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ENGLISH LEGAL EDUCATION: A COMMENTARY ON THE ORMROD REPORT

PHILIP A. THOMAS* AND GEOFF M. MUNGHAM**

I. INTRODUCTION

In December 1967, the Rt. Hon. Lord Gardiner, the Lord Chancellor, established a committee under the chairmanship of Sir Roger Ormrod to inquire into the education of the legal profession in England.¹ The report of the committee was presented to Parliament over three years later.² The Report contains several important proposals for the reform of English legal education; despite—or perhaps because of—the changes recommended by Ormrod, English lawyers have been reluctant to debate publicly the conclusions of this major inquiry. Sir Roger Ormrod himself took a rather sanguine view of the matter:

The reception of the Report . . . has rather surprised me in the sense that, . . . almost without exception, the reports that I have seen about it consist of careful, factual summaries of the

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The editorial board has made every effort to verify the sources cited herein; however, some of the authorities relied upon were unavailable and the responsibility for their accuracy is essentially the authors'.

Much of the material cited herein is of British origin; thus, the British system of citation has been adopted in this article.

1. Throughout this paper reference to England includes Wales but not Scotland or Northern Ireland. A committee on legal education in Northern Ireland was established in 1972 under the chairmanship of Professor Armitage, who was a member of the Ormrod Committee.

For an introduction to present English legal education, see McNeil, *Legal Education in England*, 57 A.B.A.J. 673 (1971).

2. REPORT OF THE COMMITTEE ON LEGAL EDUCATION, CMND. NO. 4595 (1971) [hereinafter cited as ORMROD REPORT and referred to as Ormrod Report].

The terms of reference for the Committee were as follows:

- (1) To advance legal education in England and Wales by furthering cooperation between the different bodies now actively engaged upon legal education;
- (2) To consider and make recommendations upon training for a legal professional qualification in the two branches of the legal profession, with particular reference to:—
 - (a) The contribution which can be made by the Universities and Colleges of Further Education; and
 - (b) The provision of training by the Law Society and the Council of Legal Education, the co-ordination of such training, and of qualifying examinations relating thereto;
- (3) To consider and make recommendations upon such other matters relating to legal education as the Lord Chancellor may from time to time refer to it or as the Committee itself, with the approval of the Lord Chancellor, decides to consider.

ORMROD REPORT I.

The Committee was comprised of 14 members, one of whom was a professor of medicine. The remaining members were lawyers.

Report, and so far as I can see, accurate summaries, which again is quite a surprise, but very little in the way of comment. . . . I wonder whether we are sitting in the eye of the storm or whether we have achieved nothing, or whether inconceivably, everyone agrees with us! Which it is I do not know and I am waiting with interest to see what reaction we produce.³

Taking a cue from Ormrod, we have attempted in this paper to develop a critical view of the Report. At several points we have stepped outside the terms of reference set for Ormrod and his committee to calculate more precisely the implications of its proposals for the English legal profession. In part, our decision to "break bounds" was influenced by the need to provide certain background information in order to relate the significance of the Report to North American readers. For this reason, we begin with an introduction to the procedures governing entry to the English legal profession and a short review of the historical debate on English legal education. The major portion of this article considers the specific proposals of the Ormrod Report.

The English legal profession is divided into two groups—solicitors and barristers. The essential difference between these groups is that solicitors deal with clients and prepare briefs and perform other out of court services, while barristers represent clients in court.

An English law degree (LL.B.) is equivalent to a four-year undergraduate degree in the United States. Many countries require a law degree for the practice of law. Such is not the case in England. Nevertheless, the importance and prestige of a law degree is increasing.⁴ Today, about 40 percent of beginning solicitors have law degrees, while 80 percent of those who become barristers are graduates of law schools.⁵ Two factors have proved to be particularly significant in producing this trend. First, there has been a large expansion in the number of students studying law at universities and related institutions. In England and Wales there are now 22 university law schools, seven colleges granting the Council for National Academic Awards (C.N.A.A.) law degree, and a number of other colleges providing instruction (both on a full and part-time basis) for students pursuing the London University external LL.B. degree. Alongside these law degree programs there has been a rapid expansion of law "service" teaching within non-professional

3. Ormrod, *The Reform of Legal Education*, 5 J. ASS'N L. TEACHERS 77 (1971).

4. See Wilson, *Survey of Legal Education in the United Kingdom*, 9 J. SOC'Y PUB. TEACHERS L. 1 (1966).

5. ORMROD REPORT paras. 59, 64.

higher educational structures for students who wish to become acquainted with the general concepts of law. Second, this increased enrollment has been made possible, in part, by the introduction of a national grant system, provided by national and local governments, which covers the student's fees and maintenance. These awards, which last the duration of the particular course, are based upon both the financial need of the individual and the assessed parental income. One of the purposes of these grants was to open university education to social groups that had been excluded previously for financial reasons.⁶ In numerical terms, the undergraduate population studying law at the universities has risen from about 1,500 in 1938 to over 5,000 in 1970. Regardless of the Ormrod Report it can be expected that in the coming years the legal profession will continue to become graduate rather than non-graduate in character. (However, should one of the major proposals of the Ormrod Report be implemented, this tendency will undergo rapid acceleration.⁷)

On completion of a university legal education, the graduate emerges with a law degree (equivalent to the U.S. undergraduate bachelor degree) which, by itself, confers no right to practice as a lawyer. Should the graduate decide to enter the profession (a choice, incidentally, which is rejected by a large number of graduates),⁸ further training of a practical nature lies ahead. Initially, the graduate is obliged to choose between becoming a solicitor and becoming a barrister. This decision arises from the split legal profession which exists in England. The governing bodies responsible for the professional examinations (the Law Society and the Council of Legal Education) may, however, recognize the LL.B. degree for exemption purposes from Part I of their respective qualifying examinations.

In order to qualify as a solicitor, a student must satisfy the Law Society's requirements of (1) service under "articles" (apprenticeship), (2) attendance at a course of legal education, and (3) passing examinations as prescribed by the Training Regulations. Under Amendment No. 3 of the Training Regulations of 1970, the longest period which can presently be served in articles is four years. In every such case a candidate is required to have attained the standard of general education based

6. The effect of the grant on broadening the class intake of students has been disappointing. See COMMITTEE ON HIGHER EDUCATION, CMND. NO. 2154, app. 1, at 42 (1963) [hereinafter cited as ROBBINS REPORT and referred to as Robbins Report].

7. See ORMROD REPORT para. 185(4)(i) and (6).

8. See notes 51 and 52 *infra* and accompanying text. Of the 2,343 students in Britain who received law degrees between 1961 and 1963, only 559 were known to have joined the legal profession. REPORT OF THE COMMITTEE ON SOCIAL STUDIES, CMND. NO. 2660, app. 5, table 2 (1965).

on the General Certificate of Education asked for by the Society.⁹ The non-graduate must serve four years in articles while the holder of a degree serves his apprenticeship for a basic period of only two years. Since 1962, graduates have been allowed to take Part II of the solicitors' qualifying examination before entering articles. This is particularly helpful to the recent graduate who, fresh from his degree, can proceed to "cram" for his final examination before entering the uninterrupted two year period of apprenticeship.

The second requirement that must be met by one desirous of becoming a solicitor is completion of courses of legal education. The present regulations require that all non-graduates attend a one year recognized course before attempting Part I of the solicitors' finals. Originally, the designated centers for these courses were university law schools. Unfortunately, the practitioners' long-established suspicion of academics was fortified when the schools failed to provide the specialized courses required for young clerks. It came as no surprise that the scheme was judged a failure and a redesignation occurred whereby the responsibility for the courses was apportioned between the profession's College of Law and colleges of higher education.

The third requirement that both graduates and non-graduates must meet is the passing of Part II of the qualifying examinations. Preparatory courses are provided for this examination, although none are offered at universities. Attendance at these six month courses is not obligatory, although it is usual. A premium is placed on endurance and memory; should the candidate be able to memorize and regurgitate rule upon rule (given the requisite amount of luck) the cram course is usually successful with its pupils.¹⁰

The rules governing the training of barristers are contained in the Consolidated Regulations of the Inns of Court. The procedure for "call" (admission) to the Bar is similar to that for becoming a solicitor insofar as periods of pupillage, formal education for those intending to practice¹¹ and required examinations are concerned. In the first instance, the prospective barrister must join an Inn of Court. The educational qualifications for admission to an Inn as a student have been raised in

9. Details of the minimum legal education qualifications as of July 1, 1972 are to be found in *LAW SOCIETY GAZETTE*, May 3, 1972.

10. It should be noted that the Law Society is aware of the deficiencies in the present qualification requirements. It presented a revised scheme to the Ormrod Committee. See *ORMROD REPORT* app. F.

11. A large number of those students called to the Bar do not practice in England. See *ORMROD REPORT* app. B, tables 19 and 21.

the recent past but they still fall below those demanded for admission to university law schools. The effect is that a number of students register with an Inn because they are unable to obtain a highly competitive university place. This is particularly so with foreign students (who make up a declining but still surprisingly high proportion of Bar students).¹²

The Council of Legal Education, which governs the education of barristers, was reconstituted in 1967 as a Committee of the Senate of the four Inns of Court, a body which formulates policy and takes action on matters affecting the Bar as a whole. The Council recently embarked upon a policy of changing the system of education and training.¹³ During the transitional period (until September 1972) the form and content of the prospective barrister's examination varied, depending upon the date on which the student joined the Inn of Court. The procedure for students who joined after March 31, 1969 and until such time as the system is changed by the implementation of the Ormrod Report or otherwise, is as follows: the new scheme involves two levels, *viz.*, education and training. Part I of the barrister's examination will represent the educational stage and Part II, the training element. It is envisaged that Part I will be of university law degree standard and attendance is not mandatory. The new Part II assumes the student's knowledge of the basic principles of English law but questions the student's professional approach to legal problems, his techniques of drafting pleadings and other documents and his writing of opinions. For those students who intend to practice in court, attendance at the Part II one year course is obligatory. Linked with this course are practical exercises in advocacy and office work, supervised by practicing barristers. However, of 935 students who were called to the Bar from Michaelmas (late September) 1969 to Trinity (middle May) 1970, only about 170 have actually gone into practice. The result is that the overwhelming majority of students still need not attend the courses offered, or approved, by the Council of Legal Education. Upon being called to the Bar, the barrister is required to enter into pupillage with a qualified barrister of not less than five years standing. The pupillage lasts for one year, during which time the student is expected to gain the practical experience and expertise required of a competent barrister.

12. *See id.* app. B. The decline in registration by overseas students can be accounted for partly by the establishment of national law schools in their own countries and the changes in admission standards for Bar students. *See Thomas, Legal Education in Africa*, 22 N. IR. L.Q. 3 (1971).

13. For a considerable time the attitudes of the Council of Legal Education were severely criticized because it was felt that the Council was neglecting its duty to prepare students for practice satisfactorily.

*Historical Comment*¹⁴

Given the small number of parties with an interest in the present system of legal education and training it is scarcely surprising to find no real consensus concerning the appropriate content and objectives of a preparation for legal practice. Several issues have tended to dominate the prolonged and often acrimonious discussion of English legal education: (1) the suitability of legal studies as an academic subject within a university; (2) the proper content of such a university discipline; (3) the usefulness of the law degree to practitioners; (4) the absence of an integral scheme of practical training;¹⁵ and, (5) the status of law teachers vis-a-vis that of law practitioners. An illustration of some of these themes is provided in this section by turning to the history of the debate on legal education.

The historical separation of the functions of "education" and "training" has long been criticized, although such criticism has had only limited impact on established practices. For many keenly concerned about the development of the law, the successful defense of the present system of instruction is seen as contributing directly to the shortcomings of English legal education. As an approach to law teaching specifically, present education is regarded by some educators as "narrow-minded, remote from life, chauvinistic, educationally unsophisticated and intellectually sterile"¹⁶ and "the worst system of legal education in the English speaking world."¹⁷ Others have stated, "We cannot help thinking that legal education is the weakest and most unsatisfactory feature of the English legal profession and that serious deficiencies exist in every kind of institution that provides formal instruction for law students."¹⁸ That the government of the profession has been unmoved by such strictures from foreign quarters is hardly surprising in view of its policy of benign neglect towards the comments and suggestions of domestic crit-

14. It is not our intention to present a bibliography or a detailed description and analysis of the development of English legal education. The Ormrod Report itself offers an illuminating summary in ch. I, paras. 7-44.

15. By an "integral" scheme of practical training is meant that training for practice should not be worked out through the present system of apprenticeship, *i.e.*, articles or pupillage. It should, rather, be a component part of a professional training-school course.

16. See Twining, *Pericles and the Plumber*, 83 L.Q. REV. 396 (1967).

17. A. VANDERBILT, *THE NEW YORK UNIVERSITY SELF STUDY FINAL REPORT PART II* app. B at 68 (1956).

18. Q. JOHNSTONE & D. HOPSON, *LAWYERS AND THEIR WORK* 569 (1967) [hereinafter cited as JOHNSTONE & HOPSON].

One author noted, "The historical picture is plain enough. By the mid nineteenth century the profession's direct control of legal education had become a public scandal." Arthurs, *The Ormrod Report: A Canadian Reaction*, 34 MODERN L. REV. 635, 643 (1971).

ics.¹⁹ The tradition of narrow vocational instruction as the appropriate preparation for the practice of law has been attacked for more than 200 years. For example, in 1846 Lord Campbell made the following statement before the House of Commons Select Committee on Legal Education:

All the great men who have acquired eminence in the profession of law in England would have been equally great if they had had a regular legal education, and many of them would have performed their duties in a still more distinguished and satisfactory manner, while many of those who have acquired high office in England by their abilities and interest being deficient in legal acquirements, have not performed the duties in regard to them at all in a manner so well as they would have done if they had been more particularly and more systematically educated.²⁰

If the history of criticism regarding legal education has an impressive pedigree, it has sired few reforms and, seemingly, has done little to influence the opinions of the rectors of the present legal hierarchy. For instance, Lord Justice Diplock wrote:

I am not as a customer particularly interested in those who study law as a liberal education. I must confess, in provoking parenthesis, that I do not regard law as a fit medium of liberal education for those who are destined to practice it. I do not doubt that it can be taught conceptually, philosophically or sociologically so as to give it a liberal flavour but I challenge the claim that to do so results in teaching a student to 'think as a lawyer.' To think as a philosopher, to think as a sociologist perhaps, but those who practice the law—Judges, barristers and solicitors—are concerned with cases rather than concepts Of course a practicing lawyer needs a liberal education,

19. Professor Gower noted:

There is no compulsory theoretical training, practical apprenticeship or institutional attendance; the student is merely "recommended" to attend the Inns of Court School of Law and to read in Chambers. Only students resident in London have an opportunity to attend the school and as the teaching is by part-time visiting lecturers there is very little opportunity for personal contact between them and their audience. There is, it is true, a compulsory examination, but although this has been tightened up somewhat in recent years it is still surprisingly easy.

Gower, *English Legal Training*, 13 MODERN L. REV. 137, 150 (1963).

Another author noted that English legal education is "dangerously narrow, when it has existed at all" and that the Inns of Court have not encouraged a feeling of social responsibility. A. HARDING, *A SOCIAL HISTORY OF ENGLISH LAW* 8 (1968).

20. X BRITISH PARL. PAPERS para. 3829, n. 291 (1846).

but in my view, which I think is shared by a large proportion of practitioners, the liberal education should come first and the study of law thereafter.²¹

Such an attitude towards training received attractive metaphoric portrayal by Professor Twining in what he called "the image of the lawyer as a plumber."²² This image can be described in the following fashion:

"The Lawyer" is essentially someone who is master of certain specialised knowledge, "the law," and certain technical skills. What he needs is no no-nonsense specialised training, to make him a competent technician. A "liberal" education in law for such a functionary is at best wasteful; at worst it can be dangerous. Imagine the effect, it might be argued, on our drains and central heating systems if our plumbers had been made to study the history and philosophy of plumbing, the aesthetics of drains, housing policy, Roman baths, comparative plumbing, and a special subject in the water supply of the Houses of Parliament. When practitioners emphasize the value of a broad education for intending lawyers, they frequently also indicate that it is of secondary importance whether or not it is in law. Some go so far as to say that a subject other than law is to be preferred for university study. If plumbers are to study philosophy, it should not be the philosophy of plumbing.²³

The problem with legal education, as with other mature disciplines, is how to reconcile the liberal tradition with the demands of the world of human affairs. Much of its theory and practice proceeds on the basis of certain dominant assumptions, hidden or only half-articulated, concerning the nature of law and the role of the lawyer in society. Certain historically important courses have become embalmed and are now considered fundamental to legal education while the nature of the practitioners' work has so altered as to make the very idea of "core courses" questionable.²⁴ When discussing legal education, practitioners seem to emphasize the more narrow, humdrum aspects of legal practice. The formal provisions for professional training, culminating in an examination system which has been described as "parrot-learning, cram courses [and] stereotyped thinking,"²⁵ encourage the production of narrow, un-

21. Diplock, *Introduction to a Discussion of the Wilson Report*, 9 J. SOC'Y PUB. TEACHERS L. 178-94 (1966).

22. Twining, *supra* note 16.

23. *Id.* at 397-98 [footnote omitted].

24. See notes 74-77 *infra* and accompanying text. See also ORMROD REPORT para. 109.

25. Twining, *supra* note 16, at 424.

critical technicians. In sharp contrast (which may account for the severe approach of the practitioner), the image of the lawyer that frequently dominates law teaching in the universities is one of academic purity and isolation from the vocational aspects of education. Thus there is a traditional antithesis between the theoretician and the practitioner. Nowhere is this more clearly seen than in the perennial confusion over the scope and content of legal education, which, in turn, reflects fundamental disagreements concerning the nature of the end-product required.²⁶

The long observed tension in England between those who teach law and those who practice law has made the task of reform in legal education more difficult. The quality of this relationship has, in the past, been a major obstacle facing those university teachers of law who have wanted to take the initiative in discussing programs for changes in the education and training of lawyers. One authority has written that law teachers were regarded as "a very inferior set of people who only teach because they cannot make a success at the Bar."²⁷ More than this, when judges came into contact with law teachers, the former, according to Laski, had "a most amusing sense of infinite superiority, and the teachers an interesting sense of complete inferiority."²⁸

Some of the flavor of the estrangement between the teacher and the practitioner may be gleaned from the kind of discussion which arose out of the Ormrod proposals, when the ancient enmity between solicitors and academics appeared again. Thus one university teacher of law was moved to comment:

What was distressing . . . was the way in which the University Law Schools were being ignored. Discussions were taking place between the Law Society and the Bar, between the Law Society and the Bar and the Lord Chancellor. . . . [T]here were discussions between the profession and the University Grants Committee and . . . between the profession and the Department of Education and Science. But no discussions at all with either individual universities or with University Law Schools.²⁹

In addition to the highly problematic relationship between the profession and the academics, university law teachers in England historically have had a rather uneasy link with other established university

26. ORMROD REPORT para. 85.

27. 2 HOLMES-LASKI LETTERS 1156 (M. Howe ed. 1953).

28. 1 HOLMES-LASKI LETTERS 763 (M. Howe ed. 1953).

29. Address by Professor C.F. Parker, in 12 J. SOC'Y PUB. TEACHERS L. 47 (1972). Similar criticisms had been voiced earlier in the Society's Annual General Meeting in September 1971.

disciplines. At various times the accusation has been made that law is not a fit subject for inclusion in the university curriculum. Although for the most part this sort of critical comment is muted today, there is some evidence that such accusations are still felt by some academic lawyers. Recently, for example, a debate was reported in the pages of a leading English law journal, where "[t]he viewpoint led to the vehement denial (which met with general approval) that the law was academically a second class discipline."³⁰ What is interesting here is not the detail of the debate, but the fact that the question was ever raised and considered by present day university teachers of law.

With this brief but essential introduction to English legal education behind us, we can, in the following sections, deal directly with the contemporary profession and the proposals of the Ormrod Report.

II. PROFESSIONAL BARRIERS TO RECRUITMENT AND CHANGE

The practitioners' success in resisting the reform of English legal education is the result of many factors.³¹ Among them are: the social and communal insularity of the lawyers' world; the homogeneity of the profession; the profession's traditional authority for self-regulation and self-discipline; the static rather than dynamic posture adopted by the majority of lawyers; the lawyers' long established role as leaders,³² creators and interpreters of public opinion; the practitioners' attitude, more closely related to consultancy than to service; and, to a lesser extent, the limited section of the public with which lawyers deal regularly. Such factors help perpetuate the ingrained conviction that the legal profession, as it sees itself, is best served by remaining autonomous and isolated from the vagaries of public opinion.

A more meaningful appreciation of this attitude is made possible by identifying one of the above elements and examining its characteristics in some depth. The element to be considered is that of recruitment to and composition of the profession.

Probably the first outstanding fact to strike those unacquainted with the profession is the high rate of self-recruitment—a characteristic shared with other "senior" professions, *e.g.*, medicine and the Church.

30. *Id.* at 48.

31. Chapter 1 of Ormrod Report indicates the historical antipathy toward educational change and development.

32. A simple example is that until December 1971 the Lord Chancellor received a higher salary than the Prime Minister. As a result of the recommendations of the REVIEW BODY ON TOP SALARIES, CMND. NO. 4836 (1971), both the Lord Chancellor and the Prime Minister now receive £20,000 (\$48,000) per year.

This feature of the law has been amply illustrated by Kelsall,³³ and although there are no recent figures to draw upon,³⁴ there appears to be no reason to suppose that the pattern he found has changed significantly. Kelsall's findings can be summarized as follows: in the second half of the 19th century, less than a third of the sons of barristers attending Cambridge, of the sample he studied, chose a legal career. However, by 1938 this proportion had increased to nearly half—while a further 16 percent were engaged in one of the three other leading professions studied. The lessons of the study were clear: not only was law markedly self-recruiting, but also, over the half century, the level of self-recruitment had increased. Moreover, there were often close kinship ties between those in law and those in the other leading professions.

It is among the ranks of the judiciary that we see a clear picture of recruitment from a narrow social background. An English lawyer described this process in the following manner:

Largely what you would expect: gifted and talented members of the upper class. England has its normal quota of success stories from rags to riches, its millionaires who started as office boys, its tycoons who sold newspapers on street corners. But no one other than a gentleman, in the class sense of the word, has ever graced the high court bench. Working class origins are not recommended for anyone with judicial ambitions.³⁵

This statement is borne out by a number of surveys,³⁶ the latest being that conducted by Henry Cecil, prepared for the Hamlyn Lectures in December 1970.³⁷ He compared the education of the 35 judges of the Court of Appeal and the High Court in 1941 with their counterparts in July 1969. Of the earlier group, 28 had been to public school (the British counterpart to the prestigious American private school) and, of these, eight had attended Winchester. Twenty of the judges had gone to Oxford, six to Cambridge and one to Manchester University. By 1969 the number of Court of Appeal and High Court judges had risen to 73. A sample of 36 was selected. Of this number, 31 had attended a public school. Oxford and Cambridge claimed 17 and 16 alumni respectively,

33. Kelsall, *Self-Recruitment in Four Professions*, in *SOCIAL MOBILITY IN BRITAIN* 308-20 (D. Glass ed. 1954).

34. The authors anticipate conducting a survey of the legal profession in Cardiff. Some of the questions will be geared to discover the social and educational backgrounds of practitioners.

35. Bresler, *English Law and Lawyers*, 3 *TEXAS Q.* 197-98 (1961).

36. See, e.g., B. ABLE-SMITH & R. STEVENS, *LAWYERS AND THE COURTS* 298 (1967); Ellenbogen, *Degree, Priority and Place*, 1960 *OXFORD LAWYER* 31 (1960); 181 *ECONOMIST*, December 15, 1956, at 946.

37. Cecil, *The English Judge*, in *HAMLIN LECTURES* (1971).

while London and Manchester Universities each boasted one former student. In the House of Lords the picture was of similar composition. Again a random sample of 12 out of 24 Law Lords indicated that ten had attended public school. Eight had studied at Oxford and three at Cambridge. Cecil then proceeded to examine the educational background of 45 of the 90 county court judges; of these, 32 had gone to public school. Oxford and Cambridge were equally divided with 20 each, while two had studied at Leeds and one at London. Of his random sample of 24 (out of a total of 48) stipendiary magistrates, 20 had been to public school. Twelve had attended Oxford, four Cambridge, two London, one Birmingham and one Leeds.

Confirmation of the opinion that law is dominated by the middle and upper classes is to be found in an examination of the student intake into the profession. The Robbins Committee, which did not isolate legal education, found that only two percent of the children of unskilled and semi-skilled manual workers received full-time higher education, compared with 45 percent of the children of the higher professional classes.³⁸ In 1963 about a quarter of university students had fathers who were manual workers—almost the same proportion as for the whole period covering 1928-47. A recent sample survey conducted at Durham University suggests that there has been no significant change in the family backgrounds since 1963.³⁹ As is the case with British universities as a whole, the Durham group came predominantly from the upper and middle classes. Only 12 percent were unambiguously manual (including skilled, semi-skilled and unskilled). This was one-half the national average recorded in the Robbins Report as “working class.”⁴⁰

Reference to the parental backgrounds of law students is considerably more difficult to establish because of the lack of published data. However, Professor Wedderburn has calculated that the proportion of manual workers' sons among law students is considerably lower than the overall figures quoted by Robbins.⁴¹ Coupled with the initial de facto “class” selection process for university entrance is a second phase process to which law graduates are exposed upon seeking entry into the practicing profession. In 1963, of the 65 percent of law graduates who entered the profession, only a very small proportion were from the working class.⁴² There are a number of factors which contribute to this

38. ROBBINS REPORT 39-42.

39. Cohen & Waton, *The Typical Student?*, NEW SOCIETY, Nov. 4, 1971.

40. This percentage of “working class” students is lower than Durham’s overall admission figures would indicate. The University’s figures suggest that its intake is still below that of the national average for this group as indicated in the Robbins Report.

41. K. WEDDERBURN, *LABOUR LAW IN BRITAIN: ITS TEACHING AND RESEARCH* 25 (1966).

42. *Id.*

selectivity but it is thought that the most influential one is based upon the financial aspects of qualification. Formidable as this economic check appears, it is also important to consider the issues of social and political cost.

Financial Barriers Confronting Prospective Solicitors

Dealing first with the financial aspects, the procedure of qualification is expensive both in absolute and relative terms. Traditionally, the articled clerk was obliged to pay a premium to his principal on acceptance into articles. However, a Law Society memorandum to the Ormrod Committee noted that

it is now for the solicitor to pay the articled clerk; and if the profession is to be able to compete in attracting recruits of the right calibre it becomes necessary for the articled clerk to be paid a realistic salary.⁴³

This had been the position of the Law Society for a number of years. Yet, in 1968, a survey conducted by a subcommittee of the National Committee of the Associate Members' Group of the Law Society⁴⁴ discovered that 6.5 percent of those replying had paid premiums ranging from £100 (\$240) to £787 (\$1,888), and that the average premium was £193 (\$463). Similarly, although the unpaid clerk is increasingly rare, over eight percent of the clerks were unpaid in 1968. The salary paid is decided solely between the solicitor and potential clerk and it is at this point that the overwhelming majority of clerks suffer because of the conditions of austerity imposed by their principals. In 1968, the average gross weekly wage of a clerk to a solicitor in private practice was £6 15s. (\$16.20). In the same year the average gross weekly wage for all clerks was £8 (\$19.20).⁴⁵ The adequacy of this wage is brought into perspective when set alongside the average male wage earner's weekly income during 1965, which amounted to £20 3s. (\$48.36).⁴⁶ Various interested parties have since expressed concern with this poverty level payment, but the situation has not noticeably been ameliorated. For example, the current remuneration advocated by the Council of the Incorporated Law Society for Cardiff and District, which is a typical urban, local law society, is that a non-graduate should start at £3 (\$7.20) per week, rise to £8 (\$19.20) after successful completion of Part I and three years of articles, and then rise to £12 (\$28.80) after

43. ORMROD REPORT app. F., *Memorandum by the Council of the Law Society on the Education and Training of the Legal Profession*, January 1969.

44. LAW SOCIETY, *THE PROSPECTIVE LAWYER: BLUEPRINT FOR THE FUTURE* (1968).

45. PRICES AND INCOMES BOARD REPORT, CMND. NO. 3529, at 1 (1968).

46. MINISTRY OF LABOUR GAZETTE (1969).

successful completion of Part II in at least five subjects. The law graduate is in a somewhat more advantageous position (though he has expended considerable amounts of time and money to get there), for he commences at £8 (\$19.20)—assuming completion of or exemption from Part I—and rises to £12 (\$28.80) on successful completion of Part II. The Council emphasizes that it is somewhat reluctant to publish figures, because it feels, as does the national Law Society, that the question of remuneration is one to be decided between individual principals and their articulated clerks. However, as a result of numerous requests for guidance from its members, the Council produced the above figures, which it felt were fair and reasonable.⁴⁷ These figures indicate that the majority of prospective solicitors are very poorly paid, if at all. In addition, a considerable number, some of whom were law graduates, had to pay a premium on becoming articulated. Intended or not, the effect of this system is a financial qualification to be attained before becoming articulated. In absolute terms, the wage, if unsupported by private income, guarantees the clerk a passing but nonetheless undesirable acquaintanceship with the rigors of poverty. In relative terms, many able men and women, whom the profession can ill afford to be without, may be deterred from registering as clerks primarily because the immediate financial difficulties are considerable, especially when more financially attractive opportunities present themselves in other professions and occupations.

Financial Barriers Confronting Prospective Barristers

The financial qualification for barristers is equally burdensome. The first obligation is that a student be admitted to one of the four Inns of Court. The admission fees and dues amount to £82 (\$199). In addition, each Inn requires a deposit, payable on admission, which is held as security for call fees and is returnable on call to the Bar, or in the event of death or withdrawal. The sum varies from £75 (\$180) at the Middle Temple to £150 (\$360) at Gray's Inn. The requirement for a deposit may be waived at the discretion of the Masters of the Bench and in accordance with the rules of the particular Inn. The effect is that the waiver is usually brought into operation for those graduates and undergraduates of universities in the United Kingdom who make application for the operation of this privilege. As a prerequisite for call to the Bar the student must normally attend eight dining terms. This compels the

47. There are no figures indicating whether the guidelines are observed. One of the aims of the authors' proposed survey (see note 34 *supra*) is to establish current rates of remuneration of clerks in Cardiff. The clerks may also be expected to pay examination fees for the preliminary examination (required of those over 28 years of age whose formal education is abbreviated) and for Parts I and II of the qualifying examinations. Admission costs for the clerk to the Law Society stand at £20 (\$48).

student to dine in the Hall of the Inn of which he is a member on three separate days in each term. The number of terms for those students who intend to practice at the Bar is increased to 12, although they can make up the difference after being called. The stated purpose of dining "in Hall" is to introduce the student to the traditions of the Bar and to the corporate life of his Inn, while the traditional function is to promote legal education through a technique of proximity of pupil and master. There is a small but vociferous school which challenges the utility of this archaic system which would appear to demand some form of gastronomical qualification.⁴⁸

Apart from the intellectual misgivings connected with the concept of dining, the cost is considerable. The dining charges again vary from Inn to Inn, although the average cost for attending eight terms is £14 (\$33.60). However, this figure can be deceptive if the student does not reside in London, as there could be substantial travel, accomodation and subsistence expenses to be added. The examination fees for Parts I and II amount to £18 (\$43.20), although this figure can also be misleading, as the actual sums involved will depend on the residency of the student.⁴⁹ On the successful completion of the examinations set by the Council of Legal Education and attendance at the minimum number of dinners, the student may be called to the Bar. The call fees amount to £75 (\$180). If a barrister wishes to practice, he will be obliged to purchase "robes," which consist of a wig, robe and bands, which currently cost in the region of £60 (\$144). Thereafter, the barrister must "read in chambers" as a pupil for an aggregate period of 12 months. This necessitates the creation of a master-pupil relationship which normally involves the fee of 100 guineas (\$252) for the year to the master and ten guineas (\$25) to the barrister's clerk. During the first six months of his pupillage, the student-barrister is unable to accept instructions or conduct any case in court. Despite this enforced lack of income, the pupil will be obliged to travel to courts within the circuit, maintain appearances, purchase books and possibly even contribute towards the expenses of the chambers.⁵⁰ During the second six months of pupillage, a pupil may accept

48. *E.g.*,

It is difficult to find any student who sees any value or utility in the ritual of dining in hall. . . . The conversation does no more than pass the time but the Inn requires it, so one must go through the pointless ceremony.

R. MEGARRY, *LAWYER AND LITIGANT IN ENGLAND* 114 (1962).

49. The student who intends to practice at the Bar is obliged to attend a six month course given by the Council of Legal Education in London. The availability of grants for fees and maintenance are at the discretion of the local education authorities.

50. If the barrister wishes to find some form of supplementary income until he has built up a reasonable practice, he must bear in mind a fundamental rule of the profession (embodied in the

instructions and appear in court. Despite the current boom at the Bar, which is largely attributed to the extension of a national governmental legal aid system, the problems of finance remain forbidding to a young barrister. It is not surprising that the cumulative effect of the above mentioned factors is to preserve the law as predominantly a middle and upper class profession.

Social and Political Barriers Confronting Prospective Practitioners

It is also important to consider the issue of social and political cost upon those considering entry into the legal profession. The former is particularly decisive for those working class students thinking in terms of studying for the Bar, while the latter probably affects entry to both branches of the profession. It would be wrong to discuss this aspect of exclusion solely in terms of the situation of working class students. The impact of social and political costs affects all would-be entrants and thereby acts as a further reinforcement to the middle class conservative culture of the profession. Furthermore, those initiates who ignore the social and political cost factors are hardly strong enough to bear the ethos and style of the legal profession. Where self-selection fails, the system of education and training, together with the quality of the occupational culture of law, often succeeds.

By social cost we refer to the reluctance of many students to meet the specific social demands characteristic of an occupational culture which is solidly middle and upper middle class. Some illustrative material in support of this view is found in an unpublished, small-scale survey of London School of Economics (hereafter L.S.E.) law students. The findings are of great interest on two counts. First, they show the small number of students wanting to prepare for the Bar—*e.g.*, of 53 L.S.E. students who replied to the questionnaire, 30 wanted to qualify as solicitors, 15 were looking to areas other than practice for a career and only eight were planning to qualify as barristers.⁵¹ Here we might add that

Declaration before Call prescribed by C.R. 32 and in a ruling of the Bar Council of 1914) that a practicing barrister may not, as a general rule, carry on any other profession or business, or be an active partner in or a salaried official or servant in connection with any other profession or business. The Bar Council has also ruled that a practicing member of the Bar should not at the same time be a doctor, dental surgeon, Officer of the Regular Forces, full-time civil servant, legal adviser to a company and a number of other specified bodies, secretary to a company engaged in any undertaking which, if carried on by him as an individual, would be incompatible with practice at the Bar, secretary to an incorporated society of salaried professional persons, or an insurance agent.

51. Although these results should be treated with some caution (the numbers involved were small and there was no attempt to correlate career plans with social and political characteristics of individual students), it is interesting to note the broad correlation between these findings and those published by the Kings College Law Faculty Society in 1969.

the figures do not show which students intend merely to qualify and not enter practice.⁵² This "drop-out" rate further reinforces the class exclusiveness of the Bar, insofar as self-selection out, at this level, comes mainly from the ranks of the minority groups. Second, the written responses to questions on reasons for wanting to qualify in a particular branch of the profession vividly confirm our earlier observations concerning social cost factors in student self-selection. By studying these replies we can quickly grasp the quintessence of the students' image of both branches of the profession. In most cases the attitude towards the Bar was hostile or derogatory. For those students who elected to go into solicitors' branch, antipathy to the Bar centered on financial barriers to entry, its conservatism and the suspected pervasiveness of patronage as a criterion for advancement. These students often stressed the limited field of work undertaken by practitioners, particularly solicitors, as the reason for their decisions.

Many of the views held by pre-initiates to the profession are strikingly confirmed by a contributor to a recent symposium on contemporary issues in law. It is well worth recording in full:

There is also the more general point that the law must largely embody the values of the society in which it operates. Some critics insist that if the law is to be regarded as a social service, especially by the less privileged sections of the community, it must be made to seem less forbidding, and less like an instrument of the ruling class. There is something in this. Michael Zander compares the reluctance of working class clients to seek the services of a lawyer with their ready acceptance of the doctor, who is no less middle class in background. This is used as an argument for recruiting lawyers from a wider social range. But what distinguishes law from medicine is its necessary and intimate connection with social structures. As long as British social structure is such that the traditional ruling class can still command some deference, the law, to be sure of respect, must partake of the style of that class. Until the thought of a High Court judge pronouncing a life sentence in a Birmingham accent no longer seems incongruous, High Court judges must speak with the tones of Oxbridge, and so must ambitious barristers, and so must solicitors who do not wish to be thought inferior to barristers. This situation cannot be

52. The number of people called to the Bar but who do not enter practice is surprisingly high. For example, in 1969, 755 were called (including 383 overseas students) but only 137 entered practice.

changed unilaterally by reforms in the legal profession, including changes in its members' education.⁵³

It is images like these that crystallize law students' opposition and antipathy to the idea of a law career.

The political cost factor is less well documented, but it would seem reasonable to suppose that radical-left students will be deterred from entering the legal profession because of its conservatism. Here it is possible to point to the survey findings of those like Parkin⁵⁴ who has traced a general relationship between occupational choice and political commitment. Thus Blackstone's figures on the party allegiance of even the L.S.E. students showed more support for the Conservative party among law students than among students in nearly every other subject—a bias which was especially strongly marked in the case of post-graduate students.⁵⁵ There are a number of broad lines of discrimination inside law, *e.g.*, the burden of cost and the system of patronage. The first of these we have already considered; it is to the latter that we turn briefly.

As mentioned above, entry to practice on both sides of the legal profession depends upon obtaining articles and pupillage. This is a form of qualification which can serve as an effective mechanism of social control and exclusion; it may mean, as others have pointed out, "that there is a possibility that would-be entrants to the profession may be excluded on grounds other than merit."⁵⁶ This kind of studious understatement ignores altogether the impact of discrimination, or rumored discrimination, on potential entrants to the profession.⁵⁷ Although this aspect of social communication is hardly explored at all in conventional occupational studies, it seems reasonable to suppose that ideas about discrimination in law are translated into every kind of popular currency and will act in some cases to deter would-be entrants.

Even for those male "WASP's" with adequate finance, there are still difficulties in finding placement.⁵⁸ According to the evidence of

53. Radio discussion with Lord Devlin, in *WHAT'S WRONG WITH THE LAW?* 73 (M. Zander ed. 1970).

54. See F. PARKIN, *MIDDLE CLASS RADICALISM* ch. 8 (1968).

55. T. BLACKSTONE ET AL., *STUDENTS IN CONFLICT* 194-227 (1970).

56. Fabian Research Series, Society of Labour Lawyers Report on Legal Education, No. 276, at 8-10 (1969).

57. In its 1968 annual report, the Oxford University Appointments Board said that "having 'the right father' was often more important than any other factor in obtaining solicitor's articles." *The Guardian*, May 6, 1968, at 5.

58. On this point, the Law Society stated:

The serious shortage of suitable articles for prospective solicitors is a disturbing feature

Labor Lawyers concerning solicitors' articles, "the higher the qualification of the entrant to the profession, the less the problem arises."⁵⁹ It would be a mistake to interpret this priority as a genuflection towards meritocracy. Instead, the policy more accurately reflects the *shortage* of places in articles; hence the attraction of bringing in those likely to qualify most quickly. But scarcity of places is even more pronounced at the Bar and makes the system of patronage and the struggle for placement still more invidious. A substantial number of those qualified law students seeking pupillage are currently unplaced—a situation which is causing the Bar Council some concern.

The whole pattern of recruitment is, as we have seen, highly discriminatory. The nature of this intake to law, and especially to the Bar, has clear implications for the quality of the occupational culture. However, it tells us little of the forms of stratification within the profession.

Barristers and solicitors, the two separate branches of the legal profession, share an uneasy co-existence. If we generalize the differences between them (excluding their varying job functions), we can point to three major distinctions: first, in qualifications at entry—80 percent of those studying for the Bar are law graduates, whereas the figure for solicitors is only 40 percent;⁶⁰ second, in social class background—rather than saying that law is "overwhelmingly a middle-class profession," it would be more accurate to define *solicitors* in this way, and see the Bar as the location of upper and upper middle class entrants to the profession; and, third, in levels of self-recruitment—the solicitors' recruitment is slightly more heterogeneous in that it includes lower middle class and working class elements.

Finally, the containment of grievances by the profession over the training program is not difficult. The point is simple; disaffection can be accommodated as long as the practice guarantees lucrative employment. When the financial rewards are plentiful, the students and practitioners are less anxious to question the relevance of professional training. However, in times of crisis, when traditional sources of work become scarce, the demand for specific skills becomes enforceable, alternative work is sought after, and more critical attention is paid to the quality and content of professional education.

of the system of articles today. . . . The survival of the legal profession is threatened unless the present system of articles is rapidly altered to satisfy conditions that have changed beyond recognition from those that existed when the system of articles was originally conceived.

THE PROSPECTIVE LAWYER, *supra* note 44, at 19.

59. Society of Labour Lawyers Report, *supra* note 56, at 6-7.

60. ORMROD REPORT paras. 59 and 64.

The present financial remuneration which the practice of law offers is considerable. A comparison of earnings between graduates in disciplines other than law and solicitors (many of whom have no degree) indicates the benefits awaiting the articulated clerk. As a follow-up to the 1966 National Census, a sample survey of 15,000 graduates and post-graduates in the 45-49 age group was taken to establish their annual income in 1966-67.⁶¹ The average income for men amounted to £2,569 (\$6,166), while women commanded £1,656 (\$3,974). During the same period, the average annual income for solicitors in England and Wales was £4,870 (\$11,688).⁶² In our society, where success is frequently equated with financial reward, it is not surprising that there should be a reluctance in the legal profession to question the structure and service it provides when the monetary return has been so handsome and is seen as a reflection of the achievements of the legal system.

Since 1804 the process of land conveyancing has been the monopoly of the legal profession. This element of its work has become the backbone of its financial success. The Prices and Incomes Board indicated that 56 percent of a solicitor's income was provided by this function although it represented only 41 percent of his total expenses.⁶³ Yet, various reports, substantiating more general criticisms, have subsequently condemned the high cost of this service and brought the question of professional restrictive practices into the open.⁶⁴ If work became scarce in this traditionally lucrative area (by throwing it open to non-professional competition or the extension and rationalization of registered title to land through the Land Registry) there would be the likelihood that a demand would arise to equip practitioners with alternative skills. For example, the proliferation of tribunals created by the welfare state will remain unattractive to the practitioner only as long as the governmental legal aid program does not cover this area. However, the establishment of local law centers⁶⁵ and the introduction of a new £25

61. DEPARTMENT OF EDUCATION AND SCIENCE, STATISTICS OF EDUCATION: SURVEY OF EARNINGS AND QUALIFIED MANPOWER IN ENGLAND AND WALES, 1966-67 (1971).

62. NATIONAL BOARD FOR PRICES AND INCOMES, REPORT ON THE REMUNERATION OF SOLICITORS, REPORT NO. 54, CMND. NO. 3529 (1968). In 1968 this figure had risen to £5,373 (\$12,895). NATIONAL BOARD FOR PRICES AND INCOMES, STANDING REFERENCE ON THE REMUNERATION OF SOLICITORS, SECOND REPORT, REPORT NO. 164, CMND. NO. 4624 (1971).

63. NATIONAL BOARD FOR PRICES AND INCOMES, REPORT ON THE REMUNERATION OF SOLICITORS, REPORT NO. 54, CMND. NO. 3529, at 49-54 (1968).

64. *Id.* at 27-28. For a consideration of the role of the solicitor, see generally M. ZANDER, LAWYERS AND THE PUBLIC INTEREST (1968).

65. At the moment the sole Neighbourhood Legal Centre with full-time paid lawyers is in London. Various other plans, primarily dependent upon volunteer services, also operate at the national and local levels. By the end of 1972, however, a basically different center, controlled by residents and employing a full-time solicitor, community organizer and development officer, will open in Cardiff.

(\$60) legal aid scheme⁶⁶ could provide a refreshing impetus and a new direction of legal expansion. At the moment, opportunities exist to practice law in many areas not covered by the classical legal studies curriculum. The low acceptance rate of these opportunities is undoubtedly linked to the present attractive guarantee of employment which provides an abundant living from working within the traditional territory of legal services.

In the absence of any thorough reform in the professional training of law, the present system of apprenticeship (articles and pupillage) will always tend to encourage a dull conformity in most students. The shortage of apprenticeship places reinforces the already substantial opportunities for social control and discrimination that such a system of sponsorship provides. The result for the student is not an education but a socialization in law. His dependency upon his professional "educator" is nearly total; a stance which is seen as critical will do little to support his advancement in law. Only with the provision of a professional training course *independent* of a system of patronage will the training of law students come to stand for something greater than an instrument for the conditioning of initiates.

This brief review helps one to gain an understanding of the narrow social basis of the recruitment to the legal profession and its place in the context of English elite groups. Present practitioners constitute an upper class, in Dahrendorf's words, "of an almost tangible reality, easily identifiable . . . with well defined borders and conditions of entry."⁶⁷ In this interlocking network of shared kin, schools and universities and rigid control by the professions, we locate the mainsprings of the English legal profession.

III. ACADEMIC LEGAL EDUCATION

It is against the background of the last section that we examine the present system of academic legal education in England. The Ormrod Report correctly made the point that accurate statistics about education for the legal profession are very difficult to obtain,⁶⁸ and it is to be

66. On this point, see the more dramatic approach of House of Commons Bill No. 36 (1972), "Legal Aid and Advice (Local Legal Centres)," which is scheduled for first reading on December 1, 1972. This bill would establish local legal centers in poor neighborhoods in order to provide free legal aid services.

67. Dahrendorf, *Law Faculties and the German Upper Class*, in *THE SOCIOLOGY OF LAW* 295 (V. Aubert ed. 1969).

68. ORMROD REPORT para. 21. Other commentators have stated:

In England it has transpired that even the professional organizations themselves had only the most rudimentary ideas about professional structure, and virtually no quantitative

congratulated for putting together, from a number of disparate sources, the best current statistical profile of the legal profession in England in a single source book.⁶⁹

The first point which stands out is that the demand for legal education is growing. Some elementary figures are confirmation enough: between 1964-66 and 1970-71, the number of first year students admitted to university law degree programs increased from 1,571 to 2,288. Significantly, the number of applicants for places in university law schools rose more shaply still, from 3,324 to 6,205 during the years cited. In other words, inside the universities, demand has increasingly outstripped the supply of places available.

The universities form the largest sector of legal education. There are now 22 university law schools in England with some 6,723 undergraduate students. There is, moreover, a strong possibility that other universities, noting both the excess demand for places to study law as well as the expanding job market for law students, will wish to develop law schools. The Ormrod Report encourages an even greater expansion of numbers by suggesting that the number of places should increase by about one-third to accommodate its proposal that the profession become predominantly graduate. However, the Report suggests that the expansion should take place within existing law schools rather than by establishing new ones.⁷⁰ Such a policy is particularly appropriate in England, where there are several small laws schools with limited resources.⁷¹

The basic university course in law normally lasts three years.⁷² After a survey of the type of course offered,⁷³ Ormrod put forward

information about the work and remuneration of its members. We found an almost equal lack of knowledge about legal education, although at this moment some of the gaps are being repaired by a study being undertaken by the Society of Public Teachers of Law.

B. ABLE-SMITH & R. STEVENS, *LAWYERS AND THE COURTS* vi (1967).

69. Prior to the Ormrod Report, the most informative work on the present system of English legal education was Wilson, *Survey of Legal Education in the United Kingdom*, 9 J. SOC'Y PUB. TEACHERS L. 5 (1966). One welcome by-product of the Ormrod Report was its recommendation that the collection of basic social statistics on the profession be systematized. It seems reasonable to suggest that one of the reasons why this data is not available in an easily accessible form is the lack of any tradition of research into the "senior" professions in England.

70. ORMROD REPORT paras. 104 and 122.

71. For example, the University College of Wales, Aberystwyth, has offered a degree in law since 1901. In the 1971-72 academic year, law undergraduates numbered 170.

72. In Northern Ireland, Scotland, and at the University of Sussex, the LL.B. program (or its equivalent) takes four years.

73. According to the Ormrod Report, the subjects most frequently required in university law programs are: Administrative Law, African Law, Business Law, Company Law and Partnership (or Business Associations), Comparative Law, Conflict of Laws, Criminology, English Legal His-

summary points about the universities' inventory of courses currently available. These points are: (1) that degree courses almost always include as compulsory subjects Contract, Tort, Criminal Law, Property Law, Constitutional Law and English Legal System, (2) that beyond these five or six "core" subjects, syllabi vary widely,⁷⁴ and (3) that "there is clearly a tendency for the law schools to diversify and experiment with the courses they offer."⁷⁵ Clearly, any reliable assessment of the pace and extent of innovation in university law teaching rests, in the end, on a rigorous empirical inquiry of the sort which is beyond the scope of this paper and which the Ormrod Committee signally failed to accomplish. With this qualification in mind, it is our contention that the Ormrod Report has exaggerated the extent of course experimentation within university law schools. Indeed, the inventory of commonplace subjects the Report presents shows significant areas of legal study which are not represented at all. This manifest failure to develop a considerable course interest in such subjects as Welfare, Consumer and Housing Law can only be finally understood in the context of the nature of the legal profession which the university law schools "service." Beyond this, there is a more general point of criticism to be made of Ormrod, *viz.*, that it is, throughout, insufficiently discriminating about the kind of work being done inside the universities. This issue is raised again at the end of the article when the various comments about the Ormrod Report are crystallized.

In addition to the basic law courses, there are a limited number of postgraduate law courses. These frequently last one academic year. There is also a number of students working for research degrees. As the Ormrod Report itself notes, there is a great need for expanding postgraduate studies in law, and it makes a striking comparison between the medical and legal professions in England in this respect.⁷⁶ In medicine, advancement has increasingly come to depend on securing postgraduate qualifications. With the introduction of the National Health Service in 1948, medicine was given a well defined career structure, with the result that higher training became "a *sine qua non* of professional advancement."⁷⁷ The legal profession, on the other hand, "offers no inducement to undertake continuing training except the rather indefinite objective

tory, Equity and Trusts, Family Law, Hindu Law, Industrial or Labour Law, International Law, Jurisprudence, Mohammedan Law, Procedure and Evidence, Revenue Law, Roman Law and Succession. ORMROD REPORT para. 49.

74. See note 73 *supra*.

75. ORMROD REPORT para. 49.

76. It is significant, in view of the frequency with which this analogy is used in the Ormrod Report, that Mr. Justice Ormrod is medically qualified.

77. ORMROD REPORT para. 170.

of providing better service to clients.”⁷⁸ The Ormrod Report should not be allowed to escape too lightly with a comment of this kind. Although we acknowledge the difficulties of organizing postgraduate studies in an unreorganized legal profession,⁷⁹ it does, however, seem clear that such provision would be of benefit ultimately to the client and to the public. Although the precise claims which could be made for advanced training depend very much on the content of the courses that are offered, certainly many legal practitioners would become more competent if such courses contained a behavioral science component. Once again, we reserve further discussion of this problem.

University law schools are not the only source of law degrees. Though their combined law faculties are smaller than those of universities, the polytechnical institutions and colleges of higher education are expanding their activities in this field. Between them, the colleges offer two types of law degree courses: the first, and more traditional, leads to the external London University LL.B. degree, while the second, and newer, leads to a law degree by the Council for National Academic Awards (C.N.A.A.). The external LL.B. degree can be earned at the campus or by correspondence. The external LL.B. students who are engaged in a course of full-time study at polytechnical institutions and colleges of higher education are a much larger group than the C.N.A.A. candidates. The annual number of graduates of this type has steadily increased in recent years from 87 in 1959 to 463 in 1970, and, according to the Ormrod Report, the number of new registrations for courses is rising quite substantially.⁸⁰

However, the C.N.A.A. degree can only be taken at present on a full-time basis.⁸¹ There are now seven colleges offering a C.N.A.A. degree course, and ten colleges, in addition to the College of Law,

78. *Id.*

79. If law practitioners are able to thrive by doing the legal work they have always done, there will be only the smallest pressure from those within the profession for facilities for postgraduate work.

80. ORMROD REPORT para. 51.

81. North American readers will appreciate these developments better if they know something of the contemporary evolution of higher education in England and Wales. The United Kingdom is on the verge of creating a mass system of tertiary, or higher, education. At the moment about ten percent of the 18-21 age group are in some form of full-time higher education. It is envisaged that much of this growth will take place outside universities, with an especially large concentration of students in the new polytechnics. It was agreed that these colleges should develop and award their own degrees; thus, the emergence of the C.N.A.A. structure. It is uncertain how these new degrees will be received by employers in comparison with the established university degree. The Inns of Court have illustrated their initial suspicion of the quality of the degree by demanding higher marks from those wishing exemption from Part I of the Bar finals who come from polytechnics than those who come from university law schools.

offering the external LL.B. full-time course. The number of C.N.A.A. law graduates is still very small; only 39 graduated in 1969 and 108 in 1970.⁸² This sector, however, is expected to increase rapidly in size and output. But if this much is generally agreed, there is much less certainty about the possible impact these new law schools will have upon legal education, and their graduates upon the legal profession.

IV. ORMROD PROPOSALS

Against this background we present a summary of the Ormrod Committee's solutions to the problems it believes are plaguing the English system of legal education. It was their intention first to achieve a better integration between the system of training and the practicing profession; second, to ensure that "[s]chemes of training and the requirements for qualification . . . reflect [the] need for variety in the intake of the profession;"⁸³ and third, to put forward a system of legal education which will soundly equip succeeding generations of lawyers to cope with those developments and changes which are likely to occur in the profession in the foreseeable future.

What, then, were the proposals and recommendations, and to what extent can these be said to match up to the stated aspirations? We list the main conclusions in the following way:

(1) For the purpose of training for the legal profession, academic and vocational legal education should as far as possible be integrated into a coherent whole.

(2) The scheme of legal education should reflect the profession's continuing need to recruit men and women of widely differing character, temperament and attainments.

(3) Legal education should be planned in three stages: the academic stage, the professional stage (comprising both institutional training and in-training) and the continuing education or training stage.

(4) The objectives of the academic stage should include a basic knowledge of the law, the intellectual training necessary to apply abstract concepts to case facts, and an understanding "of the relationship of law to the social and economic environment in which it operates."⁸⁴

(5) The academic stage should be spent at a university or college,

82. In October 1971, the total number of students registered at institutions offering a full-time C.N.A.A. degree in law was 758. There were 479 first year students registered.

83. ORMROD REPORT para. 98.

84. *Id.* para. 185(5)(ii).

and a law degree should become the normal mode of entry into the profession.

(6) The existing university law schools should be quickly expanded "to the point where the recruitment needs of the legal profession can be met by the supply of university law graduates."⁸⁵

(7) In addition to qualifications by law degree, there should be an alternative form of qualification for (a) non-law degree graduates, (b) foreign graduates, (c) mature students and (d) Fellows of the Institute of Legal Executives. This should consist of a "common professional examination" following a two-year course at university level.⁸⁶

(8) An Advisory Committee on Legal Education should be established to act as a link between the universities and colleges and the profession.⁸⁷ In particular, it should serve to advise the professional bodies on the recognition of particular law degrees although "the right of professional bodies, in the last resort and after consultation"⁸⁸ to withhold or withdraw recognition is still acknowledged.

(9) The objectives of the professional stage are to enable the student to adapt the legal knowledge and the intellectual skills acquired at the academic stage to the problems of legal practice. During this period the amount of substantive law to be studied should be kept to a minimum.⁸⁹

(10) The vocational course should last one year and should be "strongly oriented" towards practice, and should include "some introduction to certain non-legal subjects,"⁹⁰ especially elementary behavioral science and business finance.

(11) The possibility of running legal aid clinics with the vocational courses "should be explored."⁹¹

(12) Vocational courses should be organized "in not less than four university centers into which the Inns of Court, School of Law and College of Law would merge."⁹² These centers would award diplomas which, with a law degree or its equivalent, would qualify one for practice.⁹³

85. *Id.* para. 185(7). *See also id.* paras. 104, 118-21.

86. *Id.* para. 185(13). *See also id.* para. 113.

87. *Id.* para. 185(9). *See also id.* paras. 107, 116-17.

88. *Id.* para. 185(10). *See also id.* para. 108.

89. *Id.* para. 185(15). *See also id.* para. 125.

90. *Id.* para. 185(17). *See also id.* paras. 133-37.

91. *Id.* para. 185(19). *See also id.* para. 135.

92. *Id.* para. 185(24).

93. *Id.*

(13) These centers should be inside the university and college of higher education structure because of the strong likelihood of government finance for the centers and the students.⁹⁴ Although this means that the professional bodies would not be running the centers, nevertheless the Ormrod Report pointed out that these bodies "must have a powerful influence over the courses."⁹⁵

(14) The Committee insisted that, whatever arrangements are finally made, two factors should be borne in mind: no potential entrant should be discouraged by the cost of qualifying, and that the opportunity to merge the vocational courses into the higher education structure "will not last long, so a decision one way or the other must be made soon."⁹⁶

(15) On in-training, the system of pupillage should be retained as the method of in-training for the Bar, "though various improvements in it should be made."⁹⁷ For solicitors, however, the present system of articles should be replaced by a period of three years' limited practice after qualification.⁹⁸

(16) Transfer between the branches of the profession should be possible without exams.

(17) The area of greatest potential expansion in legal education is that of continuing education after qualification. Accordingly, thought should be given to setting up an Institute of Professional Legal Studies which would coordinate efforts in this field.⁹⁹

(18) If the Committee's recommendations are accepted, then the position of overseas students who wish to be called to the English Bar with a view to practicing in their own countries will become increasingly difficult. The profession and the government should use their discretionary power in deciding if places should be made available for these students.

V. COMMENTARY ON ORMROD

Problems of Implementation

Finally, we move to a critical review of the Ormrod Report, beginning with some observations on the main conclusions and recommendations.¹⁰⁰ In general, the Report is reminiscent of a liberal, reformist

94. *Id.* para. 185(23) and (27). *See also id.* paras. 140, 149.

95. *Id.* para. 185(22)(i).

96. *Id.* para. 185(28). *See also id.* para. 153.

97. *Id.* para. 185(31). *See also id.* paras. 158-60.

98. *Id.* para. 185(32). *See also id.* para. 161.

99. *Id.* para. 185(40). *See also id.* paras. 170-76.

100. In this section we restrict our comments to the suggestions of the Ormrod Report. Thus,

package deal: conceptually intelligent, actively presented, and honestly and openly motivated. At the outset of its recommendations the position of the Committee is spelled out when it described the history of legal education: "Developments which are evolutionary in character tend, in this country at least, to have a better chance of success than abrupt and radical changes."¹⁰¹ Consequently, it comes as no surprise that certain proposals are likely to prove acceptable to the conservative elements of the profession, while the radicals may decry the now lost opportunity to make a more significant statement regarding the inappropriateness of contemporary legal education. There is a strong suggestion of utility and practicality running throughout the Report which, rather than attempting to revolutionize, sets out to legitimize, update, harmonize and consolidate.

The process of *legitimation*, for example, recognizes the validity of the articulated clerks' claim that the qualifying "examinations themselves have dictated the content and the method of preparing for them, instead of the system of education controlling the style of the examination. This in turn has led inexorably to 'coaching' establishments and 'cramming' methods."¹⁰² Similarly, the position of the Law Society regarding articles (*viz.*, that articles be abolished and replaced by a period as an assistant to a solicitor)¹⁰³ was adopted by the Committee.¹⁰⁴ The technique of *consolidation* was applied to the historically anomalous procedure of keeping terms at an Inn of Court. Although the Inns provided the only organized teaching in the common law from the Middle Ages onward, by the time of the Civil War (1642-52) their educational functions had ceased. The Committee thought that "it is essential that it [eating dinners] should be adapted to present day conditions and so arranged that the hardship on students who live far from London is minimised."¹⁰⁵ The Report also recognized the declining dependency of the overseas common law countries on the Inns of Court to provide those countries with trained lawyers. Self-reliance in legal training is to be commended and illustrations of it are to be found throughout Africa, where domestic law schools are now springing up. This development is likely to be accelerated by internal policies designed to promote local

we have concentrated upon the meaning, scope and feasibility of the recommendations rather than promoting a set of alternative proposals.

101. ORMROD REPORT para. 7.

102. *Id.* para. 84. See also THE PROSPECTIVE LAWYER: BLUEPRINT FOR THE FUTURE, *supra* note 45, at 23.

103. ORMROD REPORT app. F, *Memorandum by the Council of the Law Society on the Education and Training of the Legal Profession, January 1969*, para. 18 *et seq.*

104. ORMROD REPORT para. 161.

105. *Id.* para. 166.

training and qualification rather than study at one of the Inns.¹⁰⁶ While the Committee recognized that provision would have to be made for certain countries which do not have law schools, it appears that the general statement will reinforce the opinions of emerging Commonwealth countries that they should not be dependent upon England for the training of their legal profession.¹⁰⁷

As has been stated earlier, the antithesis between the practitioners and theorists of law has provided an immovable stumbling block in the process of rationalizing the British system of education. It is on this point that the Committee may have made a major innovation through the suggested establishment of the Advisory Committee on Legal Education. It is to be hoped that this board (which is to be a liaison between the profession and the universities and colleges) will prove to be the catalyst of change and eventually produce harmony between the various branches of the law.¹⁰⁸ The integration process would be taken a step further by the implementation of the recommended common vocational year for students of the Bar and for articled clerks.

The reformist program also attempts to *update* the techniques of legal education. Probably the most acceptable suggestion is that the profession become graduate based.¹⁰⁹ If change is to occur, it will undoubtedly draw upon the altering composition of the legal profession through the proposed graduate recruitment. Yet, strangely, it is on this fundamental matter that the document, which is heavily influenced by feasibility and compromise, lays itself open to the accusation of impracticality. Principally, there is no consideration of the impact the proposed increase in student numbers would have upon the staffing of those institutions affected by its recommendations.

The Report suggests that 1,270 new university places be provided. This figure envisages an annual increase from the existing intake of 1,778 students to 2,222 students. By international standards the ratio of staff to students in Britain's universities is high; in Britain the conventional figure is 1:8. Given this new target enrollment figure in law, there results a need for 160 new law teachers in addition to the annual recruitment if Britain's prior standards are to be maintained. The present

106. For example, Uganda has made it more difficult for non-Ugandan trained lawyers to be admitted to the Bar. See generally S. ROSS, *THE ADVOCATES ACT* (1970).

107. ORMROD REPORT para. 179.

108. See *id.* paras. 107, 116-17. The Advisory Committee on Legal Education is considered later in this work.

109. For example, the Law Society has advocated a predominantly graduate profession since 1968.

university law teaching profession has 604 members,¹¹⁰ a figure which makes this expansion program a formidable task. A similar educational "explosion" occurred between 1959 and 1969. During this period the total number of university teachers increased from 15,000 to 31,000. Although the scholarly caliber of teachers, as indicated by academic degree, fell during the sixties,¹¹¹ there appears to be no evidence to suggest a detrimental effect on the quality of the teaching and research conducted during that period.

The staffing pattern becomes increasingly difficult, however, when the novel element of the vocational, one year course is introduced. Assuming that this course will operate on a less favorable staff-student ratio (e.g., 1:15, which is the norm employed by the Council of Legal Education in its School of Law), it is estimated that a further 70 to 80 teachers will be required at this stage. Thus the drive to recruit approximately 240 law teachers in excess of the teaching profession's normal annual intake gives rise to the question of whether the high scholarly caliber of the teaching personnel can be maintained. In particular, there seem to be immediate practical difficulties in acquiring suitable senior personnel to counterbalance the massive inflow of junior staff. The following are possible alternatives: postgraduate students in seminar work; an increase in part-time teachers;¹¹² the removal of administrative tasks from teachers; the importation of teachers from other common law jurisdictions; the return of exile teachers; and finally, interdisciplinary appointments. Even if some of the above alternatives are adopted, it may still be necessary to examine the theory of university education in this country—a theory which is based on intellectual intimacy of staff and students through close and frequent personal tutorial contact.

Focusing briefly upon the vocational year, the Inns of Court School of Law provides some sobering figures when placed alongside the requirements of the vocational schools.¹¹³ In the 1971-72 session, the Inns of Court School of Law (which caters solely to the Bar) had 300 students participating in practical exercises, *i.e.*, forensic exercises in Advocacy,

110. This figure is compiled from the SOCIETY OF PUBLIC TEACHERS OF LAW TEACHERS' DIRECTORY (1971). This body is restricted to university law teachers, although not all of the members are full-time teachers, nor are all full-time university law teachers members of the Society.

111. REPORT OF THE NATIONAL BOARD OF PRICES AND INCOMES, CMND. No. 4334, at 46, table 9 (1970).

112. The Ormrod Report indicates that this course will have to depend largely on full-time instructors. ORMROD REPORT para. 138(3).

113. We are indebted to Charles A. Morrison, M.A., Dean of Faculty, Inns of Court School of Law, for providing the information in this portion of the paper.

drafting exercises in chambers and court attendances. It is accepted that, if these exercises are to have any substantial value, the cooperation of the Bar and Bench is essential. Consequently, the Council of Legal Education arranged for students to attend courts and appear in chambers. The implementation of this decision required the assistance of 30 County Court judges, five High Court judges and a number of Old Bailey judges, magistrates and Inner London Session judges. In addition, it was necessary to find 60 barristers to act as instructors in the forensic and chambers exercises, a further number of senior counsel to act as demonstrators, and judges of the Superior Courts to act as judges at these demonstrations. Ormrod suggests an expansion of such exercises both in content and time span.

The intensive recruitment drive for full-time teachers to satisfy the recommendation of a graduate profession will inevitably be oriented, in part, towards the practitioners. The acute pecuniary difficulties of starting at the Bar were largely ameliorated in the sixties, notably through the development of legal aid, and today the lower levels of the junior Bar are packed with lawyers who before might have been attracted into full-time teaching.¹¹⁴ In 1956 a solicitor's aggregate earnings over a 30-year working life amounted to £88,000 (\$232,400); a barrister's reached £92,000 (\$257,600) while the university teacher could expect to receive £63,000 (\$176,400).¹¹⁵ In 1968 a Prices and Incomes Report stated that earnings of solicitors had kept pace with wage and salary earners.¹¹⁶ However, it has been stated that "the signs are that, relative to other professions as well as to the general run of occupations, [academic] salaries will decline."¹¹⁷ The better graduates are frequently motivated by an exacting and well-rewarded career—not by a salary placing them in relatively genteel poverty. One possibility is that the law teacher be placed upon a differential pay scale, similar to that introduced for medical teaching staff as a result of the recommendations of the Spens Committee.¹¹⁸ Such a move might be welcomed by teaching lawyers, especially if the LL.B. is to become a prerequisite for practice.

114. The numbers entering practice at the Bar have increased each year. In the period of 1955-60, the average number of entrants per year was 94; this figure increased to an average of 170 for the period of 1966-70. A similar trend is evident in the number of beginning solicitors.

115. REPORT OF ROYAL COMMISSION ON DOCTORS AND DENTISTS REMUNERATION, CMND. No. 939, at 40, table 9 (1960).

116. PRICES AND INCOMES BOARD REPORT ON REMUNERATION OF SOLICITORS, CMND. No. 3529, at 6 (1968).

117. Statement of A.H. Halsey, Professorial Fellow, Nuffield College, Oxford, reported in the Observer Review, April 2, 1972.

118. REPORT OF THE INTER-DEPARTMENTAL COMMITTEE ON REMUNERATION OF GENERAL PRACTITIONERS, CMND. No. 6810 (1957).

It is doubtful that this suggestion would receive similar acclaim from other quarters. Indeed, in 1964 the National Incomes Commission went so far as to indicate its theoretical disapproval of the differential awards for the academic medical staff.¹¹⁹

Remuneration apart, there are other aspects which will affect the decision of qualified persons to transfer to law teaching. For example, the status of university lecturing will influence the inflow of new staff. There is little doubt that the average British university teacher enjoys high prestige both within the community at large and in the community of teachers. The trends to strengthen the links between education and employment enforce the observation of Professor Talcott Parsons that the university is "the keystone of the professional arch."¹²⁰ However, as we have observed, law is an exception to this general rule. Thus, the question arises, how can law faculties attract sufficient practicing lawyers, who are already members of a heralded and prestigious profession, into another profession which may not, in their eyes, match their existing aristocratic and elite status?¹²¹

The Report's statement that the professional bodies should remain deeply involved in the government of legal education is not convincing. Throughout the Report, comparison is made between the organization of medical education on the one hand, and legal education on the other. It is clear that it was the intention that the former should serve as a model for the latter. As a general statement of intent this is reasonable, but it should be kept in mind that none of the professional bodies in medicine have any direct influence or control over that which is currently taught in British medical schools. Indeed, it is significant that when, in 1958, the British Medical Association relinquished its formal supervision of syllabi, a number of medical schools seized the opportunity for innovation and course experimentation, most noticeably by

119. "University teaching is a single and unified profession. It is incapable of comparison in terms of functional content with any other calling." NATIONAL INCOMES COMMISSION, REPORT NO. 3, REMUNERATION OF ACADEMIC STAFF IN UNIVERSITIES AND COLLEGES OF ADVANCED TECHNOLOGY, CMND. NO. 2317, at 26 (1964).

120. T. Parsons & G. Platt, *The American Academic Profession: A Pilot Study 3*, March 1968 (unpublished report submitted to National Science Foundation in the United States of America).

121. [W]e think it would be particularly difficult for universities to recruit suitable staff to teach the vocational courses. Where there is already a legal faculty, it is unlikely that the existing staff would be willing or equipped to teach practical skills, since not enough of them had recent practical experience.

PERCIVAL COMMITTEE OF THE SOCIETY OF CONSERVATIVE LAWYERS (THIRD INTERIM REPORT), LEGAL EDUCATION—AN ALTERNATIVE TO ORMROD 6 (February 1972). See also the comments in a letter from Prof. B. Harvey to the editor, in 35 MODERN L. REV. 223 (1972).

bringing in a behavioral science requirement. Those who implement the Ormrod Report would do well to remember this evolutionary history.

Certainly, the recommendations of the Report seem to blur the issue of the nature of the cooperation envisaged between the professional bodies and the law schools. What does it mean, for example, to say that in the last resort the profession should have the power to withdraw or withhold recognition of particular law degrees?¹²² What would be the consequences for the *content* of law courses, and the autonomy of universities, if this were to be? While we do not suggest that the relationship between the schools and the profession is likely to plummet to the level of internecine warfare, we are aware that the influence of the professional bodies on law school curricula would tend to be exercised in a conservative direction.

The problem of the vocational year exacerbated the difficulties regarding the institutional location of the four centers.¹²³ The majority of the Committee members were of the opinion that the centers should be at existing universities, while the minority felt that the facilities should be provided by the existing professional schools. The evidence suggests that this split in the Committee's ranks was largely along practicing and non-practicing lines. The suggestion that the centers be provided at universities was predicated on two points: first, that the universities would be willing and able to accommodate them; and second, that money from the University Grants Committee would be available for their creation.¹²⁴ There is the strong possibility that this idea will prove unattractive to a number of academic lawyers. To this group the earlier struggle to establish law as a "proper" academic discipline will make acceptance of this novel suggestion (*i.e.*, to have the proposed centers established at existing universities) difficult, for it may well raise the former questions of "servicing" for trades and professions. At the same time some may fear, as we have suggested, that the limited autonomy of university law faculties may be prejudiced by the control elements of the professional bodies. Also, it appears that money solutions assumed to be forthcoming from the University Grants Committee are not to be provided, at least not immediately. The U.G.C. does not generally provide earmarked grants; thus the onus of finding the funds would rest upon each university. The university would be forced to use part of its total allocation from the U.G.C. to establish such a center. There appear to be no takers for this venture at the moment.

122. See ORMROD REPORT para. 108.

123. *Id.* para. 138.

124. *Id.* para. 144.

If the universities are unable, or unwilling, to harbor the new institutions, an interesting question is raised regarding the future of the polytechnics in the legal educational world. In the immediately positive sense the polytechnics might be better suited to solve these issues of finance and control than the universities. On examination of the tertiary stage of the English general educational system, the "polys" may have the necessary potential to bring about a profound and distinctive social revolution. The economics of development and expansion will be a major, if not controlling, factor in the implementation of this goal. If current trends in the Department of Education and Science are projected, the future of polytechnics appears promising, even if for the wrong reasons. The cost to the country of maintaining an undergraduate at a university is £1,245 (\$3,486) per annum, while maintaining a student at a polytechnic costs only £890 (\$2,492). This significant gap results from such factors as: (1) a lower student living allowance; (2) a less favorable staff/student ratio; (3) heavy teaching loads with emphasis on lecture work to large groups rather than tutorials; (4) less institutional pressure on staff to conduct research; (5) an inferior salary structure for the academic staff; and (6) a higher proportion of students living at home. Consequently it is in the Exchequer's interest, at least in the short term, to promote educational expansion at the tertiary level in those institutions which, in the past, have been cheaper to establish and maintain. On the other hand, this form of reasoning is guaranteed to keep polytechnics as a marginal entity where both staff and students will be encouraged to consider themselves intellectual reservists. It is possible that anxiety over status, together with the desire to emulate the more "senior" models, will serve as powerful instruments to produce institutions and graduates conforming with the traditional patterns.

Assuming the failure of polytechnics as innovators, which is by no means certain, they may be cast in yet another role, at least within the area of legal education. Whereas there is no suggestion in the Ormrod Report that polytechnics might be employed to house this new concept of institutionalized vocational training outside of professional law schools, their promotion is likely to be proposed (1) because of financial reasons; (2) to avoid the possibility of encountering the traditional indifference, if not hostility, shown by university teachers towards the intrusion of the views of practitioners on the law faculties; (3) to allow the polytechnic to find a unique role for itself; and finally, (4) to implement the vocational idea within a structure which will inevitably prove more flexible and amenable to professional pressure and control.

No matter where the vocational centers are located, the merging of legal training into formal higher education will enable students to put a much stronger case before their local education authorities for finan-

cial aid. This proposed system should also give the articulated clerk a better wage upon completion of his four years than he can anticipate through the present qualification process.¹²⁵ Such a student would be more than simply financially independent; he would also be taken out of the practice of law to study that practice. Thus, at this level, there is much in the Report that is welcome. Unfortunately, we suspect that it is among the least likely recommendations to attract the necessary support for implementation.

The development of a graduate profession involves the recognition by the professional bodies that the law degree cannot continue to be valued merely for exemption purposes, but must be recognized as an integral part of legal qualification.¹²⁶ The present exemption system ensures that the law faculties do not stray unacceptable distances from those subjects thought necessary for study by the Law Society and the Council of Legal Education. A classic example of this was the sharp decline in the study of Roman law at the universities when it was dropped from Part I of the Bar's examination.

The Report also suggests that any law degree which is to be recognized for professional qualification purposes should have as its prerequisite the satisfactory completion of a number of specified "core" courses.¹²⁷ It is important to recognize the artificiality of this concept.¹²⁸ We do not subscribe to the belief that there is an identifiable, endemic core of legal courses without which no man should be allowed to call himself a lawyer. The Ormrod Report itself stated that there might be disagreement as to what was fundamental.¹²⁹ For instance, to the practicing solicitor, courses in conveyancing and land law would prove invaluable; on the other hand, it is impossible to justify the idea that a course in trusts is more useful to the practitioner than is company law. That which is important, but not necessarily of paramount importance, will vary from moment to moment according to the professional criteria being applied.¹³⁰

125. However, the Report recommends that pupillage for the Bar should remain. *Id.* para. 158. The articles system for solicitors should be replaced by a period of three years' limited practice after qualification. *Id.* para. 161.

126. *Id.* para. 83.

127. These courses are: (1) Constitutional Law; (2) Law of Contract; (3) Law of Tort; (4) Land Law; and (5) Criminal Law. *Id.* para. 108.

128. See generally M. YOUNG, KNOWLEDGE AND CONTROL (1971).

129. ORMROD REPORT para. 108.

130. Sir Roger Ormrod stated:

I may be wrong but in spite of legal aid and all the rest of it, which has greatly increased litigation in recent years, I have the feeling, and I would be prepared to take a gamble on this, that in fact proportionately to the population and to prosperity in general, litigation

There is a sense of compromise attached to the idea of core courses in that the exemption system, to be replaced by the recognition of the LL.B., be an integrated part of the qualification process, provided that certain safeguards are given to the professional bodies. Perhaps there are no sufficient reasons against perpetuating the myth of traditional or basic courses if the alternative is to lose the cooperation of the professional bodies.¹³¹ Nevertheless, it should be remembered that when the Ormrod Report lies gathering dust and its brief caveat covering core courses is forgotten, the myth could turn into reality and once again legal education could be faced with an ossification process which ensures that formally significant subjects are entrenched in the professional qualifications scheme despite their declining value within the social system.

One potential benefit flowing from the introduction of core courses could be greater flexibility of choice in the remaining courses. For example, discussion could take place concerning the role of social sciences and social research in legal problems. It is worth speculating upon the possible consequences of exposing law students to a systematic instruction in social science.¹³² It would be useful to measure the influences of such course work on student attitudes during the training phase and beyond. At the very least, this kind of teaching would cast a critical eye on present techniques of occupational socialization and control within the legal profession. Given that Ormrod supports, in principle, the introduction of behavioral science teaching in legal training courses, there still remains the question of what type of teaching would be expected. Few would quarrel with the statement that a legislator, judge or legal adviser would perform his functions more efficiently and effectively if

will diminish as time goes on. . . . I think it also likely that the work of lawyers will expand in other directions. . . . Just as all tax work has tended to drift towards the accountant, so other things, I think, will tend to drift away in other directions unless the legal profession widens its base.

Ormrod, *The Reform of Legal Education*, 5 J. ASS'N L. TEACHERS 77, 83-84 (1971). The Law Society, in contrast, concluded that work in the litigation sector was likely to increase. LAW SOCIETY, *THE FUTURE OF THE PROFESSION* (1968).

131. For example, when Britain joins the European Economic Community the need will arise for lawyers who are familiar with the continental legal systems, the rules of the E.E.C. itself and at least a working knowledge of French. For certain powerful elements of the profession, courses in these topics would be considered fundamental.

132. As one writer noted,

Too many subjects in the syllabuses of a "traditional" law degree are the product of fortuitous, accidental or ephemeral legislation or custom. They neither respond to, nor reflect major trends, social or otherwise, in the community. While these subjects may benefit the practising lawyer they do not deserve study in depth—indeed are not capable of study in depth—for the academic degree.

Dr. Mazzawi, in *The Times Higher Education Supplement*, March 10, 1972.

he were aware of the social implications of what he is doing. Yet there is an interesting and as yet undebated twist to this—*viz.*, what are the consequences for the process of law if the law maker comes, through a growing exposure to the tenets of social science, to regard his own behavior as problematic? Would exposure to different modes of thinking make the professional life of the lawyer more difficult? Should social science exist only in a minor service capacity in law courses?

The projection of this proposed freedom of curriculum content over and above core subjects will depend largely upon prevailing staff attitudes. It is hoped that the breaking of new boundaries will not be restricted to the academic sphere. For example, the establishment of local law centers has been suggested to assist teaching at the vocational period.¹³³ Such centers, which are being established, may prove to have significant implications upon future recruitment to the legal profession. It is not difficult to perceive the impact of such centers upon the changing content and emphasis of legal education, upon the pedagogical techniques adopted, and finally, upon the internal stratification of the profession itself.

The character of law faculties could well be changed as a result of the freedom of curriculum expression advocated by the new proposals. At the moment, English law schools do not have as wide a course selection as American law schools. Neither does England have a system for accrediting law schools, simply because the need for such a regulator has not arisen. Central financial control by the University Grants Committee and the authority wielded by the two professional bodies have proved successful in ensuring an acceptable standard of education in university law schools. Nor does the term “national law school” have any meaning in England. A uniform salary scale has not encouraged the concentration of teaching talent in particular institutions, as is the case in North America, but the known philosophies of faculties seem to attract teachers with strong, similar views on legal education. In this manner the new discretion bestowed upon the faculty by the core courses concept may have an impact upon the ethos of a school. For example, those faculties which accommodate vocational centers may show a propensity towards black-letter law, the enrollment of undergraduates whose career plans include professional qualification and practice,¹³⁴ and the recruitment of staff whose outlook to law is domi-

133. ORMROD REPORT para. 135.

134. As mentioned above, a significant minority of students does not attempt to qualify and practice. It is not known, however, whether this decision is made prior to undergraduate education or subsequent to enrollment. Our personal opinion is that few would have made the decision prior to the commencement of the degree program.

nated, or significantly influenced, by the demands of the professional bodies. On the other hand, certain faculties will undoubtedly welcome the innovative opportunities afforded by core courses by overturning the traditional curriculum without fear of losing the status of their degree for those graduates who wish to practice.

Another criticism of the Report is that it places too much emphasis on the system of pupillage—a system which is increasingly under fire.¹³⁵ While it is true that the Committee has suggested certain modifications of the present arrangements, this requirement for practice at the Bar remains substantially intact.¹³⁶ Feasibly, it could be argued that the pupillage system should be modified by an even more systematic in-training program. A comparison with the practices of the teaching profession is relevant, since the problem of adequately organizing practical exercises is one common to both professions. Among teachers, entrants are not simply sent into schools for a specified time to work with a selected teacher and to learn the rudiments of the trade. In addition, the student-teacher is examined regularly by the staff of his training college. In this way the dangers of learning either haphazardly, inefficiently, idiosyncratically—or not at all—are minimized. During this stage the student is encouraged to relate his vocational work to work done at the academic stage. The establishment of an inspectorate for the pupillage period of legal training was not considered by the Committee; instead, the Committee accepted the present system's reliance upon the pupil-master relationship and possible pressures in chambers. Once again, this appears to be entrusting a function to a profession which has all too frequently proved unwilling to discharge its obligations in a satisfactory manner.

So far we have considered those points arising directly from the summary conclusions of the Ormrod Report. We now turn to some of the themes which occur regularly in the text and which form a kind of leit-motif to the finished product. The main body of the Report contains the "domain assumptions,"¹³⁷ which, though only implicit in the recommendations, seem to have affected powerfully the conclusions of the Committee. It is through the study of the text that the Committee's image of the profession becomes clear. It is our contention that this image is at odds with current realities. We stress this point because it

135. ORMROD REPORT para. 130.

136. Perhaps this is another example of the Committee's realism—it may have recognized that the Bar would not consider abolishing the pupillage system.

137. "Domain assumptions" are intuitively held sets of sentiments and preferences. See A. GOULDNER, *THE COMING CRISIS IN WESTERN SOCIOLOGY* 29 (1971).

appears reasonable to suggest that these attitudes actually affected the Committee's proposals.

The Ormrod Report rightly observes that the problem of devising an appropriate system of training and education is one not peculiar to the legal profession. Yet, they might justifiably have gone on to ask why law has moved more slowly in the direction of educational reform than any other of the major professions. The answer seems to lie with the fact that the English legal profession, unlike other professions, has not undergone a "crisis of identity" which has, to various degrees, affected the professions of teaching, medicine, science and social work in recent years. Such a crisis may be provoked by any of the following: the reorganization of the professions; changes in recruitment patterns; rapid growth in the size of the labor force; redefinition of its subject matter; or finally, significant changes in its clientele (*e.g.*, medicine). Unlike nearly every other major profession, law has preserved an institutional solidarity, a close caste-like recruitment, a narrow range of professional services and a professional structure which has scarcely altered at all in the last century. To put it bluntly, the English legal system has succeeded in maintaining a professional establishment which, in terms of its size, training, social characteristics and services offered, differs only in detail from the legal profession which existed at the turn of the century. Little or nothing of this stasis comes through to the reader of the Ormrod Report.

Furthermore, the Committee's description of the nature of lawyers' work in England is less than candid. According to the Committee, "the most striking feature of the legal profession is the enormous width of its spectrum, both in function and subject matter."¹³⁸ The range is vast—indeed, it would be surprising if it were not; but the distribution of different types of work is uneven and the yawning gaps in its expanse are disturbing. For example, solicitors, who are involved primarily in conveyancing for middle class clients, focus their efforts on the narrow area of property rights. Among both branches of the profession there is insufficient interest in accepting cases in areas such as welfare law, although the need for representation is great. The recent expansion of tribunals¹³⁹ and arbitration procedures is an acknowledgment that the legal profession is contributing to the failure to provide an important range of services for a large section of the public.

It is interesting in this respect that the Report makes much of the

138. ORMROD REPORT para. 88.

139. *See, e.g.*, K. BELL, TRIBUNALS IN THE SOCIAL SERVICES (1971).

need to forecast accurately the development of law, both for legal education and the number of recruits needed to maintain an efficient legal service.¹⁴⁰ There is no mention, however, of the needs we have outlined here. Regrettably, where *service* is concerned, the Report would seem to be suggesting more of the same. We stress this point because the structure of legal services must affect the system of legal education. Undoubtedly, a drastic extension of legal services would lead to a radical change in legal education by taking in groups and problems previously ignored by the profession.

Another, more dramatic way of extending the lawyer's function would be to ignore the recruitment principles followed in the Report and adopt an alternative approach. The Committee stated, "We have assumed that the present rate of recruitment is broadly satisfactory."¹⁴¹ Thus, the statistics provided are based on the assumption of stabilizing the present intake into the profession and accommodating them as undergraduates. However, if law schools were more responsive to market forces, pressure for university places would ensure a significant increase in the number of lawyers. Applications for undergraduate places in law at English universities stood at 6,205 in October 1971; 2,301 were accepted for that academic year. Between 1970 and 1971, the increase in University Central Council for Admissions law applications rose by 14 percent.¹⁴² This increase in applications is directly related to the domestic unemployment situation. In general terms, university graduates have not found work. The result of this sad state of affairs is a growing interest in those disciplines which appear to offer the greatest employment opportunities upon graduation. Law is such a discipline. We suggest that a greater number of those seeking application to university law schools be admitted. Such a policy would swell the trickle of law graduates into a flood, thereby provoking significant employment problems for the legal profession. In such a case, it is likely that economic pressures on newly qualified lawyers would ensure that they take active interest in those groups and problems which for the most part are presently ignored by lawyers.

There is, of course, a strong element of speculation in all this. As others have noted, predictions of manpower needs are frequently—and sometimes spectacularly—wrong. For example, one authority recently

140. ORMROD REPORT para. 117.

141. *Id.* para. 118.

142. UNIVERSITIES CENTRAL COUNCIL FOR ADMISSIONS 9TH REPORT (1972). "Admissions have risen sharply [autumn 1972] at both universities and polytechnics in the social sciences—particularly in law." *The Times Higher Education Supplement*, October 20, 1972.

wrote of trends in the pattern of graduate employment: "The [British] government pamphlets produced in the 1950's on future demand for specific subjects often made wry reading even within a few years of publication."¹⁴³ Two particular examples come to mind: first, the forecast of an *over*-production of doctors suggested by some British medical teachers in the recent past; second, the gloomy predictions about the *under*-production of trained teachers for English schools. Both forecasts have been utterly confounded, thereby indicating the hazards of divining movements in the legal field.

Two conclusions can be drawn from the above graduate employment statistics. First, one writer suggests that a central problem is an excessive concentration on producing graduates who are too narrowly specialized in specific subject skills. He argues:

The Swann Report estimated that 85% of university students trained as specialists. The United States has found that only 30% of its scientists can be absorbed in a specialist role. A general comprehension of scientific principles and early demonstration of a good numerate sense have wider selling value.¹⁴⁴

Thus, the rapid development of courses finely tuned to meet the demand of the *present* labor market may have built in a high "early obsolescence" which leaves in its wake graduates with highly specialized but unmarketable skills. The second major point which stems from the analysis of graduate employment prospects raises a more general issue concerning the relationship between education and the economy in England. We are beginning to move towards the creation of something like a mass system of tertiary education, or at least starting to increase substantially the numbers of students in higher education. Many of the proponents of this kind of manpower investment point to the example of the U.S.A., but they have yet to grasp that the successful expansion of higher education in that country is related to the advanced nature and dynamic performance of the American economy. Britain's economy, by contrast, is more frail and is less able to support a tertiary educational superstructure.

So far, in discussing Ormrod's proposal for a preponderately graduate law profession, we have confined our remarks largely to speculations concerning the possible over-supply of law graduates. There are, however, further questions to be raised with regard to what is, by any measure, one of Ormrod's major recommendations for legal reform.

143. Putt, *Future Patterns of Graduate Employment*, The Times Education Supplement, Jan. 22, 1971.

144. *Id.*

To begin with, if we follow Ormrod and plan in terms of a graduate profession, the problem of implementation should be pursued beyond the Committee's study. For example, are university law schools adequately equipped to cope with the burdens implied by graduate entry to law? In particular, will the university schools be able to attract enough personnel of a suitably high caliber to discharge the new set of duties defined by Ormrod? Will it be possible to maintain satisfactory recruitment without resort to a drastically increased salary structure for teachers of law, *i.e.*, to bring the law professor's earnings nearer that of the practicing lawyers?

Again, there is a need to examine in more detail the likely influence of the course program outlined by Ormrod. The fact that law is a graduate profession elsewhere does not seem to have made those systems perceptibly better than Britain's. Is it that universities do not, or cannot, influence the life of the profession? Looking at this question in a broader perspective, all we may safely say is that studies of the impact of higher education on its alumni have been few and inconclusive. Trow, for example, has claimed that "it seems likely that experience in college, even in the mass, people-processing institutions that are absorbing most of the new students, exerts a broadening, liberalizing, civilizing influence on students."¹⁴⁵ Others have put forward a less optimistic view.¹⁴⁶

Substantive Issues

We turn now from problems of implementation to more substantive issues. Despite the range and general inventiveness of the Ormrod recommendations with respect to the idea of a graduate law profession, it is arguable that the Committee has suggested little that is new. Rather than offering a document for a radical restructuring of either legal education or the legal profession, the Committee arguably has succeeded only in rationalizing existing trends of change.

Let us consider two examples, beginning with the proposal for a graduate profession. This notion has served as the touchstone for liberal and reform-minded lawyers for many years. But is this orthodox reformist wisdom fundamentally sound? How do we identify the criteria on which we can decide whether the legal profession should consist wholly or mainly of graduates? Is apprenticeship a bad method of training? Or has it merely been badly regulated? Is a graduate with lower grades necessarily better educated than one who has served articles for five years?

145. Trow, *The Democratisation of Higher Education In America*, in 3-4 ARCHIVES EUROPEENES DE SOCIOLOGIE 261 (1962-65) (volumes 3-4 are bound as a unit).

146. See C. STEMBER, EDUCATION AND ATTITUDE CHANGE (1961).

The issues involved in the debate on education and training cannot meaningfully be separated from questions concerning the nature of the functions that lawyers should perform. Only when some consensus has been reached on this matter will it be possible to argue convincingly for or against a chiefly or wholly graduate profession of law.

The discussion of a graduate profession brings us to another area in which Ormrod has accepted, apparently without debate, prevailing orthodoxies—this time in relation to the stratification of the legal profession. Ormrod, like others before him, argued for transfer between the two branches of the English profession without any examinations having to be taken.¹⁴⁷ Attention is drawn immediately to the mechanics of this proposed exchange, thereby foreclosing other kinds of considerations. For example, why should contemporary thinking on the organization of the legal profession be content with accepting the idea of a “two branches” profession? One could argue that a mistake was made in the 19th century by fusing the legal profession into *only* two branches. Why not now entertain the notion of new divisions among lawyers? Conversely, one could argue that the present division should be abolished.

Finally, what are the prospects of implementation of some or all of the recommendations in the Ormrod Report? The response of the Lord Chancellor’s office has been less than heartening. This undoubtedly reflects the attitude of Lord Hailsham, himself a non-law graduate, who has gone on record as saying, “You’ll find me a very conservative man in matters of the structure of the legal profession.”¹⁴⁸ In the recent past his statements have done little to encourage scholars to believe that he is receptive to change.¹⁴⁹ The present status of the Advisory Committee on Legal Education indicates the government’s support and interest in the recommendations of the Ormrod Report.¹⁵⁰ The Chairman, Lord Cross of Chelsea, a law lord, was appointed by the Lord Chancellor. The committee was established on January 18, 1972 by resolution of the Senate of the Four Inns of Court and the Law Society. Thus, from the initial stages, the establishment and composition was clearly seen to be professionally dominated. Consequently, it came as no surprise when it was revealed by Lord Cross that the government had provided no secretarial assistance to the committee and had denied sufficient funds to

147. ORMROD REPORT para. 168.

148. A. SAMPSON, *THE NEW ANATOMY OF BRITAIN* 344 (1971).

149. For example, Lord Hailsham has stated, “My fundamental philosophy is very akin to Lord Melbourne’s—if it works, leave it alone.” *The Times*, July 19, 1970.

150. ORMROD REPORT paras. 107, 116-17.

The first report of the Advisory Committee on Legal Education is published in *LAW SOCIETY GAZETTE*, June 28, 1972.

cover all out-of-pocket expenses incurred by committee members.¹⁵¹ The chairman said that it was unreasonable for the government to impose on the committee the obligation to give advice without providing funds to enable it to fulfill its obligation. Obviously, the committee has started inauspiciously, but it is hoped that its potential value as a compiler of statistics on legal education and possibly as an informal liaison between the profession and the teachers will yet be realized.

The Conservative government has apparently adopted an attitude of non-involvement.¹⁵² This attitude leaves the success or failure of the Report largely in the hands of the autonomous professional bodies.¹⁵³ The abdication of responsibility by the government and the lack of sufficiently strong pressure groups has strengthened the position of the Law Society and the Senate of the Inns of Court. The result is that they are obliged to do nothing and in all probability will do only that which is acceptable to them. The suggested establishment of the vocational year will probably be unacceptable to them.¹⁵⁴ On the other hand, the predominately graduate profession is likely to receive tacit approval. It is believed that the almost casual approach which has characterized the reaction to the Report will not result in the formal commendation of a graduate profession. The new recruitment patterns will occur simply through an increased allocation from the University Grants Committee for an expansion in law schools commencing, perhaps, in 1973-74.¹⁵⁵

Unfortunately, reformism has usually floundered because of the resistance of the professions to change. The current response to the Ormrod Report is in the fine tradition of the law's delay and such reform that occurs may evolve in the ad hoc, piecemeal fashion so beloved to the common lawyer. Once again lawyers have illustrated

151. The Times, April 10, 1972.

152. The Lord Chancellor indicated that the degree of implementation of the Report was entirely in the hands of the professional bodies and the universities. He said nothing could be done unless the two sides "could be persuaded to take it [the Report] seriously." The Daily Telegraph, March 10, 1971.

153. Legal autonomy is believed by many to be fundamental to the English legal system. Its limited application to the issues raised in this paper suggests that a major stumbling block to professional change in standards of recruitment, education, training and job functions stems from this principle.

154. The Law Society is already planning an experimental vocational period for clerks. It anticipates providing a pilot course at the College of Law, Guildford, for 240 students in 1974. Although these plans must seriously jeopardize the proposed vocational year in an academic setting, they also suggest the end of the present system of articles for solicitors.

155. In June 1972, Mrs. Thatcher, Secretary of State for Education and Science, made a policy statement which suggested that university budgets will be cut back in the fall. The Times Higher Education Supplement, June 30, 1972. Lawyers can only hope that the reductions will be selective.

their reluctance to set their collective house in order while the government, fully aware of the powerful lobby which lawyers constitute, has avoided the issue. It is unfortunate, but probably true, that the Ormrod Committee's comments on the 1846 Committee on Legal Education¹⁵⁶ could be a prophetic epitaph for its own Report: "The history of legal education in England over the past 120 years is largely an account of the struggle to implement the recommendations of the 1846 Committee and the effects of that struggle."¹⁵⁷ Even if another opportunity to reform legal education has been lost, the law schools may yet be offered a new role through the development of a graduate profession. The long term effect of this occurrence could vindicate the principles enunciated in the Report and also provide a base for more significant innovations. If nothing else, there is now the probability that law schools will have the opportunity to increase their influence over the profession. The challenge has been provided—it remains to be seen whether teachers are capable of meeting this challenge.

156. REPORT OF THE SELECT COMMITTEE ON LEGAL EDUCATION, H.C.JOUR. 686 (August 25, 1846).

Supporters of the Ormrod Report proposals will be interested in the direction legal education in Uganda has taken. In 1969 the Government Memorandum on the Report of a Committee Appointed to Study and Make Recommendations Concerning Legal Education was published. The members of the Committee were Professors Gower, Johnstone and Stevens. Its recommendations bear a striking similarity to the Ormrod proposals. The vocational year was introduced in 1972 and is to be taught at the Law Development Centre, which was incorporated by the Law Development Centre Act of 1970 (Act 21 of 1970). For further information on this topic, see *Uganda Law Development Centre*, 15 J. AFRICAN L. 4 (1971); *Future of Legal Education in Uganda*, 14 J. AFRICAN L. 1 (1970).

157. ORMROD REPORT para. 19.

