

What Is The Role Of The Dean Internally?

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I should preface this short paper by emphasizing that my remarks arise out of the particular context of the Faculty of Law of The Chinese University of Hong Kong ('the Faculty') though they hopefully also have wider resonance. Whilst I have consciously sought to avoid the management-speak mantras that are often trotted out in describing decanal functions, in thinking about this conference I have found it difficult to provide recipes for others and I am convinced that a good part of the story of a Dean is intuitive. What follows, therefore, is located around my current position rather than drawing upon my previous incarnations in this capacity.

The Faculty is a new enterprise, having been founded in 2005 (as the School of Law). Whilst it lacked a tradition, alumni, a place in the market and other benefits that age brings, it importantly was not encumbered by the baggage of history, inertia, internal turf wars or staff who were captive to practices simply by reason of their lineage. There was, accordingly, space for innovation and creativity.

But it was not a completely blank paper. The Faculty's origins can be traced to the perceived failings of its predecessors. Following trenchant criticism from the Chief Justice in 1998 over the products of law schools in Hong Kong, a major official inquiry laid down a set of recommendations for the teaching of law which placed boundaries not only upon then-existing Providers but all future Providers of legal education and training in Hong Kong.

Legal education was found to be dominated by a black-letter approach to law in a passive learning environment. Law graduates were said to lack an expanded view of the world having, at all stages in higher education, been stuffed, like Peking ducks, with black-letter law. Along with the lack of critical awareness among students came a lack of diversity in the profession caused by a dependence upon a school-level intake in the universities.

Among the reform recommendations were: (i) moving the three-year LLB to a four year programme; (ii) requiring that one-quarter of the curriculum be devoted to non-law subjects; (iii) diversifying the law intake to create opportunities for graduates from other disciplines to start a legal career; and reversing the emphasis upon law against skills in the one-year compulsory practical training stage (the Postgraduate Certificate in Laws or PCLL) and moving that stage out of the universities and into an independent Provider (the proposal to divest the universities of the PCLL has not been adopted to date).

A further background feature of Hong Kong is that the legal profession has in effect a golden share in legal education. Apart from an extensive menu of subjects (recently substantially increased) which must be successfully completed as a condition of entry to the PCLL, the subjects studied in the PCLL and the assessment methods utilised (for example, the proportion of closed book examinations) are subject to the approval of the profession which

also has, and exercises, the right to inspect teaching materials, attend actual classes as it sees fit and be involved in the admissions and assessment processes.

Another governmental response to the reform proposals was the creation of the new law school at the Chinese University of Hong Kong. No doubt this was meant to introduce a greater element of competition and the potential benefits that that might bring on the grounds that competition drives standards and increases diversity. Given that government funding of higher education is always limited and given that it would have been politically difficult to provide additional funding at the expense of the existing Providers, it was no surprise that official financial support for the new Faculty was at a level that required that it be largely self-financed. The Faculty, accordingly, had the challenge of making its own way in a world which had been dominated for many years by two Providers and in a market-place that was largely unknown and at best uncertain.

The new Faculty was, accordingly, both a child of the post-reform era and to some extent a prisoner of it.

The Faculty began life in 2005 as the School of Law headed by a Director, later Dean. The status of the Director/Dean also derives from that context: the direct responsibility was to establish a law school of international standing rather than to ride shotgun over an already existing institution.

Given the context, it was important to take steps to ensure: that the Faculty rapidly established itself in the legal market-place; that it created for itself a distinct identity with which potential applicants could identify; that it promoted cultural diversity whilst maintaining the broader university commitment to bilingualism; and that it became an internally cohesive unit. Some of the ways in which these ambitions were sought to be furthered included:

- The Faculty was offered a distinct organising philosophy congruent with the educational enterprise and intended to inspire and liberate staff, give the Faculty an orientation that would differentiate it from its local competitors, enable it to eventually compete at a global level by increasing the chances that it would attract energetic and imaginative scholars and students who would share if not a common vision at least a shared commitment to the overall ambition
- This was so far as possible to be made evident in the construction of all programmes and individual courses within programmes

- *There was to be a conscious move away from black-letter law, a move that was to be as far as possible by persuading the legal profession (as well as staff and students) of its benefits. In its ideal form, the approach would be 'the context of law' rather than 'law in context' so that the starting point is always the social problems that ordinary people face rather than the law*

- *As pioneered at Warwick¹, one of the ways in which new issues are raised, and the scope of legal education expanded, is to take self-evidently important problems facing individuals in their daily lives that can be generalised into problems facing society as a whole, and to ask what is the relationship of, not only law, but also lawyers and the legal system to them. Adding social problems at the outset means that the law 'of' is replaced by an expanded perspective: the consumer and the law, for example, rather than the law of the consumer or the sale of goods; the environment and the law; the family and the law; employment and the law.*
- *One feature of this approach is that its ultimate reference point is to factual situations in the sense that its major criterion of relevance and importance is the experience of people in their everyday lives. The social problems to which it refers are common basic problems facing individuals on a continuing basis. Housing, employment, shopping, social security, the environment as well as what lies behind them, the organisation of businesses and commerce and of government. All else is instrumental. Housing law does not start with a statute on housing. It starts with the need for housing and how that is to be satisfied.*
- *This approach fundamentally expands the study of law not only by setting up links with the problems with which the law was designed to deal, but also with other things which were also relevant to the problems. It expands the study of law to include the study of non-law, the alternatives to law whose use may be more effective or more appropriate than the use of law, or may be an essential condition of the success of the use of law or which may be needed in addition to or alongside of law.*
- *In putting social problems first it raises questions about the role of law instead of simply taking it for granted and opens up discussion of the different roles of law and lawyers in relation to different kinds of problem. It cuts across the traditional boundaries between different forms of law, civil, criminal and administrative, and different areas of law, tort and contract, and adds problems like accessibility, jurisdiction, cost, effectiveness to the study of law and procedure. It also made clear that the study of law is meant to concern itself with matters of obvious importance. It is not simply a mental exercise or discipline to be studied merely to qualify to be a lawyer or simply to monitor and respond to the accidents and incidents of litigation.*

- *As part of this strategy to place law within its social context, all students are required to complete a course *The Individual, The Community and The Law*. In this course, students explore the role of lawyers in society in terms of the historical development and orientation of the professions, lawyers understanding*

¹ This passage has been taken verbatim (with few changes) from various writings of Professor Geoffrey Wilson, Founding Father of Warwick School of Law, who pioneered the law in context approach. He would approve of the change to 'the context of law' which better captures his central idea.

of and commitment to codes of conduct and ethical practice, and the relationship between the professional lawyer and the needs of the community. Students examine the role of lawyers in a practical sense in relation to the needs of different groups in society with a view to developing in students a lifelong commitment to public interest law and helping them deliver practical benefits to the wider community. Teaching is both classroom and community based. Classroom teaching will establish the framework for the course: the empirical supporting work will be student-led against a background of theoretically-informed and practically-based learning. There is an emphasis upon developing projects in conjunction with and for the benefit of the Hong Kong Community. Students are encouraged to select an issue of social importance, explore that issue in depth, look at the role, if any, that the law has played in the creation or resolution of the social problem and examine a possible reform agenda (which may or may not require legal intervention). Students are expected to be creative in devising the research agenda, prosecuting the research programme itself and in developing innovative work arrangements. Students may choose to work alone or in groups: if the latter, the work of each individual contributor must be carefully differentiated for assessment purposes. Field work is encouraged and expected. Students will be introduced to and will be expected to become familiar with research techniques and research protocols. Various media (questionnaires, interviews, video etc) may be utilized as part of the Portfolio to be submitted at the conclusion of the project. All empirical work must be undertaken with technical proficiency and a reflective perspective.

- *Typically, students choose general social issues or problems such as the environment, drug abuse, access to legal advice, domestic violence, the protection of the harbour, poverty, abuse of children, protection of animals, protection of the elderly, facilities for the disabled. Alternatively, selected groups in the community known to confront special problems may be the subject of inquiry: for example, immigrants from mainland, foreign domestic workers, prisoners, unrepresented litigants, job-related stress among police officers, rights of suspects/arrestees, problems of ethnic minorities.*

- The Faculty was invited to adopt a style of governance that was transparent and inclusive within an ethical context and a high-trust environment; an ambition that was considered to be essential in a societal context that was low-trust, heavily bureaucratic and hierarchical

- *As illustrative of the approach taken, in addition to the usual informal interactions and working groups, the original core academic planning met as a body formally twice a week in the year before the first intake of students in order to plan the curriculum, establish the committee structure, the policies and strategies in respect of all aspects of the functioning of the law school. In over eighty such meetings, agreement was reached by consensus on all matters and a vote was never taken. Matters on which there was lack of agreement were held over for further discussion until a better solution was found and common way*

forward reached. In these discussions, the force of ideas and argument, rather than the standing or experience of staff members, took precedence and prevailed.

- Individual staff were encouraged to assume major responsibilities in both administration and teaching based upon their abilities and enthusiasm rather than upon whether they were more- or less- established teachers

- *To give one example, the Faculty decided to put a great deal of its energies and resources into one major conference rather than to dissipate its efforts across a multitude of workshops, seminars, colloquia and the like in order to showcase the Faculty and to make a significant intervention into the legal culture of Hong Kong. It chose to do this by holding a joint conference with the Centre for Public Law, Cambridge University on **Effective Judicial Review: A Cornerstone of Good Governance** (December 2008) to which the leading scholars, judges and practitioners of the common law world were invited and attended. The outcome was an extraordinary conference replete with first class papers which are to be published by Oxford University Press. Whilst the whole Faculty contributed to this effort, the principal actors from the Faculty who gave intellectual coherence to the conference together with Professor Chris Forsyth and Dr Mark Elliott from Cambridge were an associate(Professor Anne Scully-Hill) and two assistant professors (Professors Swati Jhaveri and Michael Ramsden)*

- In place of teaching and rote-learning, the Faculty was invited to establish an interactive student-centred learning environment throughout the curricula within an outcome based framework and a diverse assessment regime and, so far as the PCLL was concerned, convert the law-based approach into a learning by doing environment which was skills-based and in which day to day activities more closely replicate the working world of the practising lawyer

- *Most of the Faculty's courses are delivered through our intra-net by Moodle. Students are expected to come to class prepared and to be in a position to engage with the teachers and other students; assessment regimes are designed to be developmental within an outcome-based teaching environment.*

- The Faculty was encouraged to adopt in respect of both staff and students innovative recruitment strategies which reflected the overriding philosophy of the Faculty with the ambition of bringing the law school into the community and the community into the law school

- *One illustration is 'Orientation Day', a day when students from secondary school visit each university provider to audit departments prior to prioritising their university and discipline choices. Every university approached this by having an Open Day on which staff and students handed out leaflets and staffed information booths. The Faculty had no existing students to assist and it did not*

want its efforts to be indistinguishable from those of others. Accordingly, we mounted a full mock murder trial with academic and administrative staff as the main actors, invited the Press to a full dress rehearsal beforehand and streamed the trial on our website once it was over. Thousands flocked to see our production and interest was excited across Hong Kong.

- We also made great efforts to visit secondary schools to tell students about our existence and then we set up a electronic competition which teams from schools could enter. The competition was based upon knowledge of law (discoverable from clues that we sent to them through a dedicated web site) and knowledge of our campus on which the electronic board game was based. Again, this quickly raised awareness among schools and contributed to the very high standard of applications we have received from our founding year.

- Given a background of extreme scepticism to the establishment of a new law school, efforts were made across all the board to engage the legal profession in all the activities of the Faculty and, where appropriate, implicate them in the design of key courses and programmes

- The one year training programme (the PCLL) was designed de novo in close consultation with the legal profession so that it reflected as closely as possible current legal practice. Uniquely in Hong Kong, the Faculty introduced two elective practitioner courses delivered in Chinese and, in the light of the increasing use of Chinese in the courts, is considering introducing a course on advocacy in Chinese.

I hope that this has given an insight into some of the approaches that we have taken. It goes without saying that a law school can succeed only if it is a genuine team effort. Teams are not naturally occurring phenomena and they are always, for a Dean, work in progress. When faced with problems, teams, and members within them, are likely to have answers that escape the Dean. Of course a Dean must win the respect and trust of colleagues through the usual ways and means: personal and institutional integrity; creating a transparent and ethical work environment; assisting in the development of all staff; engaging in smart delegation; helping staff to achieve a shared vision; making sure that each staff member is valued and knows that they are valued; and recognising the boundaries of their own knowledge and abilities.

As of today, our School has made the fastest transition to Faculty status in our university's history and is now far and away the largest provider of legal education in Hong Kong. With over 900 graduate students, the Faculty is predominantly self-funded and can largely determine its own destiny. A Dean needs to recognise that any success is attributable to the joint efforts of academic and administrative staff and the students who form the bedrock of the enterprise. Luck is also of help!