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An American Tale

Geoffrey J. Bennett

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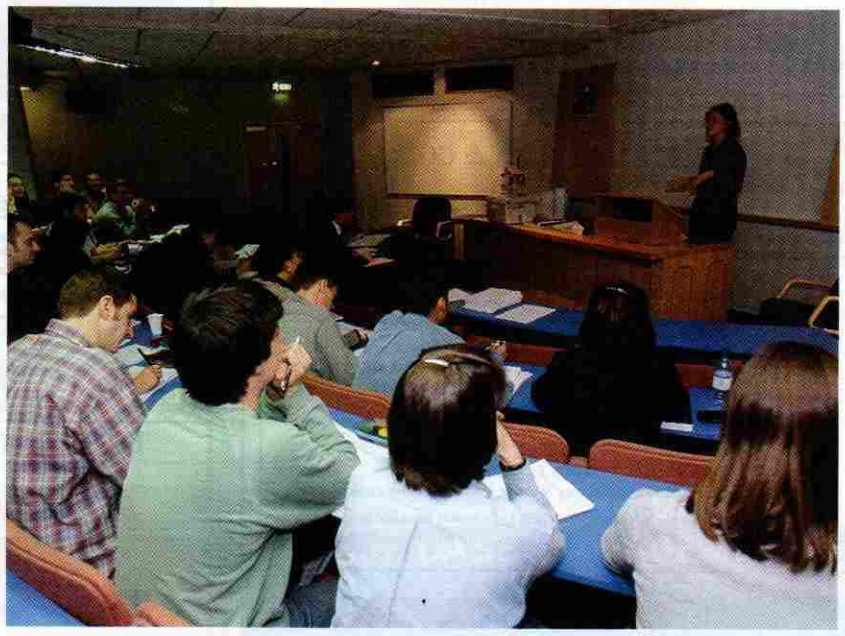
Before we write off the idea of professional involvement in legal education, **Geoffrey Bennett** says consider the US

WHEN London Mayor Ken Livingstone proposed a charge on traffic in central London there were predictions that it would cause chaos at the margins of the charge area and fail to deal with the underlying problems. The objections were neither wholly irrational nor completely unreasonable, but as it has turned out, most people would now say that it has been a success because the scheme was made to work.



The same might be said of the debate about how much influence the legal profession in England and Wales should have over law degree courses. It would be possible for a system to be constructed in such a way that high-handed professional bodies, divorced from the broader aims of a university course, could dictate the curriculum in a way that most academics, and even students, might find objectionable. However, before accepting this as the inevitable outcome of professional accreditation it might be worth reflecting on the US experience.

From the time of its foundation in 1878, the American Bar Association has actively sought to influence standards of legal education and currently there are some 181 law schools in the US that are fully approved by the ABA. The encouragement for a law school to seek such accreditation is that 43 of the 50 states require students to graduate from an ABA approved law school in order to take the state bar examination. In addition, some 165 schools belong to the Association of American Law Schools (AALS), which is an organisation that maintains a close working relationship with the ABA.

ABA works by laying down standards against which law schools are measured. For example, standard 201 states that "the present and anticipated financial resources of a law school shall be adequate to sustain a sound programme of legal education". Standard 405 requires that "a law school shall establish and maintain conditions adequate to attract and retain a competent faculty". Standard 601 mandates that a law library "shall have sufficient financial resources to support the law school's teaching, research and service programmes" and that "a law school shall keep abreast of contemporary technology and adopt it when necessary."

It would be difficult to find anyone who could object to principles such as these being rigorously applied to English legal education. There is, however, comparatively little intrusion into the details of the curriculum. Standard 302 requires that students receive a rigorous writing experience, instruction in professional conduct and an opportunity for instruction in professional skills. It would be hard to argue that this is anything other than exposure to what any law school would seek to achieve, nor could it be said that such general guidance stifles diversity or experimentation in the curriculum.

Law schools are inspected every seven years by a site team which spends several days at the institution after reviewing previously disclosed documentation. Typically, the team consists of five to seven members led by an experienced site evaluator. It would not be unusual for one member of the team to be a judge or practitioner, but the majority of the group would be experienced legal educators, such as law school deans, administrators and librarians from other law schools. This varied composition reduces the risk that the team will be completely dominated by practitioners. Some 30 site teams are appointed annually from those volunteering to carry out evaluations, which itself encourages interchange between universities and a spread of ideas.

The crucial question is whether US legal education has benefited from the regime of ABA accreditation and the question is not without controversy in the US. Some would argue that the increased resources required have increased the cost of tuition, but a majority of legal educators would say that it has had a significant effect in increasing the resources allocated to law schools. A university faced with a negative ABA report is almost inevitably obliged to move resources to its law school. It is rather ironic that one of the criticisms sometimes made of ABA accreditation is that it requires increased expenditure by institutions to: accommodate extensive use of full-time staff; limit the administrative duties imposed upon them; provide large, well-staffed law libraries; provide adequate space; and ensure that staff are adequately paid. This is the sort of problem most English law school heads of department would be happy to have their institutions face. There is an argument that just because law has a more powerful union, than, say, classics, it should not be supplied with better resources. On the other hand, the legal education in England has had a tendency to use law schools as a cheap way to subsidise other departments. Perhaps the special, and by no means fanciful, risk of law being under resourced in this way underlines the need for an overdue mechanism for its correction.

A quality legal education does not, nor should it, come cheap. One of the factors that might put some of the recent debate about student fees into perspective is that the annual fees to study law at a prestigious private university in the US might well be in the region of $28,000 (£17,100) per year. But it would be wrong to think that all, or most, law schools in the US are only able to provide the facilities they do because of fee levels that would currently be unthinkable in the UK. At a state university, although there is considerable variation between the states, the fees might well be closer to something like $9,000 (£5,500). This still supports a viable law programme that would be the envy of most of its English equivalents.

Anyone who has ever had the opportunity to teach in a US law school can hardly have failed to notice the disparity between resources available even in a state law school as compared with many universities in the UK. Even allowing for other factors, such as competition and economic conditions, it is deeply improbable that the quality of US legal education would have improved as greatly as it has in the last 30 years if it were not for the ABA's active involvement in education. Before universities here reject too quickly the idea of greater participation by professional bodies in legal education, they might want to reflect on what splendid isolation has so far achieved. ■

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TRAINING WAYS

Celia Grew, pro-chancellor, Coventry University

In suggesting that the Government has "decided to let" universities charge top-up fees, *Lawyer 2B*'s deputy editor Jennifer Farrar (*Lawyer 2B*, May 2003) should have said that the white paper proposals give vice-chancellors little option in view of stipulations on increased student intakes, but without additional funding.

The money must come from somewhere to pay for the education of so many more students, and if not from the Government, then from commerce, industry and of course top-up fees. To that extent I was interested in reading of the Modern Legal Apprenticeship, as proposed by Chris Ashford of Irwin Mitchell. But is it ancient or modern? Has the wheel turned full circle?

I was a 'five-year man'. Articles binding one to a solicitor for five years of training, including two periods of intense legal studies at a university or the College of Law in preparation for Parts 1 and 2 of the qualifying examinations, resembled the 'sandwich course' familiar to industrial apprentices.

From day one we learned our craft, and even mundane tasks had benefit. Filing, for example, enabled one to see and learn from what one's principal had written, prepared and drafted, while the filing itself provided training in orderly case management. Sitting with him, one learned the art of client care, and there was no finer way of learning court practice than to listen to those whom I believe outclassed totally the advocates of today.

We mixed with other articled clerks, and it was an honour to be allowed to join the local Law Students Society. Friendships lasted and we soon learned on whom we could rely and trust. Sent out on 'completions' of conveyancing transactions (when invariably the palm was pressed with half the fee) enabled us to become acquainted with those solicitors in other firms for whom we developed respect and sometimes awe. Words of encouragement and explanation founded good working relationships in later years. Those who treated us badly taught us to be cautious and careful. By the time of admission, not only had we learned where to find out what we did not know, but also how to care for a client, manage a case and fight a cause. We considered then – as I do now – that in those early years we had the edge on our graduate colleagues who had to catch up on the practical application of their knowledge after only having had two years articles, but in time there was little to tell us apart.

Only the very large firms can provide practical experience in every discipline. That was the drawback of articles in the smaller to average practice, and specialisation creates further restriction. The 'modern apprentice', as envisaged by Irwin Mitchell, will still require an academic education. There is little or no time, money or expertise for in-house training except at the very big firms, which understandably cream off the better graduates with offers of financial reward. Why? Because the more able the graduate, the less training required from the firm and the sooner that trainee will become remunerative in a fee-earning capacity. Otherwise, at considerable expense, 'apprentices' will be sent on courses provided by others. Unless it is proposed to dumb down the training of solicitors, legal education with quality academic education is necessary. Finally, the Government is determined to increase the university student intake, and therefore any idea of the majority of youngsters being able to avoid it by in-house legal training alone is unlikely.

What could assist is a partnership between academia and the profession, a close link between higher education and local firms, an understanding and provision of the needs of each, an opportunity for undergraduates to experience paid office life during vacation time and for trainee solicitors to acquire legal education and to move between firms to increase practical experience.

The old Part I and 2 courses totalled 56 weeks. The proposed two-year foundation degree may well be accomplished by extending the current 3 x 10-week university year to 3 x 12 weeks, with a saving on fees and living expenses.

But it will still cost money to educate the next generation, so how was it done in the bad old days? Easy peasy – we were paid peanuts. The articled clerk was 'cheap labour', the lowest-paid person on the pay roll. Indeed, it is only post-war that families ceased having to pay for their treasured son or daughter to enter into articles, with hefty stamp duty on top. Our parents, council and charity grants provided for us. So at day's end, overall, things do not really change. Like my weight, constant, but from time to time the lean and fat are distributed differently.