Tabula Rasa and other Fairytales

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A child is born. Perhaps a baby abandoned by its parents left outside a police station[1]. A child was once thought to be a "tabula rasa", a blank sheet on which anything could be written. But, is an abandoned baby such a tabula rasa? Would this baby's genes not affect the way in which this baby dealt with its new life, new information, new education? Would not the baby's experience of being abandoned also affect it? Would the care of a hospital make a difference, or foster parents or adoptive parents? And how differently might you view your own child with known genetic history, with controlled nurture and experience? Even a very small baby is not really a blank sheet of paper, or a tabula rasa.

Beyond birth young children pick up vast amounts of information and knowledge in a very short time. A child at eight months who may have been crawling for only a week or two will already react to a "visual cliff" which provide visual clues that the ground drops steeply even though the actual "cliff" is covered with a level perspex ground which means that the child could have continued its progress on the level[2]. Therefore, not only does pristeen nascence not guarantee a "blank sheet" but very small amounts of experience lay down pre-conceptions and assumptions into cognition. It was often argued that a new baby and a young child presented the possibility of complete openness, but contemporary thought suggests that both nature and nurture provide considerable, pre-existing or fast assimilated pathways and layers. Any new information, and any major attempts to change approaches, assumptions or paradigms is much more difficult that previously thought.

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[1] Newspaper article dated XXX re baby "XXX"

[2] Visual cliff reference

Legal education is faced with the need to carry out the most major changes of a half century. It is argued here, and elsewhere[3] that legal practice and the work of law has evolved both fast and far during the last half century in which the subject categories of legal education crystallised and hardened. The approaches and techniques of legal education have also changed with learning in education itself during that period and more recently the bureaucracy in auditing and monitoring education have produced further strains on traditional methods and approaches. This paper briefly takes note of the major issues which, it is argued, force change and considers the great difficulties in undertaking a total change in approach, content, method and paradigms of legal education.

The Forces of Change

(a) The Legal Profession

Most changes have occurred in the world of legal work and of the legal professions.

European Globalisation

All countries of Europe are subject to central changes in law and legal approach which stem from the development of the European Union. England and Wales, Scotland and Northern Ireland in particular are faced in addition with the difficulties of assimilating, or working in, the civil juridical family. These are issues noted for some time, perhaps most graphically by Lord Dennings "Rivers" judgment which vies with Enoch Powell's "Rivers of Blood" for its effect[4]. Subsequently …

In addition to these major changes in the content, approach and levels of operation of law, there has also been the beginnings of a change in the system of legal education set out in the "Bologna - Sorbonne Declaration" of 1999 (?) which began an attempt to standardise the qualification system for legal and other professions throughout Europe. The new "3 + 2" system in which qualifications should be based on three years of university and two years of vocational/practical training, may force modifications on the whole of the education and training of lawyers.

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[3] "Legal education, legal competence and a certain shepherdess" etc.

[4] Denning quote and Enoch Powell speech.

Globalisation

Much printers' ink has been spilled without sufficient clarity yet on what globalisation means and what it might bring. However, it is clear that many law firms are now international in their work, their partnership or grouping and their atmosphere and approach. Regulations increasingly become more global, large corporations become more global and the McDonaldisation of high streets all over the world is well recognised. Much of this is economical colonisation or the simple imperialism of specific legal and other cultures over indigenous cultures. Twining argues that this should be called cosmopolitan rather than global legal study and makes some hard hitting criticism about Micky Mouse comparativism. But there is no doubt that there is some effect which needs to be studied, whatever it is called.

The Internet, IT and the Media

IT prophets such as Susskind[5] and gurus such as Paliwala[6] and (Philip Leith[7]) have all foretold a great new future for legal information, legal information handling and legal work, though there have been some non-believers/agnostics who have been prepared to go into print[8] and most lawyers, law firms and legal educators have either ignored the coming revolution or simply decided to "wait and see". Some legal publishers have clearly accepted the message, so much so that they have tried to maintain the IT costs at a high level in order to maintain print revenues from publishing for as long as possible. But the dam walls are already collapsing and the seepage of legal information based freely on the Internet is already a river engulfing a counter-revolutionary print publisher or two. Computer systems will mediate for you, provide every sort of legal information, handle the beginnings of your case, providing precedents and power even with the biggest legal names behind it[9]. What is in question is not the extent or activity of change but the exact nature of the evolution of legal work under such change. So, there is no question that the method and approach of law will change but will the paradigms, the culture, the nature of law and legal work change in the

[5] Susskind x2

[6] XXX

[7] XXX

[8] Greenebaum in IJLP

[9] See blue flag from Linklaters

same way? Not only does the force of change provide a pressure but the enormous uncertainty of the effects of change provides an even greater pressure.

Deprofessionalisation

In an unpublished paper given initially as an inaugural lecture in 1992 at Liverpool University, this author discussed the "deprofessionalisation of the legal profession" in terms of the growing "industrialisation" of legal work, the growth in the size of firms, the need for specialisation, de-skilling, routinisation and ultimately the disappearance of a number of the major indices of professionalism in the training, organisation and conduct of legal work. This was taken further forward in "Superheroes and Slaves"[10] where typifications of current images of the legal profession were portrayed. These early reports of the demise of the legal profession have not been exaggerated. The intervening history has shown the growth of para-professionals working not only within the context of existing law firms, but now also in separate enterprises, in lawyerless supervision systems, with public funding and producing better quality work than their lawyer counterparts.[11]

Industrialisation

A linked process is industrialisation of law work and legal firms. Both this and de-professionalisation stem from the influences of specialisation which has encouraged a growth in the size of firms, and the forces of legal aid franchising and contracting[12]. Larger organisations have been necessary in order to have sufficient workers to cover the different specialist subject areas. Economy of scale is only reached with larger numbers of cases and the push towards growth in size begins. Quality systems can probably only be operated in larger organisations, and many of the problems of sole practitioner firms were identified in compensation fund claims against solicitors. Negligence claims also seem to abound more in smaller practices than in larger firms. The old model of the skilled artisan and single apprentice was fast disappearing and the likelihood of a single lawyer operating as "the

[10] XXX

[11] Contracting of advice and assistance research report.

[12] See Sherr "Client Care for Lawyers" and "Quality - Legal Agenda" etc.

lawyer" for a client also withdrew[13]. There are therefore new paradigms for the production and organisation and nature of legal work.[13a]

Commodification

Under the pressure of changes in legal work and the burden of growth and regulation it is not surprising that law is seen in a much more instrumental fashion. No longer the province of justice or wisdom, it becomes the medium for commerce or for re-negotiation of social responsibilities and rights. Providing legal assistance involves becoming a purveyor of a commodified product which can be packaged in different ways and differentiated by its packaging, level of accompanying hand holding or other add-ons. The methods of marketing law affect the methods of production and these in turn affect the nature of law itself. Commodification of law may mean that the content and system of legal education may also need to change.

Commercialisation

Separately, but in a symbiotic relationship with many of the factors already mentioned, the proportions of legal subject matter practised by lawyers has changed. An increasing proportion of lawyers are engaged in working in commercial practices dealing largely or solely with commercial law and commercial issues. More than 70% of training contract (articles) in England and Wales are within commercial law firms. The content of the vocational course for solicitors has progressed increasingly towards commercial law subjects, and there is further pressure in this line[14]. The pressure, even at the undergraduate level, to provide third year options in the commercial law area stems not just from employers but also from students wishing to impress prospective employers at the beginning of their third years so that they may be hired for training contracts.

In a 1970s cartoon a judge looks over the top of his spectacles at a prosperous man in the dock. "Bring me 'the law for the rich'", he says to his court clerk. This hideous joke, aimed

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[13] Again see Sherr "Client Care for Lawyers, chapter XXX?

[13a] See Sherr, A "Legal Work, Legal Careers and Legal Education", Educating the Lawyer for 2010. I.J.L.P Issue 3, 2000

[14] Newspaper articles on the big eight.

at a somewhat different context, appears to be achieving its realisation almost thirty years later.

Slow Fusion

Whilst the forces of specialisation, de-skilling and differentiation of product are placing divisions in and among solicitors firms, and separate paralegal para-professions begin to appear on the scene; at the other end of the professional spectrum, economic and regulatory forces appear to have the opposite effect. The English bar and English solicitors are coming together in terms of practice rights and opportunities and moving in what can only be described as a slow state of gradual fusion. The bar's last monopoly of rights of audience in the higher courts fell in 1990 and three sets of changes have already further liberalised the system for granting solicitors equal rights.

On the other side, barristers have the right to deal directly with lay clients, provided they are themselves professionals. Slowly, this narrows the specific area of activity of barristers and which differentiates them from solicitors.

The Bar is resilient and is still attractive to a particular type of person, but the costs of entry are considerable and the few salaried or scholarship positions that are available make it a preserve of an educational or class based elite, even into the 21st Century. Yet the work of the bar at an appellate level is often the concentration of undergraduate legal courses and legal analysis. The programme of the realist legal philosophers has achieved the recognition within law schools that social and policy context are important in understanding law, but has not broken the hegemony of black letter law analysis as the supreme, and largest area of study.

(b) The Legal Academy

Though movement has taken place in legal practice in terms of the development of law itself, and law jobs, there have also been major developments in academic life.

Benchmarking

In 1993 the number of universities was expanded by including institutions which had previously been called polytechnics. Subsequently, but not necessarily as a result, questions

about the standard and quality of degrees in all disciplinary areas were raised. The Higher Education Funding Council for England embarked on a scheme of Teaching Quality Assessment which graded university departments in terms of teaching, following on the system of grading in research. In 1999 a new Quality Assurance Agency for Higher Education was set up quasi independently from HEFCE in order to assure the quality of teaching in higher education institutions. In order to provide a standardising system for such assessment, the "benchmarking" of expected standards of performance in each discipline was begun. Law was among the first three subject areas, together with chemistry and history.

Benchmarking of degree standards is not necessarily a negative venture. The process of constructing and agreeing a set of benchmarks, if organised to involve a wide range of academic opinion, could be very useful. It could be an occasion for re-developing the concept of a law degree, for querying whether it is a "liberal arts degree" or merely a vocational programme, or a mix of both and it could also be a major opportunity for progressive development. However, faced with the need to produce a fully articulated, acceptable concept written in the appropriate jargon legal academic representatives turned to the product of one mind for both approach and detail. It was fortunate that it was a good mind. But the result was that only one mind had gone through the beneficial process of re-assessing and re-evaluating the legal education curriculum from a totally new perspective. It was convenient to accept a framework already wrought in a slightly different context. So, like good teachers, we used someone else's notes and like good lawyers we copied an existing precedent. The product undoubtedly is excellent, and may not have been bettered with more cooks; but the process was also important and was sadly missed by the multitude.

Benchmarking will certainly have the effect of bringing up the standard of the lowest performers, or at least labelling how low they are. It might also provide poor performers with some guidance on how to improve. But standardisation will decrease the range of imaginative response.

It will be a year or two before the full implications and effects of benchmarking comes through the system and some further time before they can be properly assessed. First benchmarking will be applied to all undergraduate law programmes and each unit of assessment will be considered against the benchmarking standards. Once these are applied, the undergraduate law programmes will re-think or sustain their approach to both legal

education generally and benchmarking as a result of their assessments and any political feedback or backlash which occurs; and any further subsequent changes to the system. Only then will the effects begin to become clear. But, whatever those effects will be, this is clearly a crucial period for change in legal education. It needs both the leadership which Professor Bell was able to provide in the benchmark formation episode and the wider discussion process and controversy which is necessary to consider all the issues and the long term effects.

Large Classes

The growth of numbers in higher education is evidence of a widening and democratisation of the system. Such growth has occurred across the higher education sector (???) as well as in law. This expansion meant that law schools (used as a synonym for law departments, law faculties and law schools) expanded from an average of XXX students intake per year in 1985? to XXX students intake per year in 2000. The teaching staff, however, did not expand at the same rate. Classes grew in size, tutorials became larger, seminar groups became larger and, in some places the numbers or frequency of such small group teaching events decreased. A consequent pressure on any 'one-to-one' teaching or review activity changed the nature of the teaching and learning enterprise. The focus moved from “teaching” to “learning” in order to accommodate the growth in student numbers.

Responsibility for their education always rested to some extent on individual students themselves. However, the possibility of individual contact, comments and encouragement greatly reduced. The new technology provides some answers. Videos of great lectures and lecturers will obviously be a benefit if easy to view and review. Well organised and presented course materials on web sites seem somehow more exciting than the flat page of black and white, though they may not necessarily be any different in content. Email does provide an effective banking of numerous students requests and questions, which can then be answered at the teacher’s best time, and possibly combine the answers to many queries in one response. But the ease of that medium does not quite lend itself to the natural hesitation which English students normally show in face to face contact and the large number of emails is sometimes impossible to answer.

An Australian law professor who had taught at Warwick School of Law and returned there in the mid 1980s described the distinction between Warwick as a “cottage industry” and

University of New South Wales as a large factory, even in those days. Out of class educational, and even social, contact between students and staff were an important, perhaps essential, element of the educational culture and routine. It fostered enquiring minds beyond the boundaries of the mere discipline. It introduced students to the real world of academe, which existed outside the lecture theatre or classroom. Education was about theory, about argument and about understanding. It was far less about exams, qualifications and stepping stones. Whether the larger classes are a manifestation of change or a promoter of change, cause or effect, is not clear. But they are definitely part of a massively changed higher educational environment.

Underfunding

The unit of resource in universities, the price for each student in a university in England and Wales is determined on the basis of the subject of study. Law, is an inexpensive subject of study whose unit of resource is low. Lawyers do not appear to need laboratories, small group teaching or other expensive facilities. Professor Deborah Rhode refers to them as "cash cows"[15]. Larger classes have meant that staff have been more over stretched in time and more time has needed to be spent on teaching and contact with students. Heterogeneity and diversity make for a much more interesting student group, but they also stretch the teaching resource to its limits. Only small proportions of funds are available to cover the extra work and much of these goes through the central university rather than individual departments. "Underfunding" is a relative term and so it shows a gradual but continuous decrease in funding. Otherwise it would be a phenomenon noted only for one year at a time.

Deborah Rhode also notes that higher education is one place where consumers, students, are quite happy to buy less – they would be pleased to receive a qualification even though it might have been earned with less work or lower grades. The pressures towards a lessening in the quality of education and even of the law degree are great. Government funds it less, the pressure on law teachers with larger classes to teach is more and even the immediate consumer, the student, is happier to get less. It would therefore not be surprising if the standards of education in general and legal education in particular were dropping. Hence, some would say, it was correct for government to impose the Quality Assurance Agency for higher education and benchmarking.

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[15] XXX

It is not quite clear what the original thickness was that the first measures of under-funding and growth in class numbers was meant to cure. Dealing with the side effects of those measures with further therapy, will not necessarily produce a healthy body. In fact, the body may spend more time trying to deal with the different medicines fighting over it, than with fulfilling its main function, in this case education. If the money spent on the QAA had been spent on education itself the under-funding would have been less. For the present time the under-funding creates a very different environment within which legal education will have to exist.

Student Orientation

A marked difference in the educational aspirations and orientations of law students has also occurred over the same period. The students of the 1960s, some of whom are now teaching law, aspired much more to education as a process and end in itself. Jobs were fairly easy to come by and graduation, qualification and employment leading to partnership all seemed to be inevitable. There was therefore little reason not to "lie back and enjoy it". Students came from a more homogenous social class base and background, which they shared with their educators. Social contact was easier and more acceptable. The values of those students are often still the values of the current educators who were either themselves students at that time or encouraged, promoted or selected people like themselves for subsequent posts on the teaching staff.

Law students of the year 2000 come from a somewhat wider class base, have a fairly equal gender mix and are faced with student loans rather than grants. They need jobs to pay off their loans, yet jobs are not so easy to come by. A smaller proportion of law students goes into the legal professions and it can be some time before they obtain jobs. Even when they do, work as an assistant solicitor is quite demanding and the prospect of partnership is nowhere near as certain as it was. Life is more complex and more stressful. There is considerable competition for, and in, jobs. Students are well aware of this new world and it is bound to affect their approach towards learning, their desire to be "educated", their need for qualifications and their interest in outcome rather than process. This can produced a heavy mismatch between teachers and taught. Student assessment of teachers has been an important measure of teaching quality. Yet, if teachers simply give students what they want, in order to

gain commendation of this nature, the whole system can be undermined. All this is yet another reason to reconsider both method and content of legal education.

Curriculum divorced from the reality of law

If the bulk of new entrants for the legal profession are to enter highly specialised areas of corporate law should we not be educating them for this reality rather than pretending it does not exist. The great proportion of trainees go to commercial law firms. Those commercial law firms practice in particular areas and therefore those trainees will qualify into those areas of activity. If that is what they need to know, then why hide it from them? Surely it is possible to teach the same basic principles, the same complex concepts through the context of a merger or take-over, as it might have been in the past in the context of a residential conveyance. Or should we rather be using every minute of educational time to provide a breadth and depth in legal subject categories which will not be revisited immediately in practice, so that our practitioners of the future are aware of problems linking into, or affected by, their work areas? Are these new subject areas fit for academic enquiry? Was conveyancing subjected to that form of enquiry.

Employer criticism

At the "Millennium and the LPC" Conference in June 2000 there was stern criticism of the Legal Practice Course and the way in which that vocational programme prepared students for their training contracts. Such criticism emanated from their employers in the "big eight" firms who had been planning to set up their own new Legal Practice Course at some chosen institutions. This plan has now been realised and more than previously takes forward the movement of vocational legal education into the province of commercial law and the law practised by the largest firms. However, they did not lead the attack there. Melissa Hardee, the Chair of the Legal Education and Training Group, a group made up largely of commercial firms who send their directors of training or partners in charge of training to represent their interests at the Group, said she thought the real problem in undergraduate legal education and not at the LPC stage. This attack has been maintained through other voices, including Nigel Savage, the Principal of the College of Law, so much under attack for its Legal Practice Course. Undergraduate legal education may be a useful whipping boy at a conference called to look at the vocational stage, but is it actually providing what the employers want? If they could have it, some employers would rather that undergraduate legal education provided their prospective employees with something closer to the areas of work they now cover. Others

feel quite differently. They prefer a wider spread of legal information at the undergraduate stage, but just want to make sure that perspective employees "understand the basics" and are good at handling legal concepts. Whatever their view, all are quite definite that they want a strong undergraduate legal education programme.

Perhaps more important than the views expressed by individuals, such views are now being heard inside the Law Society's Training Committee, where some of the same personalities are also to be found. The Law Society and the Bar together designate degrees as being "qualifying law degrees" and do visit undergraduate law programmes in order to see whether these are being carried out properly, and as promised. Together the Law Society and the Bar set the perimeters of what is considered to be a qualifying law degree. They could have a significant effect on the way legal education progresses.

However, if employers in the large commercial firms feel their law graduates are not up to standard in terms of the law they know and can handle, it is surprising that they take on so many non-law graduates (approximately one third of all trainees). Non law graduates will have had the CPE course or equivalent which can only last one year. They will, in addition, have had a broader university curriculum which may well equip them with all the skills necessary. However, it is unlikely to equip them with legal information. It is therefore not absolutely clear what is considered to be "wrong" with undergraduate legal education. It may well be that the forces of overcrowding and underfunding already noted have taken their toll. Or it could simply be that the nostalgic views of historical legal education seem to have been better than it actually was. Right or wrong, all of these views have a significant effect on how legal education will proceed in the future. It may be necessary to wrest control from others and take legal education under the control of those who provide it and make definite decisions, showing leadership and understanding to guide us through the morass of these forces of change.

Millennial aspiration

Nobody seems quite sure whether 2000 was the "fin de siècle" or its beginning. By 2001 there is no excuse. We have to make a new beginning. That needs to start now. The forces of change which emanate from the new work, organisation and practice of law and also from within the world of higher education demand that legal education does not simply stand still,

or just react to being buffeted by the winds of change. Strong leadership, wide consultation, and the ability to break away from history, tradition and fossilisation are all essential.

The techniques of change

What do we need to know about change in order to effect the massive revolution which is necessary? Kuhn in his classic work on *The Structure of Scientific Revolution*[16] discusses how change occurs in science. He shows how a particular orthodoxy becomes more and more entrenched with the results of experimentation and then suddenly a new view begins to take shape. Problem solving and puzzle solving are important elements in what he describes. Trying to understand what it is that is wrong is the very first step in reconstructing scientific theory. The anomaly is especially important in this process. When something does not fit, as an exception to a rule, it may be beginning to show that the rule itself is not correct. As areas of scientific experimentation develop a crisis becomes apparent in the theory. This moves towards a re-conception and a revolution in the scientific theory. Because of the way in which people think and conform to certain orthodoxies – different views become almost invisible. But at some point the necessity of changing understanding becomes all consuming and progress takes place. According to Kuhn, myth and knowledge are the same thing. Except that yesterday's knowledge is "myth".

Catastrophe theory which began within mathematics suggests also some helpful understandings of how change must occur. Catastrophe theory is similar to the effect of the swing of the pendulum. The further over towards one side the pendulum swings the more likely it is to hit the spot at which it starts to swing in the other direction. The further one presses a particular theory, conception or paradigm the more likely it is that problems will be found in it, perhaps due to passage of time only, and therefore make change inevitable.

But Kuhn's work and catastrophe theory tend to be more descriptive than prescriptive. They show, from an historical point of view, how things happen – but not necessarily how to make them happen. Therefore if one wishes to learn from either of these about how to progress change, it is more important to note the ingredients of those indicators of change and to see whether they can be worked through, harnessed or in some other way be used in aid of a

[16] Kuhn, G.S. *The Structure of Scientific Revolution*

more holistic process. But, what both these approaches tell us is that revolutionary change, movement in a totally different direction, is not only possible but likely.

Among other more recent models of change are those which refer to "paradigmatic change" such as . These are writings, often within the business management discipline, and sometimes with psychotherapeutic overtones. Interestingly, they also relate to the work of Kuhn whose acknowledgement of paradigmatic change may well have been the source of much of the inspiration for their teachings. Often, these approaches are designed to assist managers in organising, presenting and pushing through changes against traditional approaches of the workforce. Change, in this context, may often be set by financial or economic need and may well have been decided, or forced, by people other than those who operationalise such changes. We are not quite at that point in legal education. We have not yet developed a set of theories that will allow us to consider the changes that are essential, let alone put them into practice. However, it is necessary to think ahead to the operational stage at the same time as redevelop the principles of change.

Ink blots have been a source of exemplary material for seeing quite different things in what is really simply a folded ink blot on a page. The famous young lady old lady picture which allows the viewer to see one or the other paradigm at once, but does not seem to allow for both to appear at the same time in the one picture. Our other examples of a mind shift necessary to open up perception.

Mind set and expectation also have a clear effect. At a recent conference of the CICERO project held in London, considering "The European Lawyer – Phantom or Reality?", a German law professor commented, "Students nowadays know nothing", the reposte was fast – "Students nowadays know everything. They can wipe their bottoms and use the Internet – what else is there to know?" With such different expectations of knowledge across Europe, we need to begin the process of discussing with some clarity what students need to know.

What do students need to know?

This can be sub-divided into a number of other questions: what do students need?; what do people need?; what do lawyers need?; and what does Society need?

Students may be viewed as half-formed professional lawyers, or as partly formed liberal arts graduands or as individual pieces for a gigantic social jigsaw. Often law students are viewed by universities as fairly inexpensive educational fodder. Their unit price (the amount which universities are paid per student) is not high in many countries but their unit cost is always very low compared with scientists, medics and others. They are also fairly high status as compared with other students. What "**students**" need depends on which categoristaion, such as those above, "students" are placed in. The answer to these questions are neither clear nor generally accepted across the educational sector, let alone within the legal professions. For example, many legal professionals complain that their hirees know no law, yet they hire students who have graduated with non law degrees and have simply taken the conversion CPD course. A non law graduate may well have a wider horizon, a different set of values and an extra intellectual discipline. Some employers prefer this, while others want highly trained legal technicians. It is not simply necessary to cope with these two opposing views, but actually important to be able to produce the different products they seek.

But students are also incipient people. What might a graduated person need? The tendency has been to see them as "TSRs" - transferable skills receptacles, awaiting a set of helpful interpersonal skills which will make them capable of doing any other job as well as a law job. This particular conception is forced into prominence through political circumstances in the United Kingdom. More law graduates and qualifiers through the Solicitors Vocational Legal Practice Course, LPC, came through the system in the early 1990s than the training places that were made available to them in law firms or other organisations. Although the gap narrowed considerably towards the Millennium, their still remains a large number of law students who would have wished to qualify or take other law jobs but for whom these are not available. Some have been employed as "paralegals" for far less money than they would have obtained as trainee solicitors or qualified solicitors. The system therefore produced a reservoir of cheaper labour at a time of greater industrialisation within the profession. This approach may not be fair to those students whose results are not that different from their colleagues in the next door office, who have been fortunate enough to become trainee solicitors – and who may be doing quite similar work, but with full qualifications at the end.

The need to provide something different within undergraduate legal education than simply the grounding for a professional qualification makes the force of the transferable skills receptacle concept even stronger.

It has been possible so far to maintain these two different positions at the same time within undergraduate legal education – that the LLB is principally for educating legal practitioners and that it is also a good degree to be taken for people who wish to have transferable skills to go into other lines of occupation. However, it is possible that the watering down of the "practitioner" elements in order to provide the TSR mode, could be undermining the strength of the professional training.

When asking what lawyers need to know from a legal education some of the same questions above return and also some new questions. By "lawyers" do we mean solicitors, barristers, judges, paraprofessionals, let alone any specialisations within each of those possible areas of practice? It could well be that an undergraduate legal education could begin to specialise sufficiently to the work of a commercial solicitor, and probably already does. Any further specialisation at the undergraduate level would materially weaken the breadth of the law degree. But could some issues be looked at more in a particular context than others? Could all of contract in the first year be looking at commercial rather than consumer contract? Could all of crime in the first or second years be looking at blue collar fraud. Could all of property be looking at commercial leasing development and sale? Could all of civil procedure look at multi track rather than fast track? etc. Are the fossilised categories of law still applicable and appropriate for a fast changing environment? Could the subject categories begin to change?[17]

After considering what students might need from legal education, what transferable skills receptacles might need, what lawyers might need, it is essential to consider what society might need out of legal education. Much of the above will be important, but additional issues suddenly come into play. Society needs a multicultural set of law students and lawyers passing their way through legal education towards qualification, reflecting the makeup of society itself and enabling the reproduction of equality and fairness in its own numbers, and the role modelling for future students from different backgrounds and ethnic minority communities.

Additionally Society wants lawyers who are going to serve Society and not merely the interests of the lawyers themselves. This simple statement of the Dirk?hymian approach to

[17] Sherr, A. (2000), *Professional work, professional careers and legal education: educating the lawyer for 2010*, International Journal of the Legal Profession, Volume 7, Number 3, November 2000.

understanding professions asks an increasingly difficult feed ground for ensuring such an outcome. The context of legal practice today shows a major division between the large commercial and corporate work law firms who serve the interests of business and the law firms in the high street, and the centres of regional towns, who are involved in personal plight lawyering for individuals. The high street lawyers used to balance fees from conveyancing and probate against the income from legal aid. Even within the high street sector, there are now clear specialisations. Firms who work on legal aid are contracted to the Legal Services Commission to do so on the basis of set amounts of money and agreed numbers of cases in subject specific areas of activity. Legal aid work has become a business and is monitored to be sure that it is running on a business footing. The altruism that might have been behind service for legal aid work has been undermined by the new bureaucracy. In turn, the new bureaucracy has provided some assurance of competence and quality and this is in increasing. But the needs of society are served through the decisions of government, how to allocate funds into the legal aid system. Regional committees and partnerships agree local priorities, but funding from above may not be sufficient to supply the necessary work. In these circumstances, it is more difficult to engender, train, awaken or realise a true understanding for the real "needs of society" at the stage of legal education. A general desire to "help others" used to be a precondition to beginning the study of law. An understanding of how this might be achieved could be helped by legal education. Organising training for the new environment in which this might be achieved will be a very different process for the legal profession and its legal education of the future.

Even in Felstiner's terms of "procedural justice" as between lawyers and clients, that is "being nice" to clients,[18] ……will need to be educated in the context of professional legal services of today. Otherwise it will not be useful once today's law students move into practice.

In considering what "society" may need, levels of uncertainty also arise. If society means "polity", then Government would often wish for lawyers to handle cases quickly, efficiently and equably as between different clients. It might need the lawyers sometimes to sacrifice the needs of individual clients for the needs of "society" or the whole system. This might mean,

[18] *Synthezing Research on Lawyer-Client Relations*, Plenary by Professor WLF Felstiner at the W.G. Hart Workshop, June 2001, Institute of Advanced Legal Studies.

for example, in criminal cases pleading clients guilty early.[19] This might then mean that some people who plead guilty early, but whose cases might have been dropped at later stages, will be convicted. Some of these might be people who are "innocent" or would be found innocent if the system were allowed to play out properly.

Similarly, society's needs might clash considerably in other ways with the professional rules of conduct which place individual clients above the needs of potential client groups.

In considering what students need to know as a part of their legal education we need to think of students who are involved in legal education in order to qualify as lawyers as well as those students who will not be able so to qualify. In terms of those who will be practising lawyers in some form or other we have to consider both the current and likely future "work of law"[20] and the legal profession. But it is not just the needs of lawyers from legal education which we must take into account, but also what society needs of those lawyers. Discovering and understanding each of these approaches will not be an easy task, nor will the refocusing of legal education in order to represent such approaches but it is essential that the task be undertaken in order to produce a system of legal education fitted for the present and future and not for the past.

Reprise

In order to develop and explanation of this process, in short in this article, the author prays in aid a number of existing publications in which different elements of these issues and ideas have begun to be developed. In a paper delivered at the Law Faculty of the University of Genoa in 1995 the major of elements of English legal education were portrayed for a mainland European audience.[21] In particular, a distinction was made between the two approaches to legal education: formal education as part of a taught course and experience through apprenticeship systems. Legal education in England and Wales involves a mixture of both approaches and in some ways misses the advantages of each. Formal legal education

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[19] *The Public Defence Solicitors' Office in Edinburgh: an Independent Evaluation*, Sherr, A.H. with Goriely, T., McCrone, P., Duff, P., Knapp, M., Henry, A., Tata, C., Lancaster, B. (2001), Scottish Executive Central Research Unit (2001) (Stationary Office: Edinburgh),

[20] *Legal Education, Legal Competence and Little Bo-Beep*, Vol. 32, The Law Teacher, pp 37-63.

cannot be as theoretical or conceptual as intended because of the bulk of legal knowledge which seems to have to be imparted. Apprenticeship systems have been regularised and regulated in order to ensure a more standard experience of the fire, enthusiasm and wisdom transmitted from journeyman to apprentice in a different period.

But change in the legal profession is noted in *Of Superheroes and Slaves*[22] in which new images of the legal professional are constructed and showing how classic styles and systems of legal practice have changed considerably, so that education for this vastly different profession may need also to change.

This in turn depended upon *The De-professionalisation of the Legal Profession* an unpublished inaugural lecture at Liverpool University in 1993.[23] Such changes need to be re-evaluated in the context of changes in higher education more generally, in the nature of the University[24] and the needs of law faculties.

In *Legal Competence and Little Bo-Peep*[25] an enquiry was instigated as to where legal education needed to look for its guidance in terms of the future. Four possible places were given for law faculties to look for their "flocks" of future legal education direction. The university system, its structures, bureaucracies and interdisciplinary possibilities was the first considered. Should law schools be more like the other university departments? Next, the discipline of education itself which has now spawned much literature on systems for mass education, experiential education and information technology approaches at higher education level. Law schools might them look further within themselves in an introspection limited to both background and history. They might dig themselves further into fossilised subject categories, traditional modes of teaching and a lack of openness to the world outside. Lastly, they might look to the "work of the law" in order to see how the legal profession, the judicial

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[21] *The English Model of Legal Education* - paper presented to International Conference on Legal Education in Europe organised by the Law Faculty at the University of Genoa, Italy l995.

[22] *Of Superheroes and Slaves: Images of the Legal Profession*. Current Legal Problems, Oxford University Press, 1995

[23] *Law's Industrial Revolution: The Deprofessionalisation of the Legal Profession*. Inaugural Professorial Lecture, The Moot Room, Liverpool Law Faculty, May 1993.

[24] Ron Barnet……

[25] *Legal Education, Legal Competence and Little Bo-Beep*, Vol. 32, The Law Teacher, pp 37-63.

system, legal services and the entire legal system works in order to provide guidance for what to teach in the future. The enquiry suggests that all the three outward looking positions are useful approaches for deciding the future of legal education and that legal education need not be a "little Bo-peep" among the other faculties of the university……..