

What are the Goals and Objectives of Law Schools in Their Primary Role of Educating Students? What are We Educating Our Students For?

Professor A.T.H.Smith
Victoria University of Wellington
New Zealand

The questions posed in the title of this section of the conference are incapable of being addressed in the absence of a large amount of historical, institutional and geographical context. There may nevertheless be a core upon which different institutions might be able to agree, and that would be the mission of teaching students about how to understand and use legal materials and sources within an increasingly global context.

The institutions represented by the group under whose auspices we gather are enormously diverse. My own experience has been largely at three English Universities (Cambridge, Durham and Reading) and two in New Zealand. In all three, Law was taught as a three year degree, to undergraduates. In England, it is not necessary to have a Law degree as a prerequisite to the practice of Law. After graduating, students spend a considerable time in further academic study, and then engaging in what are, in effect apprenticeships, during which time they learnt the skills relating to the practice of Law. If they intend to practice as Solicitors, which the majority do, they must attend for one academic year one of the various providers throughout the country where they are taught the arts of drafting documents, negotiation and so forth. They then enter into a two year training contract with a firm of Solicitors, during which time they will generally work with qualified solicitors in several different branches of the Law, such as Company law, Litigation, Banking, and so on. If they wish to practise at the Bar, they must undertake the Bar Vocational course where, as one would expect, they are taught the oral skills. After that, they must undertake a Pupillage in one of the sets of Barristers Chambers (usually in London, but increasingly in one of the larger cities throughout the country). These pupilages are very difficult to obtain, especially since a requirement was introduced that pupils must be remunerated throughout the training period. The period lasts for a year, but is broken on to two halves. In the first half, Pupils may not earn money whereas in the second half, they can.

All of that background is necessary for an understanding of how the law is taught at universities in England. Although it is slightly difficult (and dangerous) to generalise in this area, the study of Law at university is not really seen as training for legal practice by most English academics, particularly in the earlier years of the degree. To qualify this, and to generalise slightly further; by agreement

between the Law Schools and the practicing professions, if students do wish to practise, in either branch of the Law, they must take seven compulsory subjects: Criminal Law, Public Law, Torts, Contracts, Property, Equity and European Law. These will usually be undertaken in the first and second years of study, leaving greater choice as to subjects in the second and third years.

In Cambridge (following Bologna and Paris), the law has been studied at least since the thirteenth century (although the law was then Canon Law and Roman Law – the Common Law was not taught until the late eighteenth century), there is a further compulsory first year subject, namely Roman Law (or Civil Law as it is now entitled). There is a (Crown appointed) Regius Professor of Civil Law whose primary field of scholarship is in Roman Law, although the current occupant, Professor David Ibbetson is also a legal historian of considerable distinction. In the modern era, this runs to risk of seeming contrived and quaint, but its defenders, of whom I am one, would point to the fact that many of the legal systems with which the United Kingdom has become inexorably entwined since it joined the Common Market in 1973 (now of course the European Union) have their origins in the Civil Law. It does not make sense to jettison a study of the origins of these systems in a modern era. What is more, and perhaps surprising, is that the students almost universally like the subject once they become immersed in it. Whereas most of the subjects that they study are concerned with the here and now and the future, the study of Roman Law allows them to look at a complete legal system in the round; part of its attraction, I suspect, is that it will contain few difficult developments and surprises such as the courts are capable of springing on them in Criminal law and Public Law, for example.

For the compulsory subjects, the syllabus for each subject was set some years ago in agreement between the Law Schools and the professional bodies. They are very broadly framed and phrased, leaving individual schools and academics considerable leeway as to what is taught, and how it is taught. The standard mode of delivery is through lectures which are then supplemented with small group teaching. The use of the Socratic method is not at all common in the lectures, although the smaller groups do to a certain extent permit a version of it to be used.

Against that background, then, it will be seen that there is scope for considerable disagreement about the broad questions that we have been invited to consider. Very few academics in Cambridge would take the view that they are introducing students to the practice of Law (even though a very high percentage of Cambridge graduates do continue to legal practice), or to think like lawyers. Rather they are teaching them legal methodology, how to think critically about legal questions and to communicate the results of that activity in an intelligible form. Upon those fundamental building blocks, students can build in the directions that best suit their instincts and inclinations. Those wishing to

work in the City of London are likely to be attracted by the commercial subjects while others who have work with non governmental agencies (for example) might be attracted by International Law (of which there is rather a lot in Cambridge) or Legal History or Jurisprudence.

One of the great benefits of this approach to the study of law is that it enables members of the Law Faculty to see themselves as an integrated part of the university community more widely. This is reinforced by the fact that the small group teaching ("supervision" as it is termed) is undertaken in the constituent Colleges to which the students must all belong, rather than through the Law Faculty.

In New Zealand, by contrast, a Law degree is required from one of the six universities. until recently, there were only five such schools, but a sixth, the Auckland University of Technology, began taking students this year. The compulsory subjects are remarkably similar to the English ones; subtract European Law, but add Legal System and Ethics. The latter is a relatively recent development. In addition, the degree must contain a certain prescribed element of non law subjects – in practice, many students undertake conjoint degrees which they can complete in a period lasting for five years. After graduation, a period of thirteen weeks professional study must be undertaken, but by comparison with the English experience, it is rather perfunctory.

None of the Law Schools is much older than a hundred years, and they undoubtedly have their origins as institutions at which men (and they were nearly all men until very recently) were taught to become lawyers. The teachers were nearly all legal practitioners in the local community and the learning was done by part time students either before or after work in legal practice during the day. Students wrote "opinions" rather than essays as their contemporaries in the other disciplines were doing.

In the course of the last 30 years or so, that picture has changed considerably. Now the professoriat is largely stocked with academics who are full time teachers and researchers. The younger members of the profession are generally legally qualified, but may have little or no experience in legal practice. They frequently have post graduate degrees from overseas universities, and increasingly they will hold a doctorate. To generalize (again) the older members of the Faculty tend to see themselves as preparing people to practise Law. Younger members are more inclined to see themselves as inculcating more transferable skills and ideas of the kind mentioned earlier. How to read, understand and deploy all sorts of legal sources – statutes, case law, books and periodical literature with a view to bringing them to bear on legal questions and problems, whether national or international, grappling with the ideas that are thrown up. There is, then, something of a tension between the outlooks of the

more senior members and the more junior. There is also the question of student expectation – many students approach the study of law expecting that they will be taught elements of legal practice, and are puzzled when confronted with the attitudes and approaches of the younger generation.

In a small and distant country such as New Zealand, it is important that students are helped to understand that they are a part of a much bigger entity. Before England became part of the European Union, the natural place to look was to the home of the Common Law, the United Kingdom, although there has been a long tradition of postgraduate study elsewhere, particularly in North America. The internet has, of course, greatly reduced the downsides of this tyranny of distance – young New Zealanders are able to travel and experience the world in ways unimaginable to their forbears. The legal education should equip them to function as participating citizens of the world rather than as part of a narrow, high earning and specialized elite.