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Legal Education: The Integrated Law School

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Summary

University legal education is currently beset by many conflicting pressures. Different law schools will respond to these pressures in different ways. This article argues that the experience of one vocational law school offers a useful model for integrating both academics and practitioners into a cohesive whole capable of delivering a range of educational objectives to varying groups.

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Introduction

This paper is the culmination of some reflections on the theory, ideology and practicalities of life in a UK vocational law school.^[1] The word vocational is used here to reflect the institutional identity of Bournemouth University in terms of its mission and its strategic plan at the time of writing although Bournemouth is not unique in describing itself as a vocational university. 'Vocational' at Bournemouth, with all that word infers, may well change with the advent of a new Vice-Chancellor; being a site of 'professional education' may become more apt. Time will tell. This possible change at Bournemouth in itself illustrates the complexity of the rapidly changing environment in which legal education operates. A further preliminary point is to note that, when speaking of 'the law school', I accept that there is considerable difference across the sector(s). The aim here is not to analyse all law schools but, instead, to look at the particular experience of one law school. Finally, there is an autobiographical aspect to the writing of this paper since it is based upon my experience of being Head of the Law Academic Group at Bournemouth since 1999. In writing this paper the first person will sometimes be used. This is not a widely accepted form of academic writing in law, yet at times it becomes expedient and has been adopted in biographical studies elsewhere.

The dynamics of change have never been so acutely felt. Time for reflection is diminishing and expectations are running high. We are working hard and fast. The ACLEC documents, neatly stored on the bookshelf, have been revisited as Bradney revives the argument for a liberal law school in the 21st century (Bradney, 2003). Recently, there have been invitations to comment on a range of consultation papers from the professional bodies about the future of legal education, giving another prompt to reflect on where we are at and, indeed, where we might suggest future graduates will be in the 21st century. Most recently, there has been considerable debate about the Training Framework Review and the different pathways which are possible as a route to qualification. Law schools find themselves involved with Developmental Engagements, Institutional Audits and Discipline Audit Trails, the outcome of which determine whether we may proceed 'with confidence' in the 21st century. It is a time of frantic activity, as law teachers respond to various calls upon their time yet seek to retain precious opportunities to think and reflect upon their own positions in their respective law schools. A balance has to be found. A key question is to what extent reflections about virtue, truth and reason can find space in a world of ticking boxes and hurtling from one meeting to the next.

Ideology

Barnett, provides some hope (Barnett, 2003). He acknowledges what it is like to operate in Higher Education these days yet provides ways in which we might make sense of this complex and challenging world in which many masters call upon our time and attention. Barnett argues the influx of both internal and external ideologies have impacted on the university to the point that it is problematic to sustain the idea of the university as solely a site of reason. Essentially his theory is based on two ideological approaches, pernicious and virtuous. The former encompasses quality, managerialism, competition, enterprise, research, learning and teaching. The latter comprises '*ideologies*', such as community, reason, communication, truthfulness and enlightenment. The essence of the argument is that universities are in a state of becoming whereby new projects become ideologies. At first sight, it might be assumed that virtuous is to be taken as good and pernicious as bad yet the basic proposition is more complex referring to the interchange between the university as a site of truth and reason and other competing ideologies. Barnett claims:

“Pernicious ideologies are those that undermine the realization of the historic idea of the university as a rational institution, as an institution that is playing its part in the continuing formation of the rational society. In contrast, virtuous ideologies on campus are building ideologies ('building' here being an adjective): they take the project of the university forward.”

(Barnett, 2003, 61)

There are differing patterns across universities with different ideologies prevailing in individual institutions. Both Bradney and Cownie have argued for the merits of a particular approach to law schools (Bradney, 2003; Cownie, 2004). Bradney is concerned with the liberal university law school and asks 'what it should be doing in terms of its teaching, research and administration'. In the context of Barnett's arguments an answer to this question can be located in exploring whether the liberal law school is absolute or whether it might be possible to incorporate some liberal precepts alongside commercial ones. In any event, the theoretical position must be understood in terms of the practical realities of where each law school finds itself within the prevailing audit culture. It is entirely laudable that Bradney asserts 'the liberal law school responds to the inalienable curiosity that is at the heart of human nature.' (Bradney, 2003, 87). This concept is at the very heart of traditional core values. Yet now this can only be part of the full picture where the reality is the reductionism of intended learning outcomes (ILOs) and assessment. Whilst asserting that the liberal curriculum 'should not attempt to determine what students will become or take out' Bradney himself acknowledges the proposition is in conflict with ILOs (Bradney, 2003, 87). The poignant question for law schools, and more probably the post-1992 law schools, is whether 'we' might be colluding with the demise of such traditional core values albeit inadvertently. This paper seeks, in the context of an analysis of one institution, to find a place for all who have a role to play in legal education and to promote inclusion.

Law Schools

'The law school' is often used as a generic term yet attention needs to be paid to the fact that there is diversity in their type, epistemological stance, ideological position, and in terms of the manner of their engagement with the study of law is required. A study by Leighton and others has shown that UK law teachers are at the centre of developing and administering change in legal education (Leighton et al, 1995). Their study provides insights into the differing professional profiles of law teachers and their priorities in relation to research, consultancy and teaching. Quantitative data regarding the profiles of law schools has been provided by the Legal Education Research Project (Harris et al, 1993; Harris and Jones, 1996) and a further study is forthcoming. In addition, Birks has identified the contribution academic jurists have made to the advance of the doctrine of law (Birks, 1998). Cownie has recently produced an ethnographic account of academic lawyers teaching on degree courses (Cownie, 2004) whilst I have previously published a study of the working lives of those in law schools (Mytton, 2003). Notwithstanding all of this, there are further questions to be asked about the current profile of law educationalists working across a range of law schools.

The essence of this study is based upon the experience of teaching law at Bournemouth Law School where the range of law programmes include a Qualifying Law Degree, the Common Professional Examination and the Legal Practice Course as well as a suite of postgraduate programmes and research degrees. There is also a commitment to the Research Assessment Exercise and to Knowledge Transfer. It can therefore be said that Bournemouth Law School is an integrated law school, having a single law academic group in which academics and practitioners co-exist. This has an effect of staff recruitment. It has been accepted that an appropriate balance between academics and practitioners serves our purposes well. The University requires, through its managerial processes, all full-time academic staff to be engaged with teaching and or knowledge transfer. We are committed to achieving the best in terms of the student learning experience whilst we are also working towards the RAE and Knowledge Transfer. It is therefore necessary that staff recruitment accords with these activities. In addition, since Bournemouth offers the LPC, it is a requirement of the Law Society that suitably qualified practitioners deliver the programme. Other programmes are staffed by traditional law academics who are research active in RAE terms. Practitioners may develop their careers through engaging with research and some do so very successfully. Given the scope of academic law programmes and the LPC, together with the size of Bournemouth Law School and its development, it has been possible to bring together practitioners and traditional academics into what may be called 'an integrated law school'. This, of course, is in part to do with the development of the University and its structures. Bournemouth is a post 1992 University which is advantageous in terms of being able to respond to a rapidly changing Higher Education environment, heavily influenced by the government of the day. Bournemouth University does not have an historic line of deeply entrenched pure academic tradition but has grown from an Institute of Higher Education through to Polytechnic and then to University status. This has provided an environment where everything is possible in terms of responding to change. Deep-rooted traditional faculty interests are not a particular feature of the success or otherwise of the endeavours of this university.

In a recent study of legal academics, cultures and identities, Cownie has found that there are enduring core aspects of the culture regarding academic law (Cownie, 2004). She refers to the increasing academic orientation of law academics. However, my own previous study found that those teaching on vocational courses do not necessarily regard themselves as academics (Mytton, 2003). This is clearly of significance given the extent to which law schools these days have a portfolio of academic and vocational programmes. One would not wish to imply to some law teachers that they have a lesser status than traditional academics.

Emerging theory

The new challenges and day to day experience of how these various law educationalists come to terms with a rapidly changing environment seemingly more and more influenced by external forces is expressed by Bassnett:

“University life gets more like Wonderland by the week, making me feel increasingly like a cross between Alice – dazed by the constantly changing weirdness of it all - and the White Rabbit, forever rushing from meeting to meeting in a perpetual state of lateness.”

(Bassnett, 1999, 201)

The constantly changing weirdness of it all was most recently illustrated by the White Paper on Higher Education about which Bibbings commented that 'it is the model of higher education that it embraces which is most deeply troubling' (The Future of Higher Education, 2003; Bibbings, 2003). Certainly, it presents fertile ground for debate in terms of pernicious and virtuous ideologies. Barnett argues that 'the concept of ideology becomes potent' (Barnett, 2003, 6). He acknowledges that collective beliefs have some influence alongside partial reason and embedded power. He suggests it is time for ideology to be re-interpreted and for 'projects for change' to be seen as part of the picture. The question arises as to what are the challenges for law educationalists. An underlying question relates to how law educationalists 'know' the world in which they work. There is not one single academic community of law educationalists. It is more accurate to speak of 'continually proliferating sub-communities' and to ask whether:

“...We have to accept that the academic community is just a collection of contrasting language games, each going its own way, with its own views as to what counts as truth, with its own relation to the wider society, and with its own sense as to what is important in the development of the individual.”

(Barnett, 1990, 201)

For this reason, it is difficult to define terms like 'university' and 'academic community'; perhaps it is easier to recognise common beliefs in terms of what the university and the academic community stand for.

Models of 'New Managerialism' have been extensively investigated and applied to the context of UK universities (Ferlie, Ashburner et al, 1996; Deem et al, 2001). Part of the work refers to manager-academics whose lives were described as 'involving long hours packed with meetings, mountains of paperwork and email and the search for additional resources, with research marginalised and little time for reflection' (Deem, 1998). At departmental level, it has been argued by Knight and Trowler that good practice in learning and teaching may be compromised by structural changes in the HE system and that "[d]esirable change is most likely to be achieved in collective and collaborative ways (Knight and Towler, 2000). They raise the proposition that perhaps the 'New Higher Education' is an inhospitable environment for good teaching and learning. Drawing from an extensive range of literature they highlight key factors: Intensification - pressures on time, energy and mental space to improve learning and teaching, particularly in the context of work degradation. They refer to 'Hard' managerialism which assumes the characteristics of an audit culture, loss of collegiality where there are reduced opportunities for social interaction as well as time to work at work, greedy institutions, ageing, malaise and marginality. They suggest that

“[t]he danger in ... a corporate culturalist project... is of suppressing the healthy diversity of cultural manifestations in the university and leading to an active backstage and under-the-stage culture of cynicism and resistance.”(Endent)

(Knight and Trowler, 2000, 77)

It seems there is a sort of continuum with command and control at one end and interpersonal effectiveness at the other. Their solution is for an appropriate model of 'interactional leadership' to be established based upon 'directed collegiality' based on negotiation and cultural sensitivity. Within the context of legal education, such a proposition does not appear to import a particularly new leadership practice. Those with responsibility for managing law schools will be very familiar with the sapiential qualities required for influencing others in an environment where resources limit financial rewards. But is there room for the approach suggested by Knight and Trowler?

Deem, citing Halsey, refers to the notion of 'deprofessionalisation' or proletarianisation' of the academic profession, seeming to imply the inevitability of Hard Managerialism. However she also makes reference, citing Henkel, to British academics engaging with 'reprofessionalisation', re-articulating and strengthening core values around the centrality of research and the value of teaching. Similarly, in law schools, Cownie maintains her study reveals enduring aspects of the culture of academic law (Cownie, 2004, 206). She suggests that against all the odds there is still a fundamental academic orientation within the culture of academic law and professional identities, perhaps suggesting some room for Knight and Trowler's approach.

The Law School In A Vocational Setting

Teaching law is a microcosm of the wider socio-political environment. The central question is whether institutions outside the university 'ought' to determine what goes on within the university. If the purpose of the university today is to produce resourceful people equipped to enter and participate in the commercial world it creates a new discourse. The experience of the law teacher as well as the spheres of influence such as political, ethical, reflexive and moral positioning need to be understood. If that can be achieved individuals within the organisation can be clearer about what is expected of them and would therefore be less fearful of uncertainty and more confident of their performance. There are matters to be more carefully articulated in terms of what the aims of the institution are. It might be that the process is becoming a means to an end rather than the educative experience providing an end in itself. Cowen refers to 'the attenuated university' which acknowledges that the autonomous position of the university is under pressure (Cowen, 1996). The underlying theoretical basis for the shift can be explained by Lyotard's reference to performativity (Lyotard, 1984).

It is clear that across UK law schools that there is diversity in the student learning experience. This is influenced by external considerations especially for the statutory universities who mainly depend on government funding. Government funding through the Higher Education Funding Council for England (HEFCE) has to be resourced by the university to establish and evidence audit trails. A concern is that the adjustment to this changing environment, given the vocational nature of post 1992 statutory universities, is such that educative boundaries have been repositioned. In order to accommodate a process-driven administration the location of the academic has become problematic (Mytton and Hanson, 2002). There is clearly the potential for competing interests to arise, an observation which is consistent with pedagogic theory espoused by Barnett who takes a critical view of the prevailing influences on Higher Education (Barnett, 2003, n 12). He argues that the debate is 'hopelessly skewed' on the basis that the various parties defend their own interests and the autonomy of Higher Education in terms of standing for intrinsically worthwhile ends is lost. A central question related to the culture of the University is to ask what it stands for; "only when institutions are clear as to what they are about can they frame any meaningful responses about their performance" (Lucas, 1996). This lies at the root of this study in terms of the dynamics of change currently being experienced. There is a clear tension between the autonomous university and those to whom it is accountable.

This must affect the experience of those who are part of the academic community. University lecturers are used to the assumptions that academic life is privileged, consisting of little real work and long, lazy holidays.

“One popular impression of professorial life is that it offers those privileged to work within an institution of higher learning almost unlimited opportunities for leisured contemplation and study. Insulated from the cut-throat pressures of the commercial world, it is said, professors are free to enjoy the life of mind, of ideas valued for their own sake, of scholarly exchange, and open-ended discussion. According to this view, the groves of academe are isolated havens, protected enclaves where disinterested inquiry and learning proceed unhindered by external interference.”
(Lucas, 1996)

The reality of the vocational university is very different. Consideration needs to be given to the purpose of the university in terms of its role whether that is as a training ground ‘or’ for the development of intellect. The culture of a vocational university is driven by processes designed to measure output. Operationally, quantitative data, strategic plans, business plans, spreadsheets, statistical performance indicators, interpreted by managers and administrators are commonplace. The overarching agenda is provided by the Higher Education Funding Council (HEFCE) and the Quality Assurance Agency (QAA) who set out what is required for funding to be secured and the criteria upon which quality is measured. This reflects the socio-political environment linked to the expectations of employers, creating a significant agenda to which, especially, the post-1992 university must respond or lose its competitive edge.

A Way Forward: The Integrated Law School

The case for establishing an integrated law school has to be made to show why it is a worthwhile endeavour. It is a model for creating a culture which promotes inclusion of all law teachers whatever their preferences. It avoids feelings of exclusivity and perceptions of elitism. Certainly, it is enriching in terms of the student experience.

From a personal viewpoint, having been Head of the Law Academic Group at Bournemouth University since 1999, it has been a time of considerable development in terms of establishing Bournemouth Law School. The Legal Practice Course has reached its 10th anniversary. The research-active staff base is becoming more established. Consultancy and knowledge-transfer activities are underway. Whatever the responsibilities of each member of the law school staff, we all teach students. In a way, the emergence of an integrated law school was a natural occurrence. The Law School had formerly been part of the School of Finance and Law which had low walls between the different discipline areas and a very close-knit community of teachers both academics and practitioners. In April 2004, the School of Finance and Law merged with the Business School to become the Institute of Business and Law. The Law School is part of that merged structure. Throughout the past ten years the LPC has been introduced, the RAE has appeared and the White Paper has had its impact

- all in a post-Dearing age. A community of law teachers both scholars and practitioners has grown through an integrated culture of working relationships. The researchers give papers in 'Masterclasses'. This enables all members of the school to know what the researchers are about and avoids mystification. The practitioners are equally visibly participative through short courses and external links with the professions. Joint conference papers are presented by academics and practitioners and there is a sharing of academic practice. Had the law school grown into two departments: one academic and one practice-oriented, the richness and capacity for sharing and diversity would have been lost. This shared experience has also benefited the student learning experience as students are exposed to a range of academics and practitioners.

External spheres of influence also shape the law school and necessarily must also be taken into account given the high levels of political intrusion into Higher Education.

The environment is complex. Universities are part of the knowledge industry and this itself raises epistemological questions about who determines what knowledge is, how it is acquired and whether it is relevant or significant. There are so many forces at work that the university seems to have a multi-identity. We operate in a dynamic environment. Someone shouts change and we change. It is not always clear where the voice is coming from, we just know that we must respond or face the consequences. There is a moral dilemma in that there is often little or no opportunity to contest the instruction to change. Of course, there is consultation but the whole industry is so complex each part of the whole satisfies itself that it has confidence in its agenda but when you put all the parts together where is the identity? Before you know it, you're living and working in a strange and unfamiliar place. A decade ago, the character of the university more closely resembled an institution for the provision of professional courses, liberal education and research. There was hardly a mention of a mission statement. The 2003 White Paper on Higher Education states '[r]esearch lays the long-term foundations for innovation, which is central to improved growth, productivity and quality of life' (The Future of Higher Education, 2003, 25). The pursuit of this agenda will of course be easier for some than for others. It is likely to be a matter of whether one is applying pernicious or virtuous ideologies. Law schools are not entirely autonomous bodies; they are susceptible to the shifting sands of external as well as internal influences. Theoretical models can be applied to emerging ideologies and management yet little is published about the impact on law schools and especially law educationalists. Given that legal education is subject to the expectations of the professional bodies one would anticipate some cultural variation for example, between those law schools which provide academic and vocational courses for the legal profession and those who adopt a broader approach to legal education. Yet the profile of law educationalists has been reconfigured over time and it would be interesting to determine the extent to which this has occurred across different universities. There has been an element of academic drift in post-1992 universities which started with a primarily vocational orientation (Pratt and Burgess, 1974, 23-30). This drift has continued with the grant of university status and the introduction of the Research Assessment Exercise (Salter and Tapper, 2002, 254). Nevertheless my study of the lived experiences of law teachers indicated that not all law teachers regard themselves as academics suggesting internal differentiation of role. The term academic was preferred when attributed to those who contribute to new knowledge typically through published research. This differentiation is likely to require new management techniques in terms of recruitment and staff development. The work of Deem et al has generated a high level of interest among

academics, manager-academics and staff development professionals. It would seem timely to undertake a focussed study to investigate the position in relation to university law schools.

Whilst there is a plethora of research into the student experience and innovative approaches to learning and teaching, the emphasis within this paper is upon the spheres of influence which affect law educators and their position within the scheme of legal education. The key point is that, historically, academics have been regarded in a particular way. This is borne out by both Cownie and Bradney who espouse the core values of the legal academic and the traditional way of knowing what law academics are about. The term academic is exclusive and needs to be reviewed in terms of the profile of today's law educationalists. Given the different backgrounds and aspirations of the mix of law educators within law schools it would seem appropriate to consider the integrated law school in which practitioners, researchers, administrators, teachers and those engaged with knowledge transfer can work effectively together (Bassnett, 2004). This can be achieved by ensuring that everyone contributes and each is seen to contribute. For example, it might be argued that researchers seem to have a privileged existence and are the least accountable whilst predominantly teaching staff tend to keep a pattern of more normal office hours. This can sometimes create perceptions about 'who is here and who is not here'. Staff seminars, Masterclasses, working papers and school newsletters provide opportunities for integration and transparency. Whilst some practitioners may not regard themselves as academics they have a valuable role in the delivery of law programmes especially the LPC. They provide considerable integration with the practitioner community and establish strong networks between the law school and the profession. Whilst there is potential for law teachers to feel marginalised if not seen to be research active there are significant professional activities which are not traditionally research which bring great benefits to the law school through consultancy and knowledge transfer. It is time to reposition the barriers of traditional approaches with regard to what counts. It is time for recognition and inclusion in respect of all those who contribute to the success of the law school. The integrated law school offers an inclusive model for those law schools which incorporate academic and professional programmes.

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