

A note on Fiona Cownie, *Legal Academics: Culture and Identities* (2004), 227 pages, Price: £30.

By *Alexandra Kemmerer**

“Law seems to have a special status among social phenomena by reason of its forms, its rituals, its specialised language, its special rationality even, and its specific social effects. But, on the other hand, law is clearly embedded in the totality of the social process which is its cause, and on which it has a substantial determinative effect, not least in providing the continuing structure of society, its hardware programme.”¹

The phenomenon of law is always situated in a broader context.² And this is, no less, true for its teachers. But what do we know about the “social embedding” of legal academics? To what extent does the study of law permeate their life? How does their social background, their gender, their intellectual self-perception affect the construction of their professional identities and thereby affect legal tradition, legal *traditio* in the true sense of the word?

While legal history unveils the “lived experience” of late members of the profession often without hesitation,³ contemporary legal academics sharing their personal

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¹ P. ALLOTT, *THE HEALTH OF NATIONS: SOCIETY AND LAW BEYOND THE STATE* 36 (2002).

² See, e.g., for the “law in context” approach of the “Frankfurter Schule der Privatrechtstheorie” (“Frankfurt School of Private Law Theory”) inspired by Rudolf Wiethölter who, in turn, inspired the contributions to Cristian Joerges & Gunther Teubner (eds., 2003) *RECHTSVERFASSUNGSRECHT. RECHT-FERTIGUNG ZWISCHEN PRIVATRECHTSDOGMATIK UND GESELLSCHAFTSTHEORIE*. As books are always placed next to other books, this review of Fiona Cownie’s monograph is also a reflection on Peer Zumbansen, *Das soziale Gedächtnis des Rechts, oder: Juristische Dogmatik als Standeskunst in WIETHOLTER*, 151 – 179.

³ For a rich collection of legal biographies, see *JURISTEN. EIN BIOGRAPHISCHES LEXIKON. VON DER ANTIKE BIS ZUM 20. JAHRHUNDERT* (M. Stolleis ed., 2nd ed., 2001). However, sometimes special efforts have to be made to overcome historiographic reluctance, see M. Stolleis, *Reluctance to glance in the mirror: The Changing Face of German Jurisprudence after 1933 and post-1945*, in *DARKER LEGACIES OF LAW IN EUROPE*. THE

learning experiences in and with the law are still rare exceptions. Admittedly, it has been one of the defining characteristics of the Critical Legal Studies (CLS) movement to shed light on the individual lawyer, on his or her private and political life.⁴ The growth and influence of the 'critical' school have been considerable in the United States and, to a lesser extent, in other parts of the anglo-american legal system. Apart from these legal cultures, however, CLS has been less influential. Furthermore, the 'critical' movement often confines itself to a critical approach to teaching, leaving aside the teacher as a multi-faceted individual. In the *Curriculum Vitae* of today's legal academic, all personal footnotes, all references to a social *Lebenswelt* are missing.⁵ And while the ever-changing landscape of legal education remains a challenging laboratory for reforms, we do not know much about the real everyday-life inside the law. Apart from our personal experience as students or teachers, apart from anecdotal references in *Festschrift* literature rarely read by students or even a wider academic public, the professional socialisation and identity of legal academics, at first glance so familiar to us, remains in the dark.

Therefore, it does not come as a surprise that Fiona Cownie's study of the lived experience of legal academics at first required from the author the skill to "exotify the domestic."⁶ Being a Professor of Law at the University of Hull and Chair of the

SHADOW OF NATIONAL SOCIALISM AND FASCISM OVER EUROPE AND ITS LEGAL TRADITIONS 1 (C. Joerges & N. S. Ghaleigh eds., 2003). An example for a closer look on one of the most ambiguous legal-academic biographies, picked from the ever-growing piles of literature on Carl Schmitt, is B. Rüthers, *Die Tagebücher Carl Schmitts – ein frühes Selbstporträt?*, JURISTENZEITUNG 445, 448 (2004).

⁴ An interesting strand of the 'critical' movement are, not only in this regard, the 'New Approaches to International Law' (NAIL), see D. Kennedy, *A New Stream of International Legal Scholarship*, 7 WIS. INT'L L. J. 1 (1988), and D. Kennedy & C. Tennant, *New Approaches to International Law: A Bibliography*, 35 HARV. INT'L L. J. 417 (1994). Although NAIL has been completed at a conference at Harvard Law School in 1997, the process of a critical examination of international law starting from its protagonists goes on, see D. KENNEDY, *THE DARK SIDES OF VIRTUE: REASSESSING INTERNATIONAL HUMANITARIANISM* (2004). The book explores, rooted in David Kennedy's own experiences in numerous humanitarian efforts as well as in legal academia, the satisfactions of international humanitarian engagement – but also the disappointments of idealism. Kennedy takes his readers from Harvard Law School to the jails of Uruguay, from the corridors of the United Nations to the founding of an NGO dedicated to the liberation of East Timor in a Lissabon kindergarten, from opposing the war in Vietnam to discussing international law aboard an U.S. aircraft carrier in the Persian Gulf.

⁵ See P. Zumbansen, *Innen- und Außenansichten des Rechts in der Globalisierung*, Habilitationsvortrag an der Johann Wolfgang Goethe Universität Frankfurt, 9 June 2004 (Ms. 2004, on file with the author): "Jedenfalls fehlen auch in einem stringent wirkenden Lebenslauf regelmäßig die Fussnoten und Verweise auf die soziale Lebenswelt, in deren Fürsorge, Ironisierung und Ermahnung die einen oder anderen Ereignisse überhaupt zu Ereignissen werden konnten. Es fehlen auch die Verweise auf die wunderbaren Zufälle und Glücksfälle, die in professioneller Hinsicht Pfadabhängigkeiten zu begründen halfen und damit auch Mut zur Innovation gaben, die aber auch dabei halfen, die Relativität des täglichen Raschels mit Papieren zu erkennen."

⁶ P. BOURDIEU, *HOMO ACADEMICUS* (1984).

Legal Education Committee of the Society of Legal Scholars, Cownie is by no means an outsider in her field of research. Yet, the author emphasizes that - as already Pierre Bourdieu showed in his classical study of French academia - an authoritative account can best be produced by a reflexive encounter with the "known," the apparently familiar. "It is a process of 'participant objectification,' which seeks to avoid the false choice between the unreal intimacy of a subjectivist position and the equally misleading superiority of objectivism." (25)

Operating from a "socio-legal" perspective, the author sets out to explore the culture of legal academia in the United Kingdom as it is experienced by academic lawyers. Key to her understanding of legal academia is "the interplay between the culture of the discipline as a whole, and the individual academic identities forged within that culture." (4) Familiarity with approaches such as CLS or 'Feminist Perspectives on Law,' according to Cownie, enables the researcher to find out "what goes on in the law school." (37) They do, however, "not allow you to see beyond the public face of law teaching, to find out how much law teachers enjoy teaching, whether they think they are good at it, to what extent they adopt any of these different approaches, or what they think they are trying to do when they are teaching their students." (37) Maybe Fiona Cownie should have had a closer look to works from the other side of the Atlantic before coming to her somewhat surprising general evaluation of the 'critical' movement. David Kennedy's essays, for example, would have been a good pick.⁷

Setting out to use a "cultural approach" to study academic law, Cownie soon had to realize that culture is not an easy thing to deal with, a slippery concept even for anthropologists. (5) After introducing different definitions of culture, (4 - 7) the author simply states that "culture, then, is about beliefs, values and customs. In terms of studying legal academics, it involves paying attention to the way people live their lives in law schools, focusing on norms and values which they share *because* they are legal academics." (7) Dealing with identity, however, turned out to be no easier task: "Just as 'culture' is a complex and contentious concept, so is 'identity.'" (11) "Identity," in Cownie's interpretation, refers to the ways in which individuals and collectives are distinguished in their social relations with other individuals and collectivities: "In relation to individuals, identity is our understanding of who we are and who other people are, as well as other people's understanding of themselves and others." (10 - 11)

Certainly, as in most European legal cultures, much has been written on various aspects of legal education in the United Kingdom. There is a wide variety of litera-

⁷ See, *inter alia*, D. Kennedy, *International Legal Education*, 26 HARVARD INT'L L.J. 361 (1985).

ture on legal pedagogy, ranging from lamentations about the lack of theoretical knowledge of education among law teachers to debates about the introduction of legal skills and clinical legal education and the place of legal ethics in the academic legal curriculum. (28) Another major area of writing about the legal academy, strongly influenced by the Critical Legal Studies movement (CLS) and, to a lesser extent, by feminist perspectives, explores the approach which should be taken to the researching and teaching of law. (35-38) But all these works belong to the “public life” of academia which is for the author only a starting point to venture into the “more private aspects of legal academia.” (42) It is the “everyday life” of legal academics in Britain Cownie sets out to examine comprehensively – including their approach to legal analysis, their personal career choices, their joys and labours with teaching and research, their self-perceptions and their attitudes towards administration, networking and Higher Education Policy. The ‘public,’ however, is absent even in private: none of the respondents expressed the intention to ‘contribute something to society’ as a reason for being a lawyer.

Out of the sixty-seven university law schools in England which offer “qualifying law degrees” (i.e. degrees which are accepted by the legal profession as the “academic stage” of legal training), Cownie chose seven research sites and thereby respondents which reflected variations in institution, status, experience and gender. The institutions were selected so that they included an elite law school in the “golden triangle” of Oxford, Cambridge and London, an old-established civic, a new civic, and three former polytechnics, all located in cities of varying sizes. (17) Between June 2001 and December 2002, fifty-four interviews were conducted. (14) The group of interviewees included thirty-five men and nineteen women, and individual academics were selected so as to include varying levels of status and experience. (19)

Examining the habits of law’s inhabitants, Fiona Cownie found the discipline in flux. This is, according to her, particularly true for legal academics’ approach to law. While almost all the respondents were clear that being an intellectual is not a necessary quality to be a successful academic lawyer, a majority pointed out that the legal academics producing the best work *are* intellectuals.⁸ (70) “With half of my respondents describing themselves as adopting a socio-legal or critical-legal approach, and feminism routinely used in teaching a wide variety of subjects,” the

⁸ It should be noted that Cownie, despite her rather positive assessment of the “intellectual drift” occurring in British legal academia, does not even mention the role of the academic lawyer as public intellectual which has a long tradition in many legal cultures. See, e.g., R. POSNER, PUBLIC INTELLECTUALS: A STUDY OF DECLINE, 359 - 386 (2001). For a witty contribution to the well-worn debate on whether there is something as a “British Intellectual” at all, see S. Collini, *Every Fruit-juice Drinker, Nudist, Sandal-wearer ...’: Intellectuals as Other People*, in THE PUBLIC INTELLECTUAL 203, 214 (H. Small ed., 2002).

author states a well advanced “movement from an exclusively black-letter culture to a pluralistic one, peopled by lawyers adopting very different approaches to the study of law.” (72) Cownie does not hold back with her enthusiasm about the British turn to scholarship: “Doctrinal law is not what it used to be, with the majority of black-letter lawyers regarding the introduction of various policy related matters as crucial to their analysis of legal phenomena.” (72)

Shedding light on various aspects of the legal academic career, from the initial decision to study law at university to the qualities and skills which contemporary legal academics think are necessary to be a good legal academic (and those which make it likely that someone will become a professor), Fiona Cownie presents rather sobering conclusions. Only one person described her interest in law as “passionate.” A later principal lecturer choose to read law rather randomly – because he did not want to end up as a teacher after studying history or languages. (75) Talking about the qualities of a good academic lawyer, analytical and communication skills were ranked on top, while imagination did not seem a highly valuable element of legal analysis. (81 – 82) Nearly half of the respondents regarded ruthlessness or ambition as necessary qualities for those who want to go on for a Chair. (88)

Even if there seems to be no room for the “good citizens” on the ladder to academic fame, legal academics are overall very positive about their career choice. They are proud to be doing this job and often perceive themselves as belonging to a high-status profession.⁹ For some, being a legal academic is a vocation – badly paid, but for the most part, hugely rewarding. *To speak as truth to power* is a professional ideal as tempting for the academic lawyer as for the humanitarian activist in general or, occasionally, for the writer educated in law.¹⁰ When asked what they liked most about being a legal academic, the factor identified most often, besides the variety of tasks, was autonomy, or the freedom to organise one’s own working life.¹¹ The flip

⁹ “Yes, I am proud. If you have been a historian, and then you go into law, there’s a great difference in the way you’re received. Anyone can do history, but law gets respect – often misplaced, I’m sure, but it does get respect ...” (principal lecturer, experienced, female, new university) (99).

¹⁰ See D. KENNEDY, *THE DARK SIDES OF VIRTUE: REASSESSING INTERNATIONAL HUMANITARIANISM*, at XVI (2004); see, also, J. Zeh, *Wir trauen uns nicht: Viele Schriftsteller halten Politik für Expertenkram – und vor allem für Privatsache*, 11 *DIE ZEIT* 53 (2004) “Nach meiner politischen Einstellung befragt, würde ich antworten, dass ich meinen Kinderglauben an die Gerechtigkeit noch nicht verloren habe. Ich würde anführen, dass ich meine juristischen Kenntnisse bislang ausschliesslich darauf verwende, ehrenamtlich gegen demokratischen Kolonialismus auf dem Balkan, gegen ugandische Kriegsverbrecher und gegen die Telekom zu kämpfen.”

¹¹ “I suppose what I really like is the individual freedom. It’s a job where you can, to a large extent, do what you want, work on questions that interest you. You can spend a lot of time reading books – I like reading books, and at times, certainly not all the time, but at times it can just seem like one of the best jobs in the world, because you can be sitting in the garden in the summer reading what I think are very

side of flexibility, however, is sometimes the inability to maintain an appropriate balance between work and other activities: "You never really leave your work behind." (professor, mid-career, male, old university). (117) But the most disliked parts of the experience to be an academic lawyer are increased accountability measures such as the Research Assessment Exercise (RAE)¹² and the Quality Assessment Exercise (QAE),¹³ (109) and the pressure to publish a certain number of pieces per year (111).

Academic lawyers enjoy teaching; they enjoy helping students to learn. Overwhelmingly, they regard lecturing as a "performance," and are quite skillful in "dramatising" their lectures. (141) Research has come to play an increasingly important part in the life of academic lawyers; RAE and other forms of "managerialism" are also often seen as making the profession more stressful. The rigid external timetable imposed on the production of research, the almost constant review of personal research agendas, and a new culture of competition are only a few negative effects noted by Cownie's respondents. (141) The negative attitudes expressed to administration in general are unsurprising. Administration is a necessary evil whose burdens are unevenly distributed among academic staff, because some people are very good at getting out of it. (202) The attitudes of the respondents towards the increasing amounts of bureaucracy and "audit" now found in academic life reflect the feelings of the rest of the academy, constituting "one of the less attractive features of the culture of academic law." (202)

Another particular feature of law's academic culture is networking. Three-quarters of Cownie's respondents had a network of academic contacts, were connected to "significant others." (153) Apart from their importance for research-related exchange, Cownie emphasizes, networks may be helpful in overcoming the "politics" of legal academia. (154) But she also highlights gossip as a particular feature of the culture of academic law. (155)

"Identity matters," states Fiona Cownie, (167 - 186) and it does not come as a surprise that gender, class, race, ethnicity and sexual orientation affect the culture of legal academia as much as other social environments. However, her reflections on

interesting books, and being paid for it - it's a pretty good deal. It's not always like that, but that's what's really good." (lecturer, early career, male, old university) (104).

¹² The Research Assessment Exercise (RAE) is an exercise conducted nationally to assess the quality of UK research and to inform the selective distribution of public funds for research by the four UK higher education funding bodies, see www.rae.ac.uk (last visited on 12 July 2004).

¹³ The Quality Assessment Exercise (QAE), an assessment of the quality of teaching, takes place every four years and every department at every university in the UK is subjected to it.

the “hegemonic masculine heterosexuality of the law school” (185) are not entirely convincing. But as there is still much work to be done “on the ways in which gender plays out in the law school,” (204) it is to be seen whether the so far “somewhat superficial” awareness of gender issues among legal academics is a result of a lack of attention towards these issues or simply an effect of a minor importance of these questions for contemporary legal identities.

“While academic lawyers have many things in common, the lived experience of being an academic lawyer differs significantly in different countries; one should not assume that experiences as legal academic in one jurisdiction can automatically be transferred to another jurisdiction.” (25) But, as Peer Zumbansen recently emphasized in Johann Wolfgang von Goethe’s words, we should learn from the “merits of foreign nations,”¹⁴ not only as far as legal education in the narrow sense is concerned, but also when we think about *Bildung* in a broader context. Stressing the limited scope of her research, Fiona Cownie expresses the hope that the ideas and theories discussed in her book will stimulate others to question the culture of their own law schools, and to think further about a number of issues she raises. And indeed, it is to be hoped that similar research will be conducted in other legal cultures. Having in mind the ever-increasing importance of lawyers in the legal and political structures of the European Union,¹⁵ an extensive comparative study of the culture and identity of European legal academics would be a desirable further step.

For now, we may for a moment listen to Fiona Cownie’s slightly optimistic conclusions, offering special comfort to legal academics in the less and less attractive academic cultures¹⁶ of some European countries:

“I would argue that in this study of legal academics, I have found considerable evidence of the enduring nature of certain core aspects of the culture of academic law, which suggest that the professional identities of legal academics may be more

¹⁴ See P. Zumbansen, *Das soziale Gedächtnis des Rechts, oder: Juristische Dogmatik als Standeskunst*, in RECHTSVERFASSUNGSRECHT. RECHT-FERTIGUNG ZWISCHEN PRIVATRECHTSDOGMATIK UND GESELLSCHAFTSTHEORIE, 151, 173 (C. Joerges & G. Teubner eds., 2003).

¹⁵ See L. SIEDENTOP, *DEMOCRACY IN EUROPE* (2001). For a critical assessment of law’s function in the process of European integration, see U. HALTERN, *DER EUROPARECHTLICHE BEGRIFF DES POLITISCHEN. HABILITATIONSSCHRIFT 252* (2003).

¹⁶ See P. Zumbansen, *supra* note 14, at 174, for an account of the everyday-life of legal academia in a major German university: “In Deutschland erreicht der Professor die Studenten nur per Mikrophon, und die Studenten erreichen den Professor gar nicht, schon gar nicht in seinem Büro. Macht nichts, weil sie ihn oft nicht einmal dem Namen nach kennen. Dass die Veranstaltungen überfüllt sind, macht auch nichts, weil weder die Studenten noch der Professor die riesigen Veranstaltungen mögen und sie deshalb eher in einer Mischung aus Resignation und Zynismus ertragen.”

resistant to pressure than some commentators have acknowledged. Their prime objective as teachers was to teach students to think; despite benchmarks, audit and other forms of quality assessment they did not talk in terms of 'transferable skills' or increasing the employability of their students. When asked about their personal view of success, their aim was to establish themselves as an expert in their field, who would be respected by other academics; other than in highly specialized fields, they did not look outside academia for peer approval. The qualities they identified as being desirable in a legal academic, such as powers of analysis and communication, were those which have been traditionally valued in the academy. Academic lawyers are subject to the changes taking place in higher education just as much as members of other 'academic tribes'. They teach more students, they are subject to almost constant surveillance, and not surprisingly, they feel under pressure, especially the women. However, overall, the culture of academic law and the professional identities constructed within it display a great deal of resilience, both retaining a fundamentally academic orientation." (206)

We may then, for a moment, contemplate a merger between two traditional features of academic culture: "Professor und Künstler,"¹⁷ professor and artist. If legal academia is truly a "site of power," as Fiona Cownie argues with Pierre Bourdieu's famous metaphor,¹⁸ it may not limit itself to ambition without passion, to reading the law without critical theoretical reflection. After all, creative intellectual imagination might be a more important professional quality than analysis and communication have so skillfully taught us.

¹⁷ *Id.* at 178.

¹⁸ FIONA COWNIE, *LEGAL ACADEMICS: CULTURE AND IDENTITIES* 3 (2004).