. Andrew Boon, John Flood, and Julian Webb, *Postmodern Professions? The Fragmentation of*

seize the chance to credential lawyers on its own terms, creating new routes and sub-professions. It seems unlikely that professional hegemony will simply end, but procrastination and uncertainty will put neither profession nor academy in a good light and could lead to more direct regulation by government nominees or intermediate regulatory institutions. In this we see the potential for a reversal of professionalization, whereby the state answers the problem of controlling expert knowledge by producing the experts—or more accurately perhaps, given the current regulatory environment, by creating new, preferred mechanisms for the production of experts itself. This may be a glimpse of future society that Merryman believes legal education can offer us. In it, we see one system offering occupational control of education—professionalism—increasingly superseded by another: state control on behalf of the consumers of professional services.



## **Solicitors Regulation Authority**

### **Day one outcomes for qualification as a solicitor**

**Version 2, April 2007**

**At the point of admission, a solicitor should be able to demonstrate:**

**A Core knowledge and understanding<sup>1</sup> of the law applied in England and Wales**

Knowledge of:

- the jurisdiction, authority and procedures of the legal institutions and professions that initiate, develop, interpret and apply the law of England and Wales and the European Union;
- applicable constitutional law and judicial review processes;
- the rules of professional conduct, including the Solicitors' Accounts Rules; and
- the regulatory and fiscal frameworks within which business, legal and financial services transactions are conducted.

Understanding of:

- Contract law;
- Torts;
- Criminal law;
- Property law;
- Equitable rights and obligations;
- Human rights; and
- The laws applicable to business structures and the concept of legal personality.

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<sup>1</sup> Knowledge should be demonstrated by the ability to explain, in relation to a particular area: key principles, facts, rules, methods and procedures. Understanding requires demonstration of higher level skills: working with, manipulating and applying knowledge in familiar and unfamiliar situations.

**B Intellectual, analytical and problem-solving skills**

The ability to:

- review, consolidate, extend and apply knowledge and understanding;
- frame appropriate questions to identify clients' problems and objectives, and to obtain relevant information;
- evaluate information, arguments, assumptions and concepts;
- identify a range of solutions;
- evaluate the merits and risks of solutions;
- communicate information, ideas, problems and solutions to clients, colleagues and other professionals; and
- initiate and progress projects.

**C Transactional and dispute resolution skills**

The ability to:

- establish business structures and transfer businesses;
- seek resolution of civil and criminal matters;
- establish and transfer proprietary rights and interests;
- obtain a grant of probate and administer an estate;
- draft legal documentation to facilitate the above transactions and matters; and
- plan and progress transactions and matters expeditiously and with propriety.

**D Legal, professional and client relationship knowledge and skills**

Knowledge of:

- the legal services market; and
- commercial factors affecting legal practice.

The ability to:

- undertake factual and legal research using paper and electronic media;
- use technology to store, retrieve and analyse information;

- communicate effectively, orally and in writing, with clients, colleagues and other professionals;
- advocate a case on behalf of a client;
- exercise solicitors' rights of audience;
- recognise clients' financial, commercial and personal priorities and constraints;
- exercise effective client relationship management skills; and
- act appropriately if a client is dissatisfied with advice or services provided.

#### **E Personal development and work management skills**

The ability to:

- recognise personal and professional strengths and weaknesses;
- identify the limits of personal knowledge and skills;
- develop strategies to enhance professional performance;
- manage personal workload;
- employ risk management skills;
- manage efficiently, effectively and concurrently a number of client matters; and
- work effectively as a team-member.

#### **F Professional values, behaviours, attitudes and ethics**

Knowledge of the values and principles upon which the rules of professional conduct have been developed.

The ability to:

- behave professionally and with integrity;
- identify issues of culture, disability and diversity;
- respond appropriately and effectively to the above issues in dealings with clients, colleagues and others from a range of social, economic and ethnic backgrounds; and
- recognise and resolve ethical dilemmas.