

faculty as lecturers in cyberspace, joined by teaching assistants found at the geographic location at which the law school is located. The cost of such a program would be substantially less than the cost of current bricks and mortar schools. The entrepreneurial law school would enjoy the distinction of its faculty and the instructional and student counselling productivity of its teaching assistants.

For a long time law schools have been able to avoid the prospect of change. The day of reckoning can be postponed for some time, perhaps for as long as a decade. The ability of law school graduates to repay the debt incurred in obtaining a law degree remains difficult but manageable, and so long as interest rates remain low and the market for lawyers remains sound, law schools can avoid change. However, the longer the wait, however, the greater the danger that change will be imposed from without.

## REVIEW ARTICLE

## PURPOSE

### **Conversations, choices and chances: the liberal law school in the twenty-first century**

A Bradney

Hart Publishing, 2003

208pp

The author, Anthony Bradney, is Professor of Law at Leicester University in the United Kingdom. In this substantial book on the role and proper function of the law school, he sets out both a theory of liberal education and the way in which the notion of a liberal education can be applied in a law school setting. In doing so, he is able to draw upon a rich vein of research and scholarship about university legal education which has emerged in recent decades, leading to the development of conceptual frameworks that have been tested by appropriate empirical evidence.

In his introductory chapter Bradney engages in a detailed assessment of the state of law schools today compared with the past, when they were 'small isolated outposts that existed on the outskirts of the academic empire' (p.2) He concludes that 'whatever the eventual balance between excitement and servitude that is to be drawn, no one could truthfully deny the evidence of elements of the excitement that clearly pervades British university law schools in the present day', as reflected in a great increase in activity across a range of the areas of academic teaching and research. Nonetheless he recognises that law schools have both suffered from the ills of their parent universities and have their own particular reasons for feeling a sense of crisis and seeing themselves as being under stress. They find themselves in conflict with both government and market pressures which push them towards a narrower compass of activity than that which they wish to engage in. Bradney sees a new definition of the traditional notion of a liberal education suitable for the twenty-first century offering a new direction for law schools. He argues that the historical concept of a liberal education, when properly interpreted in the context of the modern era, provides a backdrop which can protect and enhance the pluralism of a modern university law school.

Chapter 2 contains a highly analytical account of the research and literature on the nature of a liberal education and how the author conceives it as applying to law schools. At one level liberal education could be envisaged as resistance to the pressures from law societies and bar associations to give legal education an exclusively vocational bias. Bradney then traces the theory of a liberal education, specifically the legacy from the nineteenth century, and draws out the elements that might be applicable today. He looks at its holistic nature, designed not to transmit particular skills or information, but to convey knowledge. He also examines its traditional association with elite social groups and how it can now be applied in an era of mass university education.

In the balance of the book Bradney endeavours to provide useful input into the role which this updated and reconceptualised notion of a liberal education can play in the modern law school. Chapter 3 deals with the missions for law schools in this liberal education climate. In particular, he discusses how it can support pluralistic goals for law schools in an environment where universities are becoming more entrepreneurial.

Chapter 4 deals with the liberal curriculum. Bradney points out that 'the goal of the liberal curriculum is not to see that students have acquired particular factual information but, rather, to allow them to understand the structures and values that permeate and underpin the law' (p.87). This means that there is no core content in terms of subject coverage and no list of legal material that must be studied if the student is to be considered educated. Bradney suggests that the task for those writing a curriculum for a liberal law school is to produce a framework under which technical information is not acquired for its own ends. Instead its importance lies in the way it can be used to understand structures and values, rather than as having a value in itself. He also examines the relationship between the liberal curriculum and doctrinal law, as well as the way in which it intersects

with vocational goals. In respect of the latter, Bradney concludes that liberal law school curricula seek to avoid the pitfalls and limitations of vocational curricula by attempting to put students in a better position to address a wide range of tasks by equipping them with the necessary intellectual tools, as well as the flexibility of approach to adapt what they know to new conditions.

Chapter 5 discusses the role for research in a law school which has embraced the concept of a liberal curriculum. There is a useful account of the place research occupies in the modern law school and the conflict which often arises with the primary teaching responsibility when academics place the latter as a poor second to the former. In a liberal law school, research would be pluralistic, in the sense that it would reflect the individual interests, beliefs and enthusiasms of those in the law school. As a consequence, given the need for diversity in staff in the law school if students are to be afforded an appropriate opportunity to be exposed to the range of legal scholarship, so the sum total of the research the law school produces would be similarly diverse.

It is possibly significant that the sub-title of the chapter on the role of administration in a liberal law school (chapter 6) is 'a necessary evil or simply necessary?' He makes the point that, despite its pervasive nature and importance, 'administration is the least discussed and least analysed facet of academic life, not just in the law school but in the university as a whole.' (p.132) There is also an interesting section on the place for collegiality in the liberal law school, and how it intersects with governance, as well as the advance of university managerialism. Perhaps this is the least satisfactory chapter in the book because there is no real attempt to analyse the often fraught relationship between the law school and the central university in terms of administrative and financial expectations.

Chapter 7 deals with accountability mechanisms as they would exist for a liberal law school, whether they are imposed by the community as a whole or by government or derive from accountability to the legal profession itself. There would be manifest problems with this last line of accountability for the pursuit of a liberal education and these are discussed within the specific context of UK law schools and the expectations of their professional and admitting bodies. There is also discussion of two significant external intrusions into the traditional prerogatives of law schools in the UK: separate audits undertaken by a higher education funding body into university law school teaching and into research.

The concluding chapter deals with what it would mean to work as an academic in a liberal law school and how the work that is done there would connect with the rest of the life of a law teacher outside the law school. Bradney proposes that in the liberal law school there would be a unity of avocation and vocation. Acknowledging that modern universities are essentially exploitative in their nature, trading on their employees' love of their job, he points out that, in the interests of both the health of workers and the efficient running of businesses, there is a need to ensure that employees enjoy a proper balance between, and therefore separation of, work and life. He offers suggestions as to how legal academics can successfully manage their lives working in a liberal law school.

*Conversations, choices and chances: the liberal law school in the twenty-first century* is in all probability the most significant book written about the purposes of English legal education since 1994, the year that William Twining's *Blackstone's tower: the English law school*<sup>1</sup> was published. Anthony Bradney makes out a persuasive case for the adoption of the principles of liberal education to underpin all the dimensions of a law school's operation. He contends that the educational outcome for students of a law school guided by these principles will be that they will be learned in the law, in the sense that they will have acquired general transferable knowledge and skills, rather than the mastery of doctrinal law in limited curriculum areas provided by the traditional legal education. As a result, a liberal legal education will better equip students for a variety of careers in the law than will a curriculum focused on purely vocational outcomes.

However, in an era of increasing accountability for universities and especially law schools, which shows no signs of diminishing, there must be doubt as to whether there is really room for a legal education fuelled by liberal principles, as envisaged by the author, unless in a severely attenuated form. All stakeholders, including funding authorities, the legal profession, admitting bodies and indeed the law students themselves, have a strong tendency to conceptualise legal education substantially in vocational terms. This is in part because a knowledge of doctrinal law in specific curriculum areas is comparatively a more measurable outcome when it comes to demonstrating that accountability standards have been met. The author does acknowledge these hazards in the path of the introduction of a liberal law school education but does not offer practical suggestions as to how the accountability expectations of all stakeholders can be managed and reconciled. In the opinion of this reviewer, these unresolved practical difficulties must mean that the widespread embrace of the

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<sup>1</sup> Twining, W, *Blackstone's tower: the English law school*, 1994, London: Sweet & Maxwell

principles of a liberal law school education is likely to remain an ideal rather than to become an actuality.

Editor

### **Skills and values education: debate about the continuum continues**

### **SKILLS**

R A Matasar

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Graduating from law school and passing the bar examination does not make a student a lawyer. Even if they have taken the best professional responsibility course and have had a 'live client' clinic, a student's professional values have not yet been challenged by the extraordinary pressures of serving actual clients, working for demanding bosses and needing to pay bills. Lawyers need well-developed skills as fact investigators, negotiators, and litigators, more than they can get in law school clinics, moot court and trial advocacy courses. Law school simply is not enough. Legal education critics call for more skills and less theory courses, better teachers, more drill work, more practical material, changed accreditation rules, and a demand for better use of adjuncts. Bridging the gap between law school and the legal profession requires law schools to accelerate the process of becoming a lawyer and then the profession must take over.

Unfortunately, the MacCrate's Report of 10 years ago has had a negligible impact on the profession. It set out to create a formula for bridging the gap between student and profession, hoping to create within lawyers a lifelong commitment to learning, a method for skills training and a legal profession that would embrace agreed-upon core values. For these goals, the MacCrate Report certainly gets low grades.

In addressing the question of how to improve the preparation of lawyers for practice, the MacCrate Task Force developed a statement of the skills and values (SSV) required by the profession, based on the following assumptions: that there would be an increasing specialisation and division of labour within law firms; that every lawyer should be required to remain a 'well-trained generalist'; that the list of skills and values be minimally concerned with what it takes to practise law; that a lawyer functioning as a member of a team need not be familiar with all of the skills and values so long as the team as a whole can mobilise and effectively apply the full range of skills and values in representing a client and making professional judgments; and that sometimes specific 'substantive' knowledge is necessary.

Ten fundamental skills were identified, being: problem solving, legal analysis and reasoning, legal research, factual investigation, communication, counselling, negotiation, litigation and alternative dispute-resolution procedures, organisation and management of legal work, and recognising and resolving ethical dilemmas. Certain fundamental values were also identified, being: provision of competent representation, striving to promote justice, fairness, and morality, striving to improve the profession, and professional self-development.

One effect of these findings in the MacCrate Report can be recognised in the manner in which curricular decisions are made with reference to broader institutional and professional goals, rather than the teaching capacity of teaching staff. Responding to student needs for guidance in developing a professional identity, solid skills and firmly held values, law schools provide programs, including legal research, writing and lawyering, which are supported by career planning assistance, continuing professional development programs, opportunities to do volunteer legal work and co-curricular student organisations. Law schools have made changes to their curricula, altered the ways that they govern themselves, and become more involved in professional service to respond to the needs of top, middle and poorly performing students as well as the professional requirements of the law firms they are to enter.

Even with the many significant changes to legal education since publication of the MacCrate Report, law schools must make significant improvements if they wish to give every student a complete preliminary education in each of the skills and values set out in the SSV. While any report card on the impact of the MacCrate Report is mixed, it does suggest that law schools are making a serious attempt at teaching these skills and values. Several of the skills are already taught at a high level and there are strong efforts to improve the teaching of others. Nonetheless, on balance, legal education only scratches the surface of teaching every skill well and has done even worse in the teaching of values.

The pursuit of the fundamental skills and values set out above requires a lifelong commitment. Trends in the legal profession that stand as impediments to a lifelong commitment to training and learning fundamental professional skills and values include the direction of development of the legal profession, the substantial growth in the number of lawyers, the increasing number of women lawyers,