The Liberal, the Vocational and Legal Education: A Legal History Review–from Blackstone to a Law Degree (1972).

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Abstract

The recent debate concerning changes in the examination for entry to the solicitors' profession have seen the law schools present themselves as being in a vulnerable position- victims of a controlling and regulatory legal profession. The debate has also revived concern about the dichotomy between teaching law as a liberal arts subject and teaching law as vocational training. This legal history review provides a snapshot of the discourses concerning academic legal education, what was perceived as desirable and whether this was achieved in practice. This review teaches us that academia has had greater power and control over the nature and role of legal education than it ever really wanted.

Introduction

The recent introduction by the Solicitor Regulation Authority (SRA) of the Solicitors' Qualifying Examination (SQE) as the new route to qualification has raised several concerns. The debate around the SQE is best summarised by the accusation that it will SQEeze[1] the soul out of legal education. Academic discontent appears to have opened up an old debate emphasising the dichotomy between the law as a vocation and the study of law as a liberal art.[2] Notwithstanding different interpretations of what constitutes a liberal education,[3] it seems that the general consensus is that the greater focus on preparation for the SQE will render the academic study of the law so narrow that it will lose its complex relation to morality and politics, thus not allowing students to develop independent thinking.[4] This however, may already be the case, and some may suggest that the law degree is arguably liberal. For example, Supreme Court Justice Lord Sumption considered in 2012 that 'the problem is that we have a generation of lawyers who are coming into the profession with much less in the way of general culture than their predecessors'. Similarly, Professor Celia Wells has argued that 'students at UK law schools will, by the end of their first year, have assimilated into a way of thinking about law which is rule-bound and rational, partial and positivistic'.[5]

The following is a legal history review of the relationship between academia and the profession in the context of legal education and training from the time of Blackstone's 1758 *Commentaries* to just after the 1971 Ormrod report when, in 1972, a law degree became the main gateway to a legal career. The review ends in the 1970s because of the need to examine a period during which academic teaching was under no obligation to subscribe to a professionally prescribed mode of teaching. The twenty-first century's narratives, which beg for the return or strengthening of a legal liberal education, are problematic. Historical records indicate that the idea of liberal legal education was endorsed by many lecturers; in practice though, a narrow course of study was a far easier option, not least because competing against

[1] See for example writing by Luke Mason, 'SQEezing the jurisprudence out of the SRA's super exam: the SQE's Bleak Legal Realism and the rejection of Law's multimodal truth' (2018) 52 The Law Teacher 409; Jessica Guth and Kathryn Dutton, 'SQE-ezed out: SRA, status and stasis' (2018) 52 The Law Teacher 425.
[2] See for example, Graham Ferris, 'The Solicitors Qualification Examination: something for all? Some challenges facing law schools in England and Wales' (2018) 52 The Law Teacher 519; Doug Morrison, 'The SQE and creativity: a race to the bottom?' (2018) 52 The Law Teacher 467; Luke Mason and Jessica Guth, 'Re-claiming our discipline' (2018) 52 The Law Teacher, 379; Dawn Jones, 'Legal skills and the SQE: confronting the challenge head on' (2019) 53 The Law Teacher 35.
[3] See a discussion in Clara Haberberger, 'A return to understanding: Making liberal education valuable again' (2018) 40 Educational Philosophy and Theory 1052.
[4] Ferris (n 2) 519, 523; Guth and Dutton (n 1) 437.
[5] Cited in Susanna Menis, 'Non-traditional students and critical pedagogy: transformative practice and the teaching of criminal law' (2017) 22 Teaching in Higher Education 193, 194, 200.

the Law Society's Law School and the Inns' training, universities needed to keep enrolment records high. The review also reveals a feature that may be unique to the legal profession; sometimes, liberal academic education may not have been the issue of contention, but rather, it was whether the future lawyer needed to study law at all. Given the recent redundancy of the Qualifying Law Degree (QLD), this issue may be of interest.

The aim of this historical review is to investigate the long-lasting tension between academia and the profession; this is to help us make sense of and put into context the current academic discontent following the changes brought about by the profession. This small review concludes that there is nothing new in the current debate, and it seems as if history is repeating itself. It is submitted that this gives us an opportunity to take stock and rethink our relationship with the profession and the nature and role of academic legal education. The review draws on a range of primary sources such as contemporary commentators, official reports, surveys, committees' witness evidence, Hansards and the rich content of the meetings' minutes of the Society of Public Teachers of Law (STPL). The review also draws on secondary sources on university education. This is not an institutional history[6] but neither does it claim to fulfil Sugarman's desire[7] for what is termed as external legal history;[8] this is impossible to attain in such a small wordcount and examining a period of over two centuries. This legal history provides a snapshot of the discourses concerning academic legal education, what was perceived as desirable and whether this was achieved in practice. This review teaches us that academia had greater power and control over the nature and role of legal education than it ever really wanted; yet it ended up subscribing to what may be perceived as- the whims of the profession.

The study of law and the nature of university

This historical review of the study of law must begin with Blackstone's views on legal education. With his 1762 *Commentaries on the Laws of England* students and practitioners could finally rely upon one consolidating text. Its aim was not only to provide a historical context for the various law doctrines that Blackstone then examined in his four volumes; but also, the *Commentaries* functioned as an instructive text as to best practice in legal education.

[6] See for example Sally Gregory Kohlstedt, 'Institutional History' (1985) 1 Historical Writing on American Science 17.
[7] David Sugerman, 'Is the reform of legal education hopeless? Or, seeing the hole instead of the doughnut' (1985) 48 The Modern Law Review 728, 735.
[8] See Kunal M. Parker, 'Writing Legal History Then and Now: A Brief Reflection' (2015) 56 American Journal of Legal History 168.

The tension between liberal and professional education can be recognised in Blackstone's first chapter specifically titled 'On the Study of the Law', reflecting the Vinerian lecture he gave at Oxford University in 1758.[9] Blackstone did not hide his feelings concerning the quality of knowledge acquired, not only by current trainees of law, but also by qualified practitioners. Future lawyers developed their skills and legal knowledge by practicing in the chambers of the Inns of Court and the Chancery Inns, and only a few attended the non-compulsory lectures delivered at Oxford, Cambridge, and from the mid-nineteenth century, also University College London (UCL).[10] For Blackstone, attending the university lectures meant that future lawyers would learn 'the laws and constitution of our own country'- 'a species of knowledge', in which Blackstone thought, 'the gentlemen of England have been more remarkably deficient than those of all Europe besides'.[11] Remarkably, Blackstone saw in what he termed 'liberal education' the 'guardian of his [the lawyer's] rights and the rule of his civil conduct'.[12] According to Blackstone the purpose of legal education was twofold. The first was to instruct on the 'laws of that society', that is, what we call today 'wider reading' which, for Blackstone, went beyond the mere reading of law texts. The second purpose of education should be the strengthening of professional knowledge in the practice and understanding of the law.[13]

Blackstone was not introducing academic legal education as a new mode of studying law; accordingly, he explained that:

> In most of the nations on the continent […] no gentleman, or at least no scholar, thinks his education is completed, till he has attended a course or two of lectures […] under the very eminent professors that abound in their universities.[14]

However, Blackstone's motion can be seen as a starting point for a debate that intellectuals will grapple with in a few years' time, that is, the question of the nature and the use of university. Generally, the university was perceived as a public institution. However, intellectuals such as Samuel Taylor Coleridge, for example, found it difficult to go along with the current

[9] William Blackstone, *Commentaries on the laws of England* (Clarendon Press 1768) 3.
[10] Bob Hepple, 'The Renewal of the Liberal Degree' (1996) 55 Cambridge Law Journal 470, 472; a brief discussion on the Chancery Inns (for the training of solicitors) in Patricia Leighton, 'The LLB as a liberal degree? A re-assessment from an historical perspective' (2015) 22 International Journal of the Legal Profession 87, 90 and note 15.
[11] Blackstone (n 6) 4.
[12] Ibid.
[13] Hepple (n 7) 472.
[14] Blackstone (n 6) 4.

revolutionary ideas for change, where institutions were seen as sites of resistance.[15] Indeed, Bentham's followers were far more radical, proposing that the 'test of any institution's worth was whether it served the general interest or satisfied public opinion'.[16] Rothblatt explains that this was a time of tension between the expression of the need for change (and the French revolution expressed that) and the need to maintain stability and continuity; the latter preferred to ask the question 'what is the meaning of it?' rather than, typical of Benthamite practice, 'what is the use of it?'.[17] Unsurprisingly perhaps, it was the more subtle approach of people like Coleridge that helped to install, during this period, the notion of university as an institution possessing 'a special responsibility and trust beyond the moment'.[18] This notion of the nature of university would later constitute the core of the discourse regarding 'university liberal education' as developed by John Henry Newman in mid-1850s.

Interestingly, the fact that these views reflected, what Ryan calls anxiety over the desire to maintain a high standard of education, and thus the social prestige of a learned class-[19] did not seem to convince those resisting academic legal education. Indeed, Blackstone's proposition for change, even within this narrow understanding of the university as a 'public' institution, was not shared by all. Some thought that 'the best advocates at the English Bar, were not lawyers', and that in fact, 'they were very ignorant of the Law'.[20] This comment was not made pejoratively; rather, it was meant to emphasise the importance of the role of advocacy that lawyers were expected to cover. Law students, whether attending university or training in the Inns of Court or the Chancery Inns, were literally ignorant of the English law; at Cambridge and Oxford the teaching concerned solely Roman law. The tension between liberal education and professional training appeared to resonate very strongly here; yet, in the wider social context of the mid-nineteenth century, those snubbing liberal education supported their view with the fact that the legal practitioner was a gentleman, and as such he was expected to have a rounded 'understanding of life'; thus there was no need to entrust universities with the task of liberal education. The profession was perceived as wide, and for Sir George Stephen the 'law forms about the least part of the duty of a solicitor in a large

[15] Alan Ryan, *J.M. Mill* (1st ed 1974, Routledge 2016) 53-65.
[16] Shelson Rothblatt, *The Modern University and its Discontents: The Fate of Newman's Legacies in Britain and America* (Cambridge University Press 2006) 4-6.
[17] Rothblatt (ibid) 11.
[18] Rothblatt (ibid) 12
[19] Ryan (n 12) 36.
[20] Wesley W Pue, 'Educating the Total Jurist' (2006) 8 Legal Ethics 208, 209.

practice'.[21] Being a supporter of the professional education approach, Sir George Stephen thought that:

> […] we are brought into this confidential and habitual intercourse with men of every class in society […] I think it is most important that the profession should be so educated as to be qualified for carrying on that intercourse as gentlemen themselves; but I apprehend that that qualification cannot be attained except by educating them as gentlemen […].[22]

The above consideration is significant once placed within the context of the importance of the 'gentleman' and 'being a gentleman' in the mid-nineteenth century. Jeffreson explains that the Inns of Court were 'designed' to attract 'well-descended boys' and the 'heirs to good estates'; some 'were encouraged to devote themselves to the study of law', but the others were 'trained […] to shine in the places of kings'.[23] Students arriving at the Inns from Oxford and Cambridge universities 'were drawn from the plebeian ranks of society'; whilst the majority were the sons of wealthy men and 'had usually sprung from gentle families'.[24]

The paradigm of a liberal (legal) education

The controversy concerning academic legal education also extended to the question of whether the teaching of law should include English law; indeed, some Cambridge lecturers' attempts to introduce it were met with poor attendances in 1846. However, the same cannot be said for UCL, where up to 150 students attended lectures in Equity, Common law and Criminal law.[25] These were not only teachings in English law; the illustration of theory by reference to practice was for the Select Committee on Legal Education in 1846, according to Hepple, the 'paradigm of a liberal legal education'.[26] However, the comparison often made between academic education and professional training teased out the dissatisfaction with the latter. In a debate in the House of Commons, reference was made to universities in Germany, where it was considered that the School of Law was a 'true judicial seminary':

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[21] Cited in Pue (ibid) 210.
[22] Ibid.
[23] Cordy Jeffreson, *A Book about Lawyers* (Hurt and Blackett 1867) 132-3, 135.
[24] Ibid 132; 'gentleman' attending university studies for mere intellectual purposes was still evident in the 1840s (Select Committee on Legal Education, House of Commons, 1846, 96 <https://archive.org/stream/op1246300-1001#mode/1up> accessed 29 June 2019)
[25] Hepple (n 7) 473.
[26] Ibid.

> The early classes embraced the study of the ancient and modern languages, history, geography, mathematics, the physical sciences, natural history. In the fourth class the study of philosophy and history is commenced. In the third, they enter upon a course of Roman law, administrative law, civil law, the history of law, and an extensive course of political economy. The courses of religious instruction and the fine arts are frequented by all the classes in the school. In the last class, the pupils receive instruction in feudal jurisdictions, in procedure, in legal medicine, financial law, provincial law, law of police, of administration, and international law. They are then fit to enter upon their functions.[27]

In the same debate, reference was made to an inquiry published in 1830.[28] In that report, the Committee advised that 'it is necessary to provide a regular course of instruction, so that Law may be studied as a liberal and enlightened science'; because otherwise, the Committee suggested that:

> Students are gradually accustomed to entering on practice at the Bar without any acquaintance with the general principles of Jurisprudence, and with limited and contracted views of the subject of their profession.

And that:

> The country is deeply interested in the character, the independence and influence of the Advocates to whom the defence of their property and liberties may be entrusted; and it will be in vain to hope that the independence and character of the Bart can be maintained, if the study of Law is not conducted on an enlightened and philosophical plane.

Finally, the Committee considered that:

> The great extension of the subject only renders it the more important to provide that the instruction of the student shall not be limited to the details of a technical art, and the philosophy and science of Law sacrificed, in order to furnish materials for the manual of a practitioner.[29]

Moreover, the Select Committee on Legal Education in 1846 revealed that what it identified as dissatisfaction with the professional approach was because jurisprudence lectures, which used

[27] HC Deb 7 April 1846, vol 8,5 cols 677-91 (Mr Thomas Wyse, cols 682).
[28] Ibid cols 683.
[29] Royal Commission of Inquiry into the State of the universities of Scotland, House of Commons, 1831.

to run in the Inns of Court, became obsolete from about the seventeenth century. The implication on the quality of legal training must have been rather adverse given that Lord Bacon proposed the establishment of a university in London 'which was to be chiefly devoted to the acquisition of legal knowledge, and fitting men for public life'. The proposition was not followed up in his time.[30]

Evidence to the Committee confirmed that candidates to the Bar were now assessed based on their 'fair character', some years in training, doing well at mooting exercises, and attending a certain number of dinners in the Hall of Court.[31] The instruction of solicitors, albeit new in comparison to the Bar, was likewise patchy; the Law Society provided lectures but these were expensive and incoherent in content.[32] Indeed, evidence by the solicitor T. Taylor, for example, suggested that 'a liberal education would [raise] the tone of the profession'.[33] However, despite criticism regarding the narrowness of professional training and the aspiration for liberal education, evidence by those few lecturing in law at universities (most being also practitioners) indicates that, in fact, the teaching was not 'liberal enough'.[34] The testimony by Professor of Law at UCL Andrew Amos, for example, is rather revealing. Amos admitted that his teachings were 'chiefly of technicalities'; he explained that this approach did not reflect the public interest for lawyers to be 'scientifically educated'- where 'great injury has arisen to the community from the contracted minds of lawyers, when they rise to be legislators, chancellors, or judges'. Nevertheless, he explained that he took this narrow approach to legal education because 'it answers all the immediate wants of persons called to the Bar, and perhaps sooner than the other system'.[35]

This is not to say that Professor Amos did not endorse liberal education–on the contrary; however, the dilemma expressed in his testimony to the Committee reflects a concern that twenty- and twenty-first century law schools have grappled with. At that point in time university legal education was unsystematic, and there was no professional regulation limiting or prescribing the curriculum. However, it is interesting to note Professor Amos thought that

[30] Select Committee (n 21) xi; John Fraser Macqueen, *A Lecture on the Early History and Academic Discipline of the Inns of Court and Chancery* (S. Sweet 1851) 20-22.
[31] Select Committee (21); L.C.B. Gower, 'English Legal Training- A Critical Survey' (1950) 13 Modern Law Review 137, 139; an historical brief of the profession is given by John Cordy Jeffreson, *A Book about Lawyers* (Hurt and Blackett, 1867) part XI and Macqueen (n 27).
[32] Leighton (n 7) 93.
[33] Select Committee (n 21) 80.
[34] Ibid 103.
[35] Ibid.

to guarantee 'enrolment' and 'retention', academic education should be instrumental to the practicing of law. Unlike Professor John Austin, whose law lectures at UCL where philosophically oriented, Professor Amos explained in the testimony that he attempted to introduce some theory into his own lectures but had to make sure that his students did not lose interest. Indeed, the best attended lecture was about the practice of the law.[36] However, those students who could afford it would benefit from more liberal instruction by attending Professor Amos' own chambers for private tuition; he explained that:

> It was known that at my chambers I gave rather a more philosophical view of the subject of law […] and consequently my chambers were attended by a great number of persons who had no idea of making the law a profession.[37]

Professor Amos's dilemma over how to academically teach a subject which appeared to be driven by a dominant profession may have been fed by the view at the time calling for the university to become a site for the enhancement of citizenship.[38] The 1850s saw the publication of *The Idea of a University* by Cardinal John Henry Newman.[39] The text does not specifically deal with university legal education; however, it has recently surfaced in narratives used by legal educators to defend the idea of legal liberal education.[40] For Newman, in the university, the individual

> learns to respect, to consult, to aid each other. Thus, is created a pure and clear atmosphere of thought […]. He profits by an intellectual tradition […]. He apprehends the great outlines of knowledge, the principles on which it rests, the scale of its parts, its lights and its shades, its great points and its little, as he otherwise cannot apprehend them.[41]

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[36] Ibid 96.
[37] Select Committee (n 21) 97.
[38] Clara Haberberger, 'A return to understanding: Making liberal education valuable again' (2018) 50 Educational Philosophy and Theory 1052, 1053.
[39] John Henry Newman, *The Idea of a University* (Longman, 1952); in the 1959 edition the title changed to *The Scope and Nature of University*.
[40] See discussion on that in Fiona Cownie, 'Alternative Values in Legal Education' (2003) 6 Legal Ethics 159; Roger Burridge and Julian Webb, 'The Values of Common Law Legal Education: Rethinking Rules, Responsibilities, Relationships and Roles in the Law School' (2007) 10 Legal Ethics 72; A. Bradney, 'An education ambition for 'law and literature' (2000) 7 International Journal of the legal profession 343.
[41] Newman (n 34) 101.

Newman defined this sort of education as 'Liberal', that is, when 'a habit of mind is formed' and it 'lasts through life, of which the attributes are, freedom, equitableness, calmness, moderation, and wisdom'.[42] Newman's work has been interpreted as favouring liberal education over professional training;[43] however, he merely defined and explained the purpose of university studies. He identified the advantages of liberal education, but he did not criticize other types of educational training. Indeed, he suggested that 'we contrast a liberal education with a commercial education or a professional; yet no one can deny that commerce and the professions afford scope for the highest and most diversified powers of mind'.[44] And yet, Newman reproached those 'great men' who

> are very slow to allow; they insist that education should be confined to some particular and narrow end, and should issue in some definite work, which can be weighted and measured […] This they call making education and instruction "useful", and "utility" becomes their watchdog.[45]

Newman's critique of the narrow approach taken by some to academic education resonated with views supporting academic-liberal legal education. In a news article published by the *Examiner* in 1857, the author explained that whilst judges of the superior courts were appointed from the ranks of the most experienced and knowledgeable individuals, County Court judges might lack a 'competent knowledge of law'.[46] A commentator for *The Saturday Review* in 1859 compared the law to 'a house so old and so odd that it is almost equally difficult and dangerous to live in it, to repair it, or to pull it down'; accordingly, the commentator went on, 'the existing mode of legal education would appear to have been framed for the expressed purpose of making it impossible to alter this state of things'. It appears that some systematic lectures were introduced in the Inns, but the three main avenues for the acquisition of legal knowledge–reading books, attending chambers and sitting in courts–were perceived as 'chaotic beyond all imagination'.[47] In 1870 a commentator for the *Examiner* pointed out that 'candidates for the law, as a rule, are idle' and 'entirely ignorant of the most elementary distinctions

[42] Ibid.
[43] Burridge and Webb (n 37) 77; Bradney (n 37) 346.
[44] Newman (n 36) 107.
[45] Ibid 153.
[46] Editorial, 'Legal education' *Examiner* (30 May 1857) 338.
[47] Editorial, 'Legal education' *The Saturday Review* (12 March 1859) 302.

between actions'.[48] Another commentator thought that the standard of education required by the legal profession was 'simply absurd'; lamenting that 'in no country in Europe would a man be admitted into a learned profession' without attending university first.[49]

The legal scholar Albert Venn Dicey also contributed to this debate. In his inaugural lecture in Oxford in 1883, Dicey explained the risks of having a profession which might solely rely upon practical knowledge. 'The pupil' in the Chamber, Dicey explained, 'does not undertake to learn, the tutor does not in any way undertake to teach'. This is a hands-on form of study, but it merely concerns the 'study' of the 'papers which come in day by day. If he is to learn law, he must pick it up for himself.'[50] The learning is by imitation, and according to Dicey, such professional education has its own advantages. For example, the student can develop the skills of 'the mechanism, of legal practice'; he will learn to appreciate the facts of a case (because he might not necessarily know the relevant legal principles); and he will develop the 'capacity for forming sound opinions'.[51] However, Dicey was far too aware of the drawbacks of this type of education. The knowledge acquired was fragmentary and the student acquired incomplete knowledge of the legal principles.[52] The issue raised by Dicey goes beyond the mere tension between liberal and professional education; it is about the dubious quality of education which limits the development of good practice and, subsequently, law reforms. Aware of the tension between the two approaches to education, Dicey suggested that there 'is no real rivalry between reading in chambers and teaching at the Universities'. However, for him, 'the law of England can be taught […] as it can nowhere else, at the Universities'.[53] A few years later, Professor Fredrick Pollock added 'that a profession, above all a learned profession, is not an affair of bargain and bread-winning, but the undertaking of a high duty to mankind'. He went on by arguing that

> Neither do we say, perhaps even less ought we to say, that we can make a man a skilled lawyer. But we can endeavour to impress on him those larger and more generous notions which, if not planted betimes, are apt to wither in the dust of technical detail and the heat of forensic business. We can help him to regard law not merely as a

[48] M.D., 'Legal Education' *Examiner* (26 Nov 1870) 756.
[49] Editorial, 'Legal Education' *Examiner* (19 Nob 1870) 738. A quick search in the database of British Periodicals (ProQuest) for the period between 1850 to 1859 reveals about 15 hits of 'legal AND education' related articles; 17 hits for 1860 to 1869; and about 62 hits for 1870 to 1880.
[50] Albert Venn Dicey, *Can English Law be Taught at the University? An Inaugural Lecture* (Macmillan 1883) 3.
[51] Ibid 7.
[52] Ibid 10-12.
[53] Ibid 31.

> regulated strife, or a complex machine for securing and administering property, but as the greatest, the most interesting, and in one word, the most humane of the political sciences.[54]

However, in 1898 Pollock reported in *Law Quarterly Review* that 'it is a great misfortune that legal education should be at the mercy of a body of gentlemen who have, speaking generally, no knowledge of or interest in the subject'.[55]

University law teaching

By the first quarter of the twentieth century the status of academic education was changing with the awarding of charters to several universities in the country.[56] In 1910 individuals could attend lectures in law in seven universities across England; some achieved a BA or an LLB degree after examination.[57] Based on Hazeltine's account it appears as if the law departments at Oxford, Cambridge, UCL, Manchester, Liverpool, Sheffield and Leeds were competing with the Inns of Court and the Law Society to provide academic legal education.[58] With some exceptions, most providers had four core modules that students had to complete: Roman law, jurisprudence, public international law and English law.[59] Significantly, the Law Society's teaching and examinations focused on the discipline of English law, hence concentrating on a narrow, professionally oriented academic study. But there is more to it. Hazeltine may have been one of those wishing to reduce the liberal education of future law professionals, advising for the elimination of anything which did not come under 'English Law';[60] however, this recommendation was not out of character–it appears that law departments were perceived as preparing students for the law profession.[61] This was also in line with an approach taken by universities generally during this period; Lawson and Silver explain that, although 'not without opposition', the provision of professional training at universities increased.[62] Indeed, it was

[54] Fredrick Pollock, 'Oxford Law Studies' (1886) 2 L.Q.R 453, 454.
[55] Citing T. Raleigh's article in the Edinburgh Judicial Review ('Notes' L.Q.R (April 1898) 127).
[56] WB Stephens, *Education in Britain 1750-1914* (Macmillan, 1998) 115.
[57] Harold D Hazeltine, 'The Present State of Legal Education in England' (1910) 26 L.Q.R. 17, 23.
[58] Ibid 34.
[59] The English Law 'module' included most of the topics which will become part of the compulsory foundation subject of the QLD: constitutional law, criminal law, procedure and evidence (this is now mostly an option module), read and personal property, contracts, torts and equity (ibid 24).
[60] Ibid 37.
[61] Ibid 34.
[62] John Lawson and Harold Silver, *A Social History of Education in England* (Methuen & Co Ltd, 1973) 402, 407.

reported that during this period, the need for improved classical teaching at universities was 'slow in coming'.[63]At that point in time, it transpires that preparing students for the examinations was more important than, for example, training them to master legal reasoning.[64]

The tension between the two approaches to legal education was noted by the Haldane Commission on Legal Education in 1913. The suggestion put forward by the report was that the 'practical' and the 'theoretical' could and should both be studied at university.[65] However, it appears that in 1915 the perception was still that 'the best men who come into the professions do not as a rule do so through the law courses of the universities'.[66] It appeared that capable students would opt for the study of the humanities and mathematics, enabling them to successfully take the entry examinations for the legal profession.[67] Indeed, Justice MacKinnon admitted that he never studied law at university; in fact, he 'read very few law-books at all'.[68] However, the Law Society made a point of recognising the value of university law teaching by introducing one year of compulsory attendance at university in 1922 for those without any degree.[69] Yet the opportunity to distinguish theirs from the vocational training provided by the Law Society was not taken up by law schools, where instead, the curriculum 'follow[ed] closely those of the professional examinations [being] vocational rather than scientific and cultural'.[70] It is perhaps for this reason that we see Hazeltine reporting a few years later that several universities required students to complete a one year pre-entry preparation in arts or science before embarking on a law degree.[71] However, general observations as to the aim of education may have helped to further blur the lines of distinction between the vocational and the liberal. For example, Whitehead explained in 1929 that:

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[63] The Crew Report, The Position of the Classics in the Educational System of the United Kingdom, Report of the Committee appointed by the Prime Minister (1921) London: HM Stationery Office, 40, 42, 55, 109, and Part IV, online http://www.educationengland.org.uk/documents/crewe1921/crewe1921.html#01 accessed 6 July 2019.
[64] Hazeltine (n 52) 37.
[65] Final Report of the Royal Commission on University Education in London, 1913, cited in Hepple (n 7) 475.
[66] H.S. Richards, 'Legal Education in Great Britain', United States Bureau of Education (Washington Government Printing Office, Bulletin 1915, no.18) 18.
[67] Ibid.
[68] Justice Mackinnon, 'The Happy State of Modern Law Student' (1927-29) 3 Cambridge Law J. 24, 28.
[69] Gower (n 28) 145; Solicitors' Act 1922, s.2.
[70] Ibid 146; further evidence for this narrow approach in E.C.S. Wade, 'The Law Society's School of Law' (1926) J. Soc'y Pub. Tchrs. L 17, and E.L. Burgin, 'The Education and Training of the Solicitor's Articled Clerk' (1928) J. Soc'y Pub. Tchrs. L 1.
[71] Harold D. Hazeltine, 'Forward Tendencies in English Legal Education' (1924) J. Soc'y Pub. Tchrs. L 1, 7; further evidence for this in The Crew Report, p.97.

> The antithesis between a technical and a liberal education is fallacious. There can be no adequate technical education which is not liberal, and no liberal education which is not technical […] The intellect does not work best in a vacuum.[72]

Narratives of the debate during the 1930s and 1940s continued to suggest an unresolved role taken by universities. Some considered the need to combine teaching with practice, because universities were 'largely responsible for the training of the future barrister and solicitor'.[73] Hazel considered that university legal education could cover both the cultural and the vocational; this was supported by some views suggesting that reading in chambers was still open to abuse.[74] Whilst Radcliffe from the Law Society suggested that 'solicitors distrusted the lack of discipline and control in the universities'; Professor Smith argued that 'the best students did not always study law because the teaching was not sufficiently educative'.[75] Indeed, Haggen, in *the Training of the Practical Man*, admitted that universities were struggling 'to meet professional requirements without sacrificing university standards';[76] albeit these 'requirements' were never made explicit and it may have merely been a response to maintain competition against the legal instruction provided by the professional societies.

Other academics voiced their concerns that universities should not deal with the professional aspect of education. For McNair training students to critically read and understand the law was fundamental for them to be able to contribute in the future to the development of legal reform. Apart from teaching what the law is, according to McNair, a university's duty was also to

> keep constantly before him [the student] the view that the law is something which is capable of going wrong in one direction and of becoming obsolete in another; we can

[72] AN Whitehead, *The Aims of Education and Other Essays* (Macmillan Co., 1929), 74.
[73] A.E.W. Hazel,' Law Teaching and Law Practice' (1931) J. Soc'y Pub. Tchrs. L. 12, 12; similar views also in JDI Hughes, 'Culture and Anarchy in Legal Education (1932) J. Soc'y Pub. Tchrs. L 1, and the accompanying views at the Annual Meeting of the Society of Public Teachers of Law (SPTL) held at the Law Society's Hall, London, 16 July 1932.
[74] To a different address to the SPTL in 1931, Lord Atkin said in relation to the studies in the chambers that 'You must, in fact, be a neophyte, and go into the wizard's room and there learn the black art which the public […] seem to associate with the learning and practice of the law' ('Law as an educational Subject' (1932) J. Soc'y Pub. Tchrs. L 27, 31.
[75] As reported in the Annual Meeting of the Society held at Lincoln College, Oxford, 12 July 1931 (in Hazel (n 70) 13); also, confusion as to a separation between the two is expressed in PH Winfield, 'Reforms in the teaching of Law (1930) J. Soc'y Pub. Tchrs. L. 1.
[76] G.L. Haggen, 'The Training of the Practical Man' (1933) J. Soc'y Pub. Tchrs. L. 14, 14.

> direct his attention to the process of law reform by showing him what has been done and the imperfections which still remain to be removed.[77]

The War led to a reduction in university applicants and law students;[78] however, the debate was taken up again immediately thereafter. Views diverged in the SPTL annual meeting in 1946. Some emphasised the importance of universities broadening their studies, especially for persons progressing on to governmental office, local authorities and corporations;[79] indeed, Lord Justice Denning reflected on the importance, for the purpose of legal reform, of studying the law as it was in the past and as it should be.[80] Others thought however that legal history was just a 'hindrance to the student'.[81] The debate continued with suggestions that a narrow field of study was fruitless; accordingly, lawyers should 'pay more attention to the social and economic background of the law at all periods of its history'.[82] Wade, for example, was for what we term today the socio-legal approach to the study of law, rather than the orthodox black letter study. He considered that:

> To overload our syllabus with a mass of subjects and complex detail means inevitably that our students lose sight of law as a great human institution serving social and economic needs, which alone is the justification for its existence and enforcement on the people it exists to serve.[83]

Also, Stallybrass emphasised that 'education in the Law at the universities should not be vocational' and that it was not 'the function of the university to provide the Lawyer with the tools of his trade so much as to teach him how to use those tools'. For him, university education should not be merely targeted for the future lawyer-to-be, but for any 'men furnished with ability'.[84] At the SPTL annual meeting in 1949, the view was shared that 'law must be related to other branches of learning' and that the university student should 'not obtain merely a

[77] Arnold D. McNair, 'Law Teaching and Law Reform' (1934) J. Soc'y Pub. Tchrs. L 1, 3-4.
[78] See reports by various universities in 'Review of Legal Education during the War, 1939-1945' (1947) J. Soc'y Pub. Tchrs. L. 1.
[79] Denis Brown, 'Some Problem of Post-War Law Teaching' (1947) J. Soc'y Pub. Tchrs. L 19, 21.
[80] Lord Denning, 'The Universities and Law Reform' (1949) J. Soc'y Pub. Tchrs. L 258.
[81] Denis Brown, 'Some Problem of Post-War Law Teaching' (1947) J. Soc'y Pub. Tchrs. L 19, 21-22.
[82] E.C.S. Wade, 'The Aim of Legal Education' (1947) 9 Cambridge Law Journal 286, 291.
[83] Ibid.
[84] W.T.S. Stallybrass, 'Law in the Universities' (1948) J. Soc'y Pub. Tchrs. L 157, 160-1.

technical preparation for practice. He must be given some idea of the relation of law to the general social structure and to its welfare'.[85]

The address by Goodhart at the SPTL annual meeting in 1950, and the reactions to it, teased out a tension within academia. Firstly, Goodhart suggested that law teachers had contributed to the uncertainty as to whether the future lawyer should academically study law in the first place, rather than any other discipline. Goodhart explained that law, in itself, is a cultural subject studied by students 'who are planning to enter other vocations'; accordingly, 'a Frenchman finds it difficult to conceive that economics or political science can be taught properly without a background in law'.[86] Therefore, he proposed that 'unless we have confidence in ourselves and in our work, it is certain that no one else will'.[87] Goodhart also recommended taking a holistic approach to academic vocational education;[88] this was not well received. It was pointed out that at present, the teaching was excessively technical; hence the concern that if they were to follow Goodhart's recommendation, students would end up acquiring only that particular type of reasoning and that particular type of thought which were only appropriate to legal study.

Gower may have agreed with Goodhart, but he reproached universities for 'fulfil[ling] a dual role': they teach law but also deliver lip service training on behalf of the professional bodies. 'The result is', he explained, 'that they have tended to fall between two stools and to be in part schools of theoretical instruction and in part vocational training establishments'.[89] Gower thought that the law degree could and should combine the theoretical with the vocational, but that it was essential 'that the profession should not seek to dictate to the university the method and scope of its teaching'.[90] Gower explained that many students 'will become central or local government servants, advisers to public corporations and companies, business executives, politicians, teachers, magistrates or magistrates' clerks'; for that reason, 'universities should attempt something wider and in particular that they should emphasise the sociological purposes of law and relate it to the other social sciences'.[91] Wade supported this view, emphasising the need to separate academic and professional training, because 'each side

[85] D. Hughes Parry, 'Some Reflections of Legal Education' (1949) J. Soc'y Pub. Tchrs. L 249, 257.
[86] A.L. Goodhart, 'The Vocational Teaching of Law' (1950) J. Soc'y Pub. Tchrs. L 333, 334.
[87] Ibid 335.
[88] Ibid 338-9.
[89] Ibid 338-9.
[90] Ibid 160-1.
[91] Ibid 170.

has its own contribution to make'- 'Let us concentrate on the "Why" and the "What" and leave the "How to do it" to the profession'.[92]

However, the uncertainty as to the approach to be taken for the teaching of the "Why" and "What" was picked up by a UNESCO Enquiry. Reporting on the Enquiry, Hamson explained that the findings suggested that 'the academic teaching of law in England […] reveals us as being in a most anomalous position'; concluding that 'the true line of development is perhaps still to find'.[93] Indeed, it appears that in the mid-1950s legal education was less liberal than some had wished. Reporting in 1955 Grunfeld explained that only a few universities allowed in the legal curricula for the study of extra-legal subjects.[94] Llewelfryn was further concerned as to

> whether the students who pass through our faculties of law are receiving a sufficiently liberal university education. Has our university legal education not become too isolated and self-contained? Is it not too narrowly based?[95]

His conclusion was that 'in the three university law schools where I have taught, academically, the law student has been completely isolated from all other subjects'.[96] These concerns were further discussed by the House of Lords in relation to Higher Education in general; another UNESCO report drew the House's attention to what seemed to be the current 'far too specialised education' at English universities.[97] Lord Pakenham put it this way:

> For the whole of his period at the university, the Arts student will probably learn no Science at all, and the Science student will probably learn practically no Arts […]. Therefore, I submit that undue specialisation, in the sense that the two great blocks of our young people are almost totally ignorant of the other half of human knowledge, is the shattering, indeed, the scandalous, weakness of our higher education.
> […] There is a handicap on each side, and very serious it may be for the nation.[98]

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[92] E.C.S. Wade, 'Legal Education: The Changing Scene' (1951) J. Soc'y Pub. Tchrs. L 415, 417, 419.
[93] C.J Hamson, 'The Teaching of Law- Reflections Prompted by the UNESCO Enquiry, 1950-52' (1952) J. Soc'y Pub. Tchrs. L 19, 26, 29.
[94] C. Grunfeld, 'The University Law Courses' (1955) J. Soc'y Pub. Tchrs. L 40, 43.
[95] D.J. Davies Llewelfryn, 'Problems of Legal Education' (1956) J. Soc'y Pub. Tchrs. L 198, 200.
[96] Ibid 201.
[97] HL Deb 22 May 1957 vol 203 cc1069-145, 1079.
[98] Ibid 1080. However, even the Lords did not always agree. In another debate Lord Simon of Wythenshawe said: 'I am told, for instance, very emphatically, that the big American law schools, such as Harvard and Yale, produce types of industrialists and others in the public service who are a long way ahead of those we produce.' Whilst Lord Beveridge argued that 'The purpose of a university today is not to teach men how to make money

The role of academic legal education came under attack again in the early 1960s–this time by the legal profession. The Law Society felt that one year of compulsory legal studies did not fulfil its needs any longer. Hall explained that law lecturers targeted their studies towards a successful completion of university examinations, rather than the Law Society's qualifying examinations.[99] This led to the implementation of the Students Regulation in 1962, exonerating lawyers-to-be from any academic education; hence making, what were until then the 'approved law schools', redundant.[100] It is difficult to tell whether universities were fazed by this situation as there is not much discussion about it to be seen; however, writings do stress the importance of acquiring academic legal education. Hall, for example, argued that 'it is fair to assume that the best boys today almost invariably receive a university education, and that those who choose to read law at their universities generally do so because that subject interests them'.[101] Wheatcroft further stressed that 'for many years the majority of our successful barristers and judges have taken university degrees'.[102]

Wheatcroft brings back the discussion on the nature of legal education; for him, academic education proved inadequate because it did not provide wide enough knowledge–specialisation seemed to be the common practice. Wheatcroft saw in law a cultural subject in its own right, arguing that, 'a considerable proportion of those taking such a degree do not intend to make law their profession', and therefore, 'the subjects chosen for instruction must be those which offer a wide scope for general education'.[103] This concern was also voiced by The Robbins Report, 1963, on Higher Education; it argued that specialisation should be achieved in postgraduate studies rather than in undergraduate degrees. The report explained that

in professions; it is to make them fit and eager to render professional service to their fellow citizens. The university is there not simply to sharpen wits, but to build character' (HL Deb 11 May 1960 vol 223 cc615-732, 621, 630).

[99] J.C. Hall, 'The Training of a Solicitor' (1962) J. Soc'y Pub. Tchrs. L 22, 24.

[100] According to Hall, these approved law schools included 13 universities, 2 university colleges, 2 technical colleges and 2 Boards of Legal Studies (ibid 22)

[101] Ibid 28.

[102] G.S.A Wheatcroft, 'The Education and Training of the Modern Lawyer' (1962) J. Soc'y Pub. Tchrs. L 1, 8.

[103] Ibid 2, 5, 8.

> Courses which concentrate on a narrow front are intrinsically unsuitable for many students, who would benefit more from broader courses, and, second, that many students would be better prepared by broader courses for their future careers.[104]

This last point was of particular interest to Wheatcroft. He explained that 'who takes a part in framing and administrating the law, and in explaining it to his fellow citizens, must appreciate the social and economic environment of the community in which that law operates'; law cannot be 'properly studied in an ivory tower furnished only with law books'.[105]

However, a survey carried out in 1966 reveals a different picture of the nature of law teaching. One of its aims was to shed light on the object of legal education: was it a liberal education or preparation for a future career in the legal profession that ought to be addressed by universities?[106] The problem identified by the survey was whether an education whose core focus is professional can satisfy those who do not intend to enter that profession. The survey reported that 95% of the law lecturers thought that the teaching was wide enough and rounded enough. Only 3% of the law lecturers were in favour of a strong vocational input, and only 18% insisted on a predominantly liberal approach; the majority thought that a balance between the two was preferable.[107] However, the majority of those completing the survey from the legal profession thought that 'university is a place for arousing interest and training the mind, not for imparting knowledge for use in one's profession'.[108] And yet, the data from the survey suggest that the law courses were indeed law-subjects and the only non-legal modules offered in London, for example, were introductions to economic and political institutions.[109] Interestingly, Wilson noted in the report that the law courses allowed little subject-choice for students. He thought that this was unfortunate and should 'be kept in check'; considering that despite 'the belief, held by many law teachers, that any well-equipped lawyer must have studied a certain basic core of legal subjects', many law students 'have no intention of practicing after graduation'.[110] Moreover, although there was no such requirement from the professional societies at this stage, Wilson reported that it was an academic choice to make compulsory

[104] The Robbin Report, Higher Education (1963) (London: Her Majesty's Stationery Office, Cmnd. 2154), 90
[105] Ibid 5, 9.
[106] J.F. Wilson, 'A survey of Legal Education in the United Kingdom' (1966) J. Soc'y Pub. Tchrs. L 1, 41.
[107] Ibid.
[108] Ibid.
[109] Ibid 42.
[110] Ibid 43.

those topics subject to the professional examination; whilst Roman law and legal history, once core topics, had acquired a marginal space in the syllabus.[111]

The 1971 Ormrod report considered afresh this tension. Its narrative suggests that it recommended integrating the 'theoretical' and the 'vocational' 'into a coherent whole', by eliminating 'the traditional antithesis […] which has divided the universities from the profession'.[112] The prospect for integration was well received, where Arthurs considered that 'intellectual comprehension is hardly enhanced if it occurs in a factual vacuum'.[113] In effect however, the Ormrod report proposed dividing the syllabus into three stages: academic, professional and continuing education.[114] The report led to university legal education becoming compulsory in 1972 for those wishing to join the legal profession; indeed, by then, although obtaining a degree in law was not compulsory, Brown reported that 85% of recruits to the Bar had a law degree.[115] The report and following commentaries grappled with the question concerning the content of the law degree, striking the balance to two-thirds in favour of strictly legal subjects.[116] This was interpreted by some as a 'complete freedom to construct the reminder of the(ir) curricula'- aiming for a 'broader intellectual basis'.[117] Others hoped that apart from the prescribed compulsory subjects, the new relationship between academia and the profession would remove 'the existing pressure on (universities) to shape their courses' and prepare students merely for the professional examinations.[118]

Conclusion

This historical review ends with a survey carried out post-1972 by Wilson and Marsh. It reveals that, contrary to the 1966 view that 'if a law degree is incapable of providing liberal education it should have no place in a university curriculum', few universities had implemented this approach by the time of the survey.[119] For Wilson and Marsh, this was illustrated by the limited

[111] Ibid 44; Similar concerns are expressed in G.P. Wilson, 'The Concept of a Law Degree: Getting on with the Job' (1968) J. Soc'y Pub. Tchrs. L 114.
[112] Ormrod Report (1971) *Report of the Committee on Legal Education* (Cmnd 4595) para.85.
[113] H.W Arthurs, 'The Ormrod Report: A Canadian Reaction' (1971) 34 The Modern Law Review 642, 647.
[114] Ormrod Report (n 109) para. 100.
[115] L. Neville Brown at the Annual meeting of the SPTL, in 'The Ormrod Report (1972) J. Soc'y Pub. Tchrs. L 39, 39.
[116] R.H. Graveson at the Annual meeting of the SPTL, in 'The Ormrod Report' (1972) J. Soc'y Pub. Tchrs. L 39, 43; Ormrod Report para. 109, 111.
[117] H.A. Kerrigan at the Annual meeting of the SPTL, in 'The Ormrod Report' (1972) J. Soc'y Pub. Tchrs. L 39, 49.
[118] G.P. Wilson, 'Reflections on the Ormrod Committee Report' (1971) 34 The modern Law Review 635, 636.
[119] Ibid 278.

or non-existent availability of option modules outside the discipline of the law. Indeed, the syllabus in most universities focused on the compulsory legal modules, where the only module from the list of options which perhaps was not fundamentally legal was criminology.[120]

This legal history review is not aimed at identifying a solution to academia's dissatisfaction with the professional societies' changes to regulations, or at suggesting how to balance the liberal with the vocational. However, it does indicate that universities are quick to adjust to the market's demands, that is, to respond to competition. It appears that today, as before, academic legal education is portrayed as a discipline capable of transforming students into responsible citizens with an enhanced sense of social justice. However, practice suggests that the need or the want to comply with professional regulations is far stronger. Compliance means having a course recognised by the profession, and along with the marketed fiction that a degree leads to employment in the legal profession for most, law schools must give in to a sustainable vocational type of law degree. There is nothing to suggest that paying attention to the vocation is wrong, whilst there has never been a coherent concept of liberal legal education which law schools can switch back to. Now that the QLD has become redundant, where history is repeating itself is a good time to take stock and reconsider what we want the role of legal education to be. What is important to bear in mind is that a law degree today, as before, is taken by students, the majority of whom will never become barristers or solicitors.[121] We should be guided by history and assess the university's power-relation with the profession, not least because this gives us the opportunity to facilitate a curriculum which is otherwise rich and colourful: a degree informed by a pedagogy that empowers citizenship, diversity, inclusiveness and tolerance.

[120] Ibid 281.

[121] Statistics by the Law Society indicate that for 2017-18, out of 23,605 students (UK and oversees students) who took a law degree (no data as to whether this has been completed) 27% were admitted to the roll (The Law Society, *Entry Trends* < https://www.lawsociety.org.uk/law-careers/becoming-a-solicitor/entry-trends/> accessed 15 Sep 2019); The Bar Council does not use a similar evaluation, and it is only possible to identify that out of 2977 applicants to the BPTC in 2017, 54% enrolled to the course, and out of these 62% successfully completed it (Bar Standards Board, *Research and Statistics* < https://www.barstandardsboard.org.uk/media-centre/research-and-statistics/> accessed 15 Sep 2019).