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Widening participation in higher education: the legacy for legal education

Ben Waters*

*Senior Lecturer, Department of Law & Criminal Justice Studies,
Canterbury Christ Church University, Canterbury.*

New Labour's first administration pledge to enable 50% of the adult population to pass through higher education by 2010 was predicated on the notion that an educated nation is beneficial and as such is linked to its long-term economic well-being. The dilemma confronting successive Neo-liberal Labour governments was that the creation of a more educated nation, was being proposed at the expense of the accusation that widening participation has caused a 'dumbing down' or devaluation of the degree qualification, law included. This article, among other things, analyses the various strategies which have attempted to achieve the policy, it will examine the effect that this has had on universities going into the 21st century with an emphasis on legal education. The author will attempt to show that widening participation has not fully achieved its intentions in that the effects have not been wholly beneficial; there are not the job opportunities available to offer the growing pool of graduates, including those with a law degree wishing to enter either branch of the legal profession. The author will also briefly explore the accusation that the law graduates are not attaining the kind of employment traditionally considered as being of graduate status. Sustainability of the policy has left the Conservative-led coalition government with no option but to introduce the promised rise in tuition fees initially implemented under Blair. As such, the future of higher education and indeed legal education is far from certain and this will be contextualised in a brief examination of the current state of UK legal education in anticipation of the eagerly awaited LETR review.¹

Introduction

The New Labour 'third way' policy of widening participation can be traced back to the early 1990s. However in terms of clear policy trajectory, it has its origins in the *Dearing Committee's Report on Higher Education* commissioned by John Major's Conservative government, which reported during the early months of New Labour's first administration in 1997. One of Dearing's recommendations was that government should introduce policies which encourage and support students from

* Email: ben.waters@canterbury.ac.uk

¹ At the time of going to press, the *Report of the Legal Education Training Review (LETR)* had not been published.

disadvantaged backgrounds, whose social demography, amongst other things, had traditionally denied them the opportunity to attend higher education.²

This article will trace the progress of the widening participation policy: it will provide an analysis of the policy's trajectory from Dearing to the present: some of the main effects that the 'inclusive' policy approach to higher education has had on universities and law schools going into the 21st century will be considered and will be analysed in light of the suggestion that an educated nation is beneficial for, or will contribute to, the economic well being of the nation in the long term.

The article will analyse the policy choice in terms of its congruence with 'third way' principles of inclusion, social justice and an enhanced sense of citizenship in the pursuit and creation of a more educated nation, but at the expense of the accusation that widening participation has devalued the undergraduate degree qualification. This is particularly relevant to those degree subjects, including law, which were traditionally accepted as being academically challenging.

Finally the article will consider the particular policy implications for legal education, including the graduate skills agenda, the issue of student retention, and will propose the notion that widening participation in higher education may not have been embraced by some institutions for the reasons intended by government. The competing interests of traditional and new approaches to higher education will be reflected upon, and achievement of the policy intentions will be questioned.

Tracking the policy trail

Blair's pre-election speech to the Labour Party Conference at Blackpool on 1st October 1996 signalled a decisive repositioning of education onto the centre policy stage. That speech included Blair's now famous words:

"Ask me my three main priorities for government, and I tell you: education, education, education".³

Upon coming to power in 1997, amongst the education policy pledges outlined by Blair's first education secretary, David Blunkett, was that successive Labour governments would work hard towards ensuring that 50% of adult population would be put through higher education by 2010.⁴

In Blair's 1996 Ruskin speech there is brief mention of New Labour's thinking on the future of higher education, but it was the Kennedy Report (*Further Education Funding Council*) published the following year that argued strongly that learning in

² See a summary of the Report available at Leeds University; <http://www.leeds.ac.uk/educol/ncihe/> (accessed on 10.03.13)

³ Ball S.J. (2008), *The Education Debate: Policy and Politics in the Twenty-First Century*, The Policy Press (Bristol). In fact those words framed New Labour's education policy in its 1997 election manifesto and became both their mantra and the cornerstone of the 'social democratic' education policy in successive Labour administrations throughout the Blair-Brown era.

⁴ Chitty C, (2009), *Education Policy in Britain*, Palgrave/Macmillan, (Basingstoke), 203-205 and Blunkett D, Speech to University of Greenwich 15th February 2000 available at <http://www.cms1.gre.ac.uk/dfee/#speech>, (accessed on 21.02.13).

higher education was the key to economic prosperity and social cohesion which had an influence on New Labour's future policy messages.⁵

The Dearing Report appeared in July 1997 during the third month of Blair's tenure as Prime Minister. In his report Dearing warned that the British economy could not survive without expanding the universities, improving their teaching and broadening their students' skills. Some of the proposals included: the charging of tuition fees, an unprecedented expansion of student numbers and "threshold" standards for degrees.⁶

Dearing and his committee's views appear to be based on the premise that an educated nation is required, for the growing competitive globalized market economy and as Hodgson and Spours put it;

*"The development of skills in the population as a whole is seen by New Labour as central to economic competitiveness in an era of rapid technological change"*⁷

The proposals for higher education put forward by Dearing and adopted by New Labour were fourfold: firstly a proposal to use a variety of funding levers to support higher education institutions in developing widening access or participation: secondly, an intention to provide targeted individual support for particular groups of under-represented learners (eg disabled): thirdly to increase the number of sub-degree programmes designed to attract new types of learners, and fourthly: to focus attention on the kind of teaching and learning strategies that they considered to be required by the new types of learners entering higher education.⁸ Further reports and ultimately legislation followed.⁹

Policy analysis

The social justice aspect of New Labour's approach to education policy during its lifetime in government can be neatly illustrated by its *Aimhigher* strategy.¹⁰ Whilst the numbers of students from unskilled backgrounds increased by only 500 by the year 2000 from 5000 in 1995, the number of students from partly skilled

⁵ Walford G, (2006), *Education and the Labour Government; An Evaluation of Two Terms*, Routledge (London), 103, who acknowledges that *The Kennedy Report* was much shorter, punchier and accessible than previous reports on Higher Education and, was generally welcomed by those in the Labour Party who were advocates of further education and widening participation. See also generally Trowler P, (2002), *Higher Education Policy and Institutional Change*, SRHE and OUP, (Buckingham).

⁶ See leeds.ac.uk/educol/niche for a concise summary of the Dearing Report (*Higher Education for the 21st Century*) (accessed on 10.03.13)

⁷ Hodgson A and Spours K, (1999), *New Labour's Educational Agenda, Issues and Policies for Education and Training from 14+*, Kogan Page, (London).

⁸ Op. cit. Trowler, *supra* n. 5.

⁹ In the same year that Dearing reported, the Higher Education Funding Committee for England (HEFCE) produced its *Report on Participation for Non-traditional Students in Higher Education*, furthering the widening participation policy agenda and the following year the unpopular *Teaching and Higher Education Act 1998* which introduced tuition fees for students was passed.

¹⁰ See <https://www.gov.uk> and <http://www.direct.gov.uk/en/educationandlearning/>. According to Directgov, *Aimhigher* is a national programme which aims to widen participation in higher education by raising the aspirations and developing the abilities of young people from under-represented communities. The Directgov website states that overwhelmingly these are people from lower socio-economic groups and disadvantaged backgrounds. (Both accessed on 21.02.13).

backgrounds grew more steeply, from nearly 2000 to just over 24,000 in the same period.¹¹ There is evidence therefore that progress was being made in this area prior to New Labour's tenure, however such strategies as *Aimhigher* were nevertheless having a positive impact on the development of the 'knowledge economy'.¹²

Labour's 1996 paper on *Lifelong Learning* emphasised the fact that continuous learning is key to economic success, social cohesion and national prosperity.¹³ A critical reading of the strategy as set out in Labour's 1999 White Paper *A Vision for the New Millennium*, indicates that this is more a response to what is required as a skills demand of a knowledge economy for global competitiveness, than issues of social inclusion and increased opportunities for lifelong learning.¹⁴

Disabled students, i.e. those with disabilities ranging from physical, sensory, neurological, psychiatric and those with learning disabilities such as dyslexia, were considered unrepresented in higher education by Dearing and universities were provided with financial incentives by HEFCE to take on more disabled students.¹⁵ The *Disability Discrimination Act 1995* and its amendments, imposes obligations on HEIs to provide minimum standards for students with disabilities, but despite this and although disabled students have been entering higher education in greater numbers, they remain under-represented today and their experiences are variable.¹⁶

In adopting many of Dearing's recommendations, government quickly realised that increased funding provision for a rapidly expanding higher education sector was vital; if such expansion was to be sustained at the rate anticipated and if the 2010 target was to be achieved. Many critics viewed the continued rise in public sector education spending as unsustainable. Through the *Teaching and Higher Education Act 1998* annual tuition fees of £1,000 per student were therefore introduced and in 2003 this policy was extended to allow higher education institutions to increase annual tuition fees to £3,000 per capita.¹⁷ The introduction of tuition fees attracted criticism for placing an unfair burden on students and critics warned that they would have a damaging effect on the widening participation agenda.¹⁸

The introduction of increased tuition fees was particularly relevant for students who were thinking about studying law and especially for those proposing to practise as solicitors or barristers. Entering either branch of the legal profession requires law graduates to pursue a final year towards completion of the vocational stage of their legal education. Tuition fees for either the Legal Practice Course (LPC) or Bar Practice

¹¹ Trowler P, (2003), *Education Policy*, Routledge (London) citing Thomas E, (2001), *Widening Participation in Post-compulsory Education*, Continuum (London).

¹² See *Aimhigher* available at <http://www.direct.gov.uk/en/educationandlearning/> (accessed on 21.02.13).

¹³ Op. cit. Chitty, *supra* n. 4, 225.

¹⁴ Appleby Y, and Bathmaker A, *A New Skills Agenda: Increased Lifelong learning or new sites of inequality?* British Educational Research Journal Vol. 32, No. 5, Oct 2006, 703-717, Routledge (London).

¹⁵ Thomas E, (2001), *Widening Participation in Post-compulsory Education*, Continuum (London).

¹⁶ This is according to the HE Academy (www.heacademy.ac.uk), and this underrepresentation of minority groups is supported by a National Audit Office Report in 2008, which also stated that whilst between 2002 and 2008 there have been improvements in the participation of some groups in higher education, this was not true of all groups and some remain significantly under-represented in higher education, particularly those from lower socio-economic backgrounds. See <https://www.nao.org.uk> (accessed on 21.02.13)

¹⁷ Machin S and Vignoles A, (2006), *Education Policy in the UK*, Centre for the Economics of Education.

¹⁸ Op. cit. Trowler, *supra* n. 11.

Training Course (BPTC) can be as much as £13,300 per annum for the LPC thus adding to the tuition fee debt burden.¹⁹ UCAS did in fact report an immediate drop in student numbers from under-represented groups applying for admission to most types of university despite the availability of financial assistance.²⁰

The global financial crisis which began to bite towards the end of 2008 has perhaps coloured any favourable analysis of the widening participation policy and it may take many years before the higher education policies of the Blair-Brown years can be effectively analysed. It was evident however that by 2010 the 50% target had not been achieved and as such it is also arguable whether after 13 years of New Labour, they achieved the aims of their 'social democratic' higher education policy agenda overall.

Despite the seemingly well intentioned promotion of social democratic 'third way' principles, analysis of the policy effects would question whether this is actually a promotion of social justice and egalitarianism or merely a case of institutional survival. For some institutions widening participation, increasing access, social inclusion measures and rhetoric about lifelong learning have perhaps been more closely linked with more pragmatic concerns over institutional survival. If this is the case, then it appears that some institutions, particularly those newer universities, are pursuing an inclusive education policy in order to survive.²¹

There was much talk in the popular and broadcast press during the last decade about the 'dumbing down' of education standards, degree qualifications included. Some education commentators and journalists including Minette Marrin were hyper-critical of New Labour's policies with regard to the Higher Education sector:

"Even though the government spent more and more, it was never enough, so universities were obliged to deflate their teaching and pastoral care to lower, cheaper levels. At the same time they devalued their degree standards to inflate the numbers of students passing and getting high marks. Meanwhile, students had to borrow more and more money from a government loan scheme to pay for these places, so some were forced to drop out and others graduated with terrifying debt loads. They now face the world as graduates in inflated numbers with inflated expectations, inflated debt, devalued degrees and deflated prospects".²²

¹⁹ See College of Law figures of 2012 available at <http://www.law.ac.uk/Our-Courses/Our-LPC/LPC-course-fees/> (accessed on 11.03.13).

²⁰ See Goddard (1999) in Chitty (2009) *Education Policy in Britain*, Palgrave/Macmillan, (Basingstoke) supra n. 4, 210-211; this included mature students, working-class students and students from minority ethnic communities and to ensure a return to the upward trend of inclusive post-compulsory education attendance, a decision was taken by the government to means test the tuition fee requirement and as a result of the *Higher Education Act 2004*, poorer students are now exempt from tuition fees. Regardless of the contribution of tuition fees to the central government funding pool, it is questionable whether New Labour could maintain the funding injection required to sustain the continued growth in higher education sector in order to support its widening participation policy agenda.

²¹ Op. cit. Trowler, supra n. 11.

²² Marrin M, *The New University Challenge is to Unravel Labour's Mess*, Sunday Times 21.03.10.

To circumvent graduate unemployment, which has never been higher, government was also forced to introduce expedient policy making schemes such as graduate apprenticeships.²³

Earlier in this article the question of sustainability of public sector education spending levels, regardless of part-funding through tuition fees, was raised. Clearly it could not because during the latter part of Brown's administration, serious public sector funding cuts were announced for higher education. In September 2010 the budgets of more than three-quarters of universities in England were cut, some by nearly 14%.²⁴ This was only the beginning as once the Conservative led coalition had formed a government; it announced proposals to introduce full tuition fees. The proposals were adopted by Parliament and full tuition fees were introduced in September 2012, leaving the Liberal Democrats in the embarrassing position of having to make a clear manifesto policy U-turn.

The implications for legal education

Over the past twenty years and particularly since 1997, there has been dramatic expansion in terms of numbers attending higher education and in particular students reading law. Sixty seven universities offered law as a degree subject in 1994,²⁵ in 2012 there were 96,²⁶ an increase of some 43% in the space of 18 years. My institution is one of the most recent 'new universities' to offer the qualifying law degree (QLD). Legal education is just one part of the massification of tertiary education which prompted George Ritzer to describe the process as the McDonaldization of higher education.²⁷

The promotion of the New Labour third way policy of creating an educated workforce has had a real impact on the growth of legal education in the UK. The QLD, whilst academically challenging, has been traditionally regarded as a good all-round degree useful in so many different employment sectors. However, many students arrive at university to take law with aspirations of practising as either solicitors or barristers. From my experience, by year three, many fewer will want to practise law and of those who still aspire to pursuing some kind of legal career, the majority will not have either a training contract or a pupillage. Many eventually confront the realisation that they will never pursue a career as a legal practitioner either because they do not feel academically capable, that the further training stage is cost prohibitive, competition is far too stiff or the length of time that it may take to gain qualification to practise in either branch of the profession may suggest that they are better off choosing an alternative career.

²³ For latest graduate unemployment statistics see The Higher Education Statistics Agency (HESA) at <http://www.hesa.ac.uk/> (accessed on 11.03.13).

²⁴ Op. cit. Marrin.

²⁵ Bradney A, (1994), *Raising the Drawbridge: Defending University Law Schools*, [1995] 1Web JCLI.

²⁶ See The Complete University Guide's league table rankings at <http://www.thecompleteuniversityguide.co.uk/league-tables/rankings?s=Law> (accessed on 28.02.13).

²⁷ See Ritzer (1998) in Hayes D, & Wynard R, eds. (2002), *The McDonaldization of Higher Education*, Greenwood Press (London), 1-2.

Whether or not one subscribes to the Ritzerian theory of McDonaldization, there is no denying that one product of the massification of higher education in the UK over the last 20 years or so, has been the development of a graduate skills agenda which has arisen with much more of a focus on employability and transferable skills. The idea of transferrable skills can be traced back to James Callaghan's 1976 Ruskin College speech, some twenty years before Tony Blair returned to the same college to deliver his own version of the speech.²⁸ In his speech Callaghan sought to popularise the view that the main aim of education (and particularly post-compulsory education) should be instrumental in that it should primarily serve the needs of the economy. This was arguably one of the important foundational platforms for New Labour's social democratic approach to education throughout the late nineties and going into the first decade of the 21st century and has been met with some measure of success.

With the rise of the 'new universities', including my own institution, skills have become more central to the HE curriculum. My university is a good example of a new university which promotes degree programmes, including law, with an emphasis placed on graduate transferable skills. Such as: communication (both orally and written), computer literacy, effective team-working, problem solving and negotiating. The university has a rich tradition of educating students for employment within the public sector, from health and social work to policing, and has done so effectively for many years. For example, within my own department partnerships have been entered into with the local regional police constabulary for the training of their police officers. Offering law as both a single and combined honours QLD with a skills based element further enhances this agenda.

Allied to the rise of the so called 'new universities', promotion of the graduate skills and lifelong learning agendas has arguably broken down the traditional barrier between academic and vocational training. This drive towards the promotion and development of graduate and transferable skills has had an impact upon the debate about the nature of higher education curriculum design and delivery. There are now competing agendas within many university departments including law, between those who subscribe to the creation of a knowledge based workforce fit for the competitive globalized world, against the more traditional academic's view that the role of higher education is to provide a liberal education and produce intellectuals who are capable of critical and independent thought. Government policy in the higher education sector has undoubtedly created a need for a rounded curriculum which satisfies both the social justice agenda and the creation of a skilled workforce to enable the UK to compete globally during the 21st century. This is no less important than in the area of legal education which has a duty to responsibly and adequately prepare both the nation's future lawyers for legal practise and those who study law with a view to entering other employment sectors, such as finance, local government or education perhaps.²⁹

²⁸ According to Lea J (et al), (2003), *Working in Post Compulsory Education*, Open UP (Maidenhead).

²⁹ See the series of annual statistical reports published by the Law Society which are useful indicators of the growing number of students choosing to study law as a degree subject; the reports for the years 1987 to 2010 inclusive are available at: <http://www.lawsociety.org.uk/aboutlawsociety/whatwedo/researchandtrends/statisticalreport.law> and which are referenced by Mayson S, (2011) in *The Education And Training of Solicitors: Time For Change*, *The Law Teacher*, 45:3, 278-293.

The skills aspect of legal training is situated within the LPC or BPTC and even then it is arguable that there is little link between what students learn substantively and the application of that substantive law during the vocational stage of their legal education. In an article published for this journal, Stephen Mayson highlights the criticisms of the adequacy and effectiveness of the QLD as a part of the process of professional formation stating that these come from both employers and LPC/BPTC providers. He generally points to inadequate legal research skills and the poor standard of written English as being perceived as real issues for employers.³⁰ Could this perhaps be a side effect of widening participation? One challenge for LETR in mapping out proposals for the future landscape of legal education in the UK, is to strike a balance between prescribing the right kind of graduate type skills whilst at the same time accommodating the substantive law requirements of the core foundational subjects of legal knowledge.³¹

An increasing number of students now attending higher education to read for degrees such as law are the first from their families to do so. Many are from a socio-demographic background which would have denied them this opportunity in previous decades. Critics such as Marrin would no doubt argue that this has been possible, not through the raising of education standards during the compulsory education years, but through the devaluation of GCSE and A-level qualifications.³² Many of the students studying law at my institution would not have had the opportunity to do so 25 years ago. The corollary of widening participation in the context of legal education is that when students now get that opportunity to study an academically challenging subject such as law at degree level, a significant proportion does not complete the degree course.

Lynne Graham-Matheson in her report for Consortium for Access to Legal Education³³ considered that one of the main issues for the institutions, upon which she focused her research, is that of retention, i.e. ensuring that students complete their degree. She quite rightly stated that this is demoralising for students and staff, as well as having financial implications for the institution. Retention is a real concern for the new universities such as my own. From 54 students starting the first year of the LLB in September 2008, some 34 graduated; an attrition rate of 37%. According to Graham-Matheson there are a number of reasons for poor retention rates. Some law schools are under pressure from their institutions to recruit large numbers of students. Because law is a popular degree, the decision to introduce it may be taken to compensate for other less popular subjects.³⁴ This could well be an explanation in part for my own institution's decision to offer law as a single honours degree given the decline in student numbers on some other degree programmes. If one were to be critical, this strategy may support the arguments on institutional sustainability rather more than those centred on any egalitarian social justice agenda.

³⁰ Mayson S (2011): *The Education And Training of Solicitors: Time For Change*, *The Law Teacher*, 45:3, 278-293.

³¹ The seven foundations being: Criminal Law, Contract, Tort, Property/Land Law, Equity and Trusts and Public Law (Constitutional, Administrative and Human Rights Law) and Law of the European Union.

³² See Op. cit. Marrin.

³³ Graham-Matheson L, (2002), *Recruitment and Retention in Legal Education Report* commissioned by CALE (the Consortium for Access to Legal Education) available at <http://www.ukcle.ac.uk/resources/wp/matheson.html> (accessed on 25.02.13).

³⁴ Ibid.

What widening participation seems to have achieved for many aspiring legal practitioners, particularly those graduating from the newer universities, is the realisation that they will never practise law. What many law graduates are left with instead is a degree that is arguably under-valued; they will find themselves entering the job market at a level which 25 years ago would not have been considered commensurate with a law degree in terms of either status or salary. Not only that, most law graduates will also graduate with a student loan debt burden which they will be repaying for much of their working lives whilst working in relatively low paid employment. The legacy that widening participation has produced for legal education requires us all as educators in this area to be honest with undergraduate law students from day one. This includes providing them with realistic careers advice as to how they may use their law degree in a broader sense and not just as legal practitioners.

(3,367 words)

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