ARTICLES

THE RENEWAL OF THE LIBERAL LAW DEGREE†

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I

I propose to examine the underlying philosophy of the recent First Report on Legal Education and Training by the Lord Chancellor's Advisory Committee on Legal Education and Conduct (ACLEC),¹ and also some of the practical implications of the Report, particularly for university law schools.

It was a stimulating experience to be able to work on this Report which reflects the collective wisdom and experience of all seventeen members of ACLEC and draws on the views expressed by its consultation panels and the large number of respondents to its consultation papers.² It is important to stress that the Committee's expertise is not simply that of the two law teachers on the Committee or the two barristers, two solicitors and two judges, but also that of the lay majority of the Committee whose experience is that of consumers of legal services, social researchers, educators and in other professions. In reflecting this breadth of experience, it is a Report unique in the annals of British legal education. I have no intention of

† An inaugural lecture delivered in the Faculty of Law, University of Cambridge, on 14 May 1996, under the Chairmanship of the Rt. Hon the Lord Steyn. The lecture as delivered began with a tribute to the three previous incumbents of the Chair of Law established in 1973, Kurt Lipstein (1973–76), Toby Milsom (1976–90) and Bill Cornish (1990–95). If an explanation is wanted of the liberal legal education, with which the lecture is concerned, there is no need to go further than the teachings and writings of these three outstanding exponents.

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¹ The Lord Chancellor's Advisory Committee on Legal Education and Conduct, First Report on Legal Education and Training, April 1996. The Committee's review was undertaken under the provisions of the Courts and Legal Services Act 1990, s. 20(1) and Sched. 2. The Report deals with the first degree in law, conversion courses for non-law graduates, common professional legal studies and the specific training of intending barristers and solicitors up to the point of initial qualification. Later reports are intended to cover continuing professional development, and the education and training of paralegals.

² The Committee also had the benefit of a number of recent academic studies, of which particular mention may be made of William Twining's Hamlyn Lectures, Blackstone's Tower: The English Law School (London, 1994), and Peter Birks (ed.) Reviewing Legal Education (Oxford, 1994).
attempting to summarise the 171-page Report or to regurgitate its main recommendations. What I have to say is, in the words of tort lawyers, a "frolic" of my own for which my colleagues on the Committee bear no vicarious responsibility.

In the first part of this lecture I am going to argue that the Report signals a significant shift in the underlying philosophy of legal education in England and Wales. For most of the 20th century legal education in this country has been dominated by the false antithesis between "liberal" and "professional" legal education, a distinction legitimated and given an institutional basis following the Report of the Ormrod Committee (1972)\(^3\) which resulted in a sharp line between the "academic" and the "vocational" stages of legal education. The ACLEC Report, on the other hand, favours integrated education and training, in which liberal values and transferable professional skills are learnt throughout the educational process by in-depth study of Law. This involves an erosion of the traditional linear model of academic and vocational stages ending with qualification as a barrister or solicitor, and its replacement by the notion of life-long personal development in the Law as a liberal and humane profession. I shall submit that this new direction is a revival or renewal of an older vision of Law as a liberal discipline which inspired such great Cambridge teachers as Andrew Amos and Frederick William Maitland.

In the second part, I shall discuss some of the practical implications of the renewal of the liberal law degree, and provide some examples of the kind of approach to teaching which this involves.

II

The antithesis between a "liberal" or "academic" education and a "professional" or "vocational" training, is one of the most striking differences between the preparation of lawyers in England and the formation or Bildung of lawyers in other European countries, including Scotland. As everyone knows, the origins of this schism are to be found in the divergent paths of the common law and the Roman-based civil law.\(^4\) On the Continent it was the universities which created the new and modern law of Europe, as opposed to the archaic and feudal law, in the 13th and 14th centuries. Although national law was not taught in the Continental universities before the 17th century (Swedish law from 1620 at Uppsala, French Law from 1679 at the Sorbonne, the Deutsches Recht from 1707 at Wittenberg etc.), it is

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\(^3\) Report of the Committee on Legal Education, Cmnd. 4595 (March 1971). In contrast to ACLEC, 12 of the 13 members of this Committee were lawyers, 6 of them senior academics.

important to realise that this was a natural development following the Reception of Roman law. In England, on the other hand, modernisation was achieved from the mid-12th century onwards through the centralised judiciary and the Inns of Court which developed the common law. The Inns were the focal point for the study and teaching of English law, with Cambridge and Oxford universities fulfilling only the marginal and distinct role of teaching canon and civil law.

In 1598 Stow in his Survey of London described the Inns as a whole university, but by then they had already passed their peak. The Civil War effectively put an end to their educational functions. Thereafter training both for barristers and for solicitors and attorneys depended entirely on apprenticeship. It was in this sorry state of affairs that Blackstone became the first holder of the Chair of Common Law endowed by Charles Viner at Oxford. In seeking a definition of a liberal law degree it is still illuminating to re-read Blackstone’s inaugural lecture delivered on 25 October 1758. Blackstone suggested two distinct purposes of an academic legal education. The first, and for him perhaps the most important, was that “a competent knowledge of the laws of that society in which we live is the proper accomplishment of every gentleman and scholar; and highly useful, I had almost said essential, part of liberal and polite education”. The cultivated gentleman needed this in his capacity as juror, justice, landowner and legislator. Secondly, he argued that the practising barrister needed an academic legal education: “If practice be the whole he is taught, practice must be the whole he will ever know: if he be uninstructed in the elements and first principles upon which the rule of practice is founded, the least variation from established precedents will totally distract and bewilder him: ita lex scripta est [thus the law is written] is the utmost his knowledge will arrive at; he must ever aspire to form, and seldom expect to comprehend, any arguments drawn a priori, from the spirit of the laws and the natural foundations of justice.” Moreover, if they were confined to the “manual labour of copying the trash of an office” few gentlemen of distinction or learning would seek to go to the Bar. The consequence of this would be to “have the interpretation and enforcement of the laws (which include the entire disposal of our properties, liberties and lives) fall wholly into the hands of obscure or illiterate men”.

Despite the enormous popularity and influence of his Commentaries, Blackstone’s twin vision of the university as provider of both a civilised education and a foundation for professional practice was not realised. These ideas were revived in the remarkably far-sighted report

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of the Select Committee on Legal Education in 1846,\footnote{Report from the Select Committee on Legal Education (1846), B.P.P., vol X (perhaps significantly, as Professor Gower has pointed out in (1950) 13 M.L.R. 137, in the same volume as a Report from the Select Committee on the Disposal of Metropolitan Sewage Manure!).} which castigated the "unsatisfactory and incomplete" state of legal education which had produced two "striking evils" by concentrating on the "practical and mechanical" and discouraging the "higher and doctrinal" parts of the profession. These "evils" were first that the study of law had been deprived of its scientific character, and secondly "throwing out those intelligences who were most capable of bringing back the profession to its original purposes and character".\footnote{Ibid., p. xxxiv.} The Committee complained that "the want of an early well-directed and well-digested philosophic system of study" had dire consequences producing technical lawyers unfit for judicial office.\footnote{Ibid., p. xxxi.}

The Committee reported that there was virtually no institutional teaching of any kind of English law, with the exception of Professor Amos's lectures at University College London. Thomas Starkie Q.C., Downing Professor of the Laws of England, told the Committee that "there are at present no lectures given and no attendance whatever" at Cambridge.\footnote{Ibid., p. v. Starkie also reported that the "hour of the lecture interferes with the College hours". This is reminiscent of the undergraduate who complained that lectures on a Wednesday interfered with both weekends!} Starkie's successor as Downing Professor was Amos, first Professor of English Law in London, whose popularity at UCL was not to be matched at Cambridge. While between 50 and 150 students attended his lectures each year at UCL,\footnote{Ibid., p. viii.} only eight undergraduates attended his inaugural lecture at Cambridge, and only two of these, together with a B.A. and an M.A., subsequently joined his class.\footnote{[J.H. Baker], 750 Years of Law at Cambridge (Faculty of Law, University of Cambridge, 1996), p. 9. Amos's experience should serve as a warning to me, since I held his Chair at UCL (1982-93) before returning to Cambridge, and I saw no undergraduates at all at this lecture! There were, however, over 100 law teachers and senior representatives of the legal profession present, a healthy sign that legal education is now taken very seriously.} The 1846 Committee commended Amos's UCL lectures in equity, common law and criminal law, because "he endeavoured to throw into them as much as possible of a philosophical character, to give them as much theory as he could in these lectures, illustrating his theory by constant reference to actual practice . . . [and describing] his practice by what ought to be the guiding principle in regulating it."\footnote{Op. cit., p. viii.} This integration or unity of theory and practice was for the 1846 Committee the paradigm of a liberal legal education. It is striking that they recommended as courses which the universities should provide for both the non-professional and the professional lawyer, "elements of Jurisprudence" described as "the base and introduction to all legal study, and the
natural sequel to History, Mental and Moral Philosophy” as well as “Comparative Constitutional Law”, “Political and Commercial Geography”, “Statistics and Political Economy” and “The History and Progress of Law”. For the professional lawyer they wished to add subjects such as “International and Colonial Law”, “Medical Jurisprudence” and “Municipal and Administrative Law”. Such a list (or its modern equivalent) would grace a liberal law degree today.

Amos’s inaugural lecture in 1850, like Blackstone’s a century earlier, commended the study of law for clergymen and country gentlemen. But what was particularly striking was his advocacy, as well, of “the study of law on a philosophical basis, and in connexion with the history and literature of the country” as a “desirable object not only for general students, but for those who intend to make the Law their profession”. “The University” he said “is the place the best calculated for laying that enlarged foundation of legal knowledge, and storing those general principles of jurisprudence, which may enable the future lawyer to tread in the steps of a Mansfield.”14 Similarly, in 1901 Maitland read a paper to the Cambridge Law Club in which he derided the notion that the universities should teach theory and leave it to the Inns in London to see to a “working” knowledge of English law.15 What is common to Blackstone, Amos and Maitland (and to Dicey in his celebrated inaugural as Vinerian Professor in 188316) is that they draw no distinction between a “liberal” or “academic” legal education, and a “professional” or “vocational” one. As Professor Otto Kahn-Freund commented in 1966 (in relation to Blackstone and Dicey): [There is] “not a trace of the thought or superstition that only that which is of practical importance is worthy to be taught or of the perhaps even more pernicious superstition that the less a thing has to do with practice the better it is for the so-called training of the mind.”17

The case for an integrated approach was put cogently in the Final Report of the Haldane Commission on Legal Education in London in 1913, which argued that a university law faculty would develop better if it were not under the control of the professional bodies. The Report countered the suggestion that “practical” law cannot be studied in a university: “the most scientific study of [the law of England] which a university can provide will be the best foundation for professional

15 F.W. Maitland, “Law at the Universities” Collected Papers, vol. III (Cambridge, 1911) 419 at p. 427. Maitland made the penetrating comment elsewhere (op. cit., pp. 78–79) that “the taught system will be very much tougher than the untaught”.
16 A.V. Dicey, Can English Law be Taught at the Universities? (London, 1883).
work, and will also fit a man to deal with intellectual freedom, and from a wide point of view, with the questions he will have to answer from day to day in his professional practice. It will also be a reliable guide to the legislature in framing statutes in organic connection with the past and in harmony with the social development of the national life."\(^{18}\) Haldane saw legal education as a liberal discipline not only for professional lawyers but also for diplomats, civil servants, those in public life as MPs councillors and magistrates, those in public companies and commercial life and those researching into legal questions.

If this integration of theory and practice was seen by the Haldane Commission in 1913 as the cornerstone of the edifice of academic legal education, as it had been by the founders of the academic study of law in England in the 18th and 19th centuries, how did the belief arise that "academic" and "vocational" stages are in some way distinct and ought to be kept apart, that academic teachers should stick to teaching "academic" law and leave it to the professionals to teach what are loosely described as "skills"?

The first chapter of the Ormrod Report provided a clear historical explanation for the duality of English legal education.\(^{19}\) This was the existence of law schools run by the profession itself which play a prominent part in the education of future professional lawyers, and its corollary that the universities have not yet attained the dominant influence over professional legal education which their counterparts in other countries have enjoyed for a great many years. There was also a powerful ideological basis for the split between the "academic" and the "professional". The views of the Haldane Commission were not widely shared either in the profession or in the academic world. Professor H.D. Hazeltine, in a paper presented in 1909 to the American Association of Law Schools, contrasted the aims of the University law schools and the professional schools in England: "the University law schools aim perhaps more at the theoretical and scholarly preparation of the student, while the Professional law schools aim perhaps more at his practical and immediately useful preparation".\(^{20}\) This acceptance of the demarcation between academic and professional education was carried over into the years after the First World War. The Legal Education Committee, set up in 1934 under the distinguished chairmanship of Lord Atkin to consider "closer co-ordination between the work done by the Universities and the professional bodies and further

\(^{18}\) Final Report of the Royal Commission on University Education in London. Cd. 6707 (1913) para. 337.


provision for advanced research in legal studies”, contended itself with a short 15-page Report giving English legal education a clean bill of health and recommending only the setting up of an advisory committee. The Committee said that they “fully accept the principle that it is for the professional bodies alone to decide what degree of professional knowledge shall qualify for admission to the profession and to determine the tests by which that proficiency shall be ascertained”.21 Despite the general complacency, there were voices of dissent, such as Professor Harold Laski’s “uncharacteristically restrained”22 Addendum to the Atkin Report criticising law teaching at the Inns, and the criticism of university law teaching by Sir Arnold McNair in 193423 and Professor E.C.S. Wade in 1947.24

The ideological peak of conservatism in legal education was reached in the Presidential Address to the SPTL in 1948, by Professor W.T.S. Stallybrass (then Vice-Chancellor of Oxford University).25 He equated liberal education with only one of Blackstone’s aims, namely what a gentleman (“a man of general ability and acceptance”) ought to know, and insisted that Law could be recognised as a fit subject for University learning only if it were “education in the Law and not . . . education for the Law”.26 As Abel-Smith and Stevens comment: “his concept of a liberal education was a peculiarly English one; it required separating academic from vocational subjects, but at the same time treating the academic subjects as worthy of analytical and critical study only within certain limited boundaries. The idea of analysing or criticising the policies embodied in doctrines or the actual operation of legal principles clearly did not come within the concept of a liberal education.”27 For him “the best academic subjects are those which are most closely related to other University subjects” such as Jurisprudence, Roman Law and Constitutional Law. While he would admit Contract and Torts and Criminal Law “because a knowledge of them should be part of the equipment of every decent citizen”, he rejected Real Property as having “the same virtues for the legal mind as irregular verbs have for any Classic”.28 He was “sure that the Oxford Law School has been wise in excluding from its course those branches

24 E.C.S. Wade, in his inaugural lecture at Cambridge entitled “The Aims of Legal Education” (1945–47) 9 C.L.J. 286. He urged (at pp. 288, 289) that we should “teach law as a great human institution serving social and economic ends” and “in relation to its place in the world in which we live”; he wanted “to sharpen the critical faculties of the lawyers of tomorrow”.
26 Ibid., at pp. 160, 161.
of the Law which depend on Statute and not on precedent”.29 His notion of liberal education did not include asking what the law ought to be as distinct from what it is. “That” he said “gets us near to the field of sociology” and “objectivity is difficult when you come to sociology”.30

The counter-blast came two years later in Professor Gower’s brilliant inaugural lecture at LSE, later published in a much expanded form in the Modern Law Review.31 He attacked the “complacent apathy” of English lawyers about legal education. He demonstrated that the universities fell between two stools—the academic or theoretical and the professional or vocational. He sought a rethinking of the subjects which were fit for academic study (“the fact that a subject is of practical value is no reason for rejecting it as unsuitable for university instruction”).32 He argued that “every lawyer, whether he devotes himself to private practice or the public service has to make policy decisions demanding a knowledge of economics, political science and sociology” as well as psychology.33 His proposal to make a university law degree compulsory for every barrister and solicitor took over twenty years to come to fulfilment. It was the outstanding achievement of the Ormrod Committee (of which Gower was a member) to secure recognition of the need for all professional lawyers “normally, but not necessarily” to have a university degree in law.34

In retrospect, however, it can be seen that the Ormrod Report contained a serious flaw. This was the threefold division which it drew between an academic stage, a professional stage and a stage of continuing education or training. As Professor Twining pointed out in his seminal Hamlyn lectures on the English Law School, this structure has entrenched “separate spheres of influence”, with the universities being primarily responsible for the “academic” stage (but not fully in control), while professional and continuing education are the sole domain of the Bar and Law Society.35 I believe that the Ormrod Committee did not intend this to be a rigid demarcation. Indeed the Report, in words reminiscent of Professor Gower’s paper, advocated the “integration of academic and professional teaching resources into a coherent whole”. “The traditional antithesis between ‘academic’ and ‘vocational’, ‘theoretical’ and ‘practical’, which has divided the

32 Ibid., p. 177.
33 Ibid., p. 171.
34 Ormrod Report, para. 103.
35 Twining, op. cit., p. 35. He points out that the Committee failed “to carry out Lord Gardiner’s agenda of creating an integrated and unified system of legal education and training”. This agenda was implicit in the terms of reference, and also advocated in G. Gardiner and A. Martin, Law Reform NOW, (London, 1963), chaps. 1 and 11.
universities from the professions in the past, must be eliminated by adjustment on both sides.” 36 Sad to relate, these intentions of the authors of Ormrod were frustrated. While Ormrod recommended that the “professional bodies ought not to specify the contents of the curriculum . . . as a condition of recognition” of a particular law degree, the professional bodies continue to lay down fairly precise minimum requirements. The current Announcement on Qualifying Law Degrees, approved under the framework of the Courts and Legal Services Act, adds a seventh compulsory subject and in the words of the ACLEC Report “imposes uniformity, inhibits innovation and diversification of law degrees, and contributes to the overload of the undergraduate curriculum”. 37 Moreover the law degree route can be circumvented by the short-cut of the 36-week conversion course (CPE or Diploma in Law). 38

The ACLEC Report stresses the adverse consequences of the artificially rigid distinction between the academic and professional stages of academic legal education. 39 First, it has encouraged the separation between theory and practice, between “academic” knowledge and “professional” expertise, and between the study of substantive and adjectival law. It has also stimulated among some practitioners that anti-intellectualism which is one of the less attractive features of English popular culture; at the same time it has reinforced intellectual snobbery on the part of some academics who regard practice as beneath their dignity. There is something seriously wrong with legal education and training if academic courses are seen as intellectually rigorous and practical training is not. As the ACLEC Report says: “a liberal and humane education implies that students are engaged in active rather than passive learning, and are enabled to develop intellectually by means of significant study in depth of issues and problems as part of a coherent and integrated course, and that the teaching of appropriate and defined skills is undertaken in a way which combines practical knowledge with theoretical understanding”. 40

A second consequence of the rigid three-stage approach is that it has deprived the legal profession of the contribution of a wider range of university lawyers to the development of subjects which are thought to be appropriate only for the vocational stage. Thirdly, it has led the professional bodies to see themselves as regulators of the law degree instead of facilitators and partners with the universities, and for their part the university law schools have been suspicious and resentful of the professional bodies.

36 Ormrod Report, para. 85.
37 ACLEC Report, para. 2.6, and generally, paras. 4.11–19.
38 Ibid., para. 2.6 and generally, paras. 4.34–37.
39 Ibid., paras. 2.11–13.
40 Ibid., para. 2.2, and see too para. 2.4.
In place of the fragmentation of the present system, the ACLEC Report offers a new vision of a system of legal education capable of meeting the changing needs for legal services in the next century. In the language of the Report the general requirements of the system must be to provide flexibility, variety and diversity; multiple entry and exit points; an all-round preparation for a wide range of occupational destinations; intellectual rigour; and common professional education.  

The Report suggests that all stages of legal education and training should aim to achieve intellectual integrity and independence of mind, knowledge of the general principles, nature and development of law and of the analytical and conceptual skills required by lawyers, an appreciation of the law's social, economic, philosophical, moral and cultural contexts, as well as a commitment to legal values. The intending barrister or solicitor will also need to know the tricks of the trade, that is how to act in various practice settings.

I believe that the proposals in the ACLEC Report for achieving these aims present the universities and the professional bodies with an historic opportunity at last to achieve, in partnership, the “integration of academic and professional resources” which the Ormrod Report advocated, and to end the artificial distinction between the “academic” and “vocational” aspects of legal education.

III

I turn, then, to consider some of the practical implications of the integration of legal education and training, particularly for university law schools.

One of the central recommendations in the Report is that law schools should be left to decide for themselves, in the light of their own objectives, which areas of law will be studied in depth, which only in outline, which (if any) shall be compulsory, and which optional, provided that certain broad aims—the Report uses the fashionable jargon of a “statement of outcomes”—are satisfied. The only constraints are that the professional bodies should be satisfied that there are adequate learning resources (a protection for law schools against greedy vice-chancellors who want law taught on the cheap); that the course must have been rated as satisfactory by the quality assurance body (a necessary concession to the demands by the Treasury for accountability in spending public money and by the professional bodies and public for “product safety”); and that the degree course

\[41\] Ibid., para. 2.2.

\[42\] Ibid., para. 2.4.

\[43\] Ibid., p. 72 (annexure to chap. 4) for an illustrative statement.
should include the study of legal subjects for not less than two years of full-time study (or its part-time equivalent) subject to adequate transitional arrangements being made to ensure the continued viability of mixed degrees (a recognition that in-depth study of law requires time).  

These proposals rest on the assumption that the quality of legal education will be improved by giving universities greater freedom and the possibility of developing courses which are as intellectually challenging as those in other disciplines. How will university law schools use this new freedom to provide an independent liberal education in the discipline of law, without a prescribed core of subjects? There is perhaps understandable alarm in some quarters. The professional trainers are worried that graduates will not have a common core of substantive law within which to learn professional skills; practitioners fear they will have trainees who know nothing of breach of contract or tort, let alone estates in land or constructive trusts. Instead they will be expected to employ or give pupillages to a cynical bunch of post-modern critical theorists, who know little law. My response to this is to ask the doubters to trust the universities and to put their faith in the market. Most lawyers in practice are now university graduates; most academic lawyers have some contact with law firms and barristers’ chambers. Through formal and informal interaction, the law schools are sensitive to the needs of practice, and in turn can present ideas to practising lawyers, helping them to develop new areas of practice. Students are canny when it comes to opting for the knowledge and skills which will be most useful to them in finding jobs; but it is also important that they should have the opportunity which universities can uniquely offer of following knowledge of law for its own sake in areas which interest them, not least critical theory. Such students, with a sound general education, can readily acquire “add-on” subjects, which they may need for professional training or specific forms of practice, at later stages of their careers. They will, in the end, be better lawyers. And let us never forget that over half the number of law graduates use their degrees as a basis for careers other than as barristers or solicitors, and that this proportion is likely to increase.

The integration of theory and practice has important implications for the universities. In my view it means that the student has to examine problems from at least five distinct perspectives.

The first is through rigorous legal argument, that is by deductive reasoning from the premiss of the statute or precedent, isolating principles which help to resolve knotty legal problems. In order to do

\[44 \textit{Ibid., para. 4.33.}\]
this the student needs to have mastered what is sometimes called "traditional" legal scholarship. Such scholarship continues to flourish in England, not least in the Cambridge law school, and is of growing importance in assisting judges in the highest courts. A thorough understanding of the alphabet of legal concepts and of legal principles is essential before the student becomes immersed in issues of "policy". In Kahn-Freund's memorable phrase, the student must go through legal argument, but must not get stuck in it. Or, as Lord Steyn put it in his Presidential Address to the Bentham Club earlier this year, "in some cases, particularly at an appellate level, the court is confronted with situations of choice in which deductive reasoning competes for supremacy with considerations of general principle, policy and justice". In my view, these questions of policy or justice make it essential that the student must be able to view the problem from a second perspective, that of a social, political or commercial problem requiring a solution. This requires at least the ability to comprehend the evidence and methods of social scientists, such as economists and sociologists, and, where appropriate, to be able to suggest forms of dispute resolution other than conventional litigation.

Both these perspectives—the doctrinal and the social—are vital to an understanding of legislation which, as Professor Jack Beatson reminded us in his recent inaugural lecture, is the Cinderella of legal studies. Specialist options in legislation are rare in England, and even in statute-based courses the basic skills of legislative handling are often neglected. The courts show an increasing willingness to construe statutes purposively. Students need to know how to ascertain the purposes of a statute. This cannot be confined to reading those parliamentary materials which are now admissible under Pepper v. Hart rules. The statute needs to be studied in its social and political context, and the student needs to understand how statutes are adapted to work in circumstances quite different from those contemplated by the legislator.

The doctrinal and social perspectives are also both relevant to the study of case law. Take for example the problem of liability for

46 Kahn-Freund, op. cit., p. 366: "he must not be allowed to go around it by escaping into talk about policies, he must go through it".
48 J. Beatson, "Does the Common Law Have a Future?", an inaugural lecture delivered in the Faculty of Law, University of Cambridge, 29 April 1996. [To appear in the Journal in July 1997.]
negligently caused pure economic loss. Examples are situations where auditors negligently certify accounts which give a false impression of a company’s worth, and a take-over bidder then relies on those accounts and purchases the company only to discover later that in fact it is worthless;\textsuperscript{51} or a solicitor negligently fails to act on a client’s instructions to draft a will, the client dies and the intended beneficiaries fail to receive their expected legacies;\textsuperscript{52} or a person buys a house or product only to discover that it is worth less than he paid for it, and now seeks to recover that loss not from the person who sold him the house or product but from the original builder or manufacturer or the local authority which carelessly approved the defective design.\textsuperscript{53}

A purely doctrinal analysis of such problems leads up a blind alley, because of the inconsistencies and uncertainties of the judges’ use of concepts such as “duty”, “remoteness”, “damage”, “reliance”, “policy”, and “justice and fairness”.\textsuperscript{54} Incidentally, in my view, this is an area which illustrates the importance of teaching the law of obligations as an integrated subject, because one of the important doctrinal arguments for denying tort liability is the need to protect the integrity of contract. Unless the student has either previously or at the same time, understood the doctrine of consideration, the rule against third party benefits, and the different times at which limitation of actions begins to run for breach of contract and tort, these doctrinal arguments are incomprehensible. But having reviewed the doctrinal approach, the teacher will be expected to focus on “policy”. Here it is not enough to make vague pronouncements on the danger of opening the “floodgates”, or the fear of “liability in an indeterminate amount to an indeterminate class”. Recent textbooks, such those by Howarth\textsuperscript{55} and Markesinis and Deakin,\textsuperscript{56} show how economic analysis of law can provide a more sophisticated and refined understanding which does not simply lump all kinds of economic loss together. One can examine whether to allow recovery in the particular circumstances would provide an incentive for people to behave in a way which would be even more harmful than if the loss were irrecoverable; whether a particular result would undermine the competitive process, or would be a waste of resources, or would allow people to keep benefits for which they have not paid either directly or indirectly. This provides a basis for critical assessment of the present law.

\textsuperscript{51} Caparo Industries plc v. Dickman [1990] 2 A.C. 605.


\textsuperscript{54} See the devastating critique by B.S. Markesinis and Simon Deakin, “The Random Element in their Lordships’ Infallible Judgment: An Economic and Comparative Analysis of the Tort of Negligence from \textit{Anns} to \textit{Murphy}” (1992) 55 M.L.R. 619.


The problem of economic loss is also one where the students can benefit by taking a third perspective, namely that of comparative law. By reading in parallel with the decisions of the House of Lords, say some decisions of the German Federal Court and relevant provisions of the German civil and commercial codes on a similar question, one can derive a clearer understanding of one's own law.\textsuperscript{57} I must acknowledge my prejudice because I was trained in the hybrid Roman-Dutch system before I studied English law, and so inevitably tend to look at every problem in a comparative way. Earlier this year, Professor David Johnston delivered a fascinating inaugural lecture as Regius Professor in which he illustrated the usefulness of Roman and modern civil law in solving legal problems which have baffled common lawyers.\textsuperscript{58} Professor Markesinis has recently delivered an inaugural at Oxford extolling the virtues of comparatism as part of a broader liberal education.\textsuperscript{59} I need add only one practical reason for making the comparative study of civil law systems (and at least one other European language) an integral part of legal education in England.\textsuperscript{60} This is that in order to deal with the law of the European Union—already regarded as an essential part of the curriculum—we need to understand legal traditions other than our own on which many of the concepts and assumptions of Community law are based. These Codes present a model of law as a unity comprising a series of interlocking principles. This approach to law, as a comprehensive framework for society based on scientific study by legal scholars, stands in contrast to the common law tradition. Exposure to the civilian systems, based on Roman law, is essential if English lawyers are to respond to the profound changes which EU law is making to our legal system, and to be able to compete on an equal footing with Continental lawyers in international legal transactions.

A fourth perspective is that of theory or philosophy. In the old adage, while theory without practice is sterile, practice without theory is blind...Unless the student can make those connections between the particular and the general which theory should provide, he or she will fail to comprehend the wider universe in which law operates. The usual complaint is that substantive law subjects are too context-specific

\textsuperscript{57} This is the approach favoured by one of our greatest comparatists, Kurt Lipstein, in \textit{The Common Law of Europe and the Future of Legal Education} (eds. B. de Witte and C. Tucker) (Deventer, 1992), pp. 255–263. In the particular example given, this has been facilitated by B.S. Markesinis, \textit{The German Law of Torts}, 3rd ed. (Oxford, 1994), p. 173 et seq.

\textsuperscript{58} David Johnston, Inaugural Lecture delivered in the Faculty of Laws, University of Cambridge, 1 February 1996. [To appear in the Journal in March 1997.]


\textsuperscript{60} This draws on the ACLEC Report, para.1.13.
to take account of theory, and that Jurisprudence courses are too remote from the specific concerns of all but a small minority of students. These complaints can be met in a variety of ways. First by integrating theory into substantive subjects. For example, I have found that in teaching a relatively new statute-based subject such as the law on discrimination, the students can benefit greatly by reading some theoretical discussions on the meaning of equality, such as those by Bernard Williams, Ronald Dworkin, and others, in parallel with the legal definitions and judicial interpretations. Secondly, a structural change in law degree courses, placing the primary Jurisprudence course in the second year and relating its content fairly closely to other substantive subjects would provide students with a new key to understanding.

Finally, there is the ethical dimension. The ACLEC Report argues that "as the organisations in which law is practised become larger and more complex, as competition and instability in the market for legal services increases, and as many practitioners experience a growing sense of insecurity, there are real dangers that professional standards will be threatened unless counter-balancing steps are taken to reinforce ethical values". If this prediction is correct, then it is essential that law schools should "make students aware of the values that legal solutions carry, and the ethical and human dimensions of law as an instrument which affects the quality of life". The teaching of professional ethics and conduct cannot simply be left to vocational courses or in-service training. Students have to imbibe a sense of the obligations which lawyers owe not simply to their own clients or employers but to society as a whole: in maintaining and improving fundamental democratic values, including the protection of human rights and the defence of individuals against the abuse of public and private power, as well as providing legal services for disadvantaged sections of the population.

These are counsels of perfection. You may well ask how any undergraduate course can be expected to impart an in-depth knowledge of law from all these perspectives in the space of three years, let alone within the projected two years' minimum study of legal subjects or the

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63 E.g. the contributions by Derrick Bell, Nicola Lacey, Bhikhu Parekh and Gwynneth Pitt in (B. Hepple and E. Szyszczak eds.) Discrimination: The Limits of Law (London, 1992), chaps. 1, 7, 15 and 16.
65 ACLEC Report, para. 1.19 ; and see further, R. Cranston in (Cranston ed.) Legal Ethics and Professional Responsibilities (Oxford, 1995) at p. 32.
short-cut of the conversion course. Every law teacher complains (as Maitland did)\(^6\) that our students are too young and their period of legal studies too short. I believe strongly that the objective should be a four-year degree. Although the essential issue is the quality of the educational experience (such as small-group teaching and adequate learning resources), rather than its length, English lawyers are at a disadvantage compared to their European and American counterparts in the range of legal subjects which they have time to study. It is impossible to acquire a firm grounding in English legal principles and skills, let alone to study other necessary parts of a liberal degree course which I have described, such as social sciences, philosophy, ethics, history, comparative law and a second language, within a three-year degree course. Many law schools do make provision for a four-year degree, and I hope that their number will increase. However, the Committee\(^6\) was acutely conscious of the serious adverse impact on students from disadvantaged backgrounds which would result from imposing a requirement for a four-year degree. The Department for Education and Employment have made it clear that if the trend to four-year law degrees continues they will amend the Regulations so as to limit the availability of mandatory awards. The financial hardship, and limitation of access by talented non-law graduates, which would result from a requirement for a two-year conversion course, also led the Committee to the pragmatic conclusion that the additional period of study to be required of non-law graduates, beyond the present 36-week course, should consist of the equivalent of 10 weeks of full-time study of legal subjects, but that this could normally be undertaken on a part-time or distance learning basis or by completion of project work.\(^6\) We must now look to the Dearing Committee of Inquiry into Higher Education to press for some form of income-contingent loan scheme or a graduate tax which would enable students from all socio-economic backgrounds to study now and pay later. This would help to make a longer degree a viable option.

Finally, I must say something about the role of universities at the post-graduate stage of legal education. The integrated approach, and the ending of the rigid demarcation between academic and vocational stages, implies that universities should be prominent in the development of the Licentiate stage of common professional legal studies course which is one of the central recommendations of the Report. I must refer you to chapter 5 of the Report for a reasoned case in favour of common education both as an entry point into various types of professional activity and as a flexible foundation for subsequent

\(^6\) ACLEC Report, paras. 4.22–33.
\(^6\) Ibid., paras. 4.34–37.
learning and specialisation. The point I want to emphasise here is that the course which is proposed would build on the law degree or conversion course in a practical, work-oriented context. It might involve subjects such as legal research skills in solving clients’ problems, communication skills, negotiation skills, and fact management, as well as professional values and ethics. All these skills could be integrated within a four-year law degree of the Northumbria-type, or they could form part of a course leading to a Master’s degree in Professional Legal Studies. Such university-based courses could also include the requirements for the revamped and abridged Solicitors’ Legal Practice Course or the Bar Vocation Course proposed in the Report. Perhaps only a minority of university law schools, and then mainly the new universities, will be interested in the Licentiate or exempting first degree or Master’s degree. But I believe, for reasons given earlier, that there is no contradiction between a liberal law degree and professional legal studies.

Undoubtedly there will be strains between those teachers who see themselves as imparting “academic” knowledge and those who profess to be “skills” trainers.69 But they have to learn that this is a false dichotomy. Unfortunately the term “skills” has become associated with “non-academic” “technical” “unreflective”, or lacking in intellectual rigour. Once we accept the idea of integrated learning, we can see the objective of all stages of the educational process as being “knowledge and understanding”, which I use as a shorthand to cover not only the body of facts and principles relevant to any area of law, but also the associated cognitive skills. In other words, the Committee’s proposal for common professional legal studies, is not simply a redistribution of the present list of skills which the LPC and BVC claim to impart. Professional action, that is providing a service to a client, is not simply a “technique” as the modern fashion of assessing “competences” implies.70 What a barrister or solicitor or other lawyer does depends on mental attitudes and professional responsibilities which cannot be separated from “skills”. Professional education cannot be reduced to ever-longer lists of skills (as the MacCrate Report tried to do in the USA71). The educational process has to try to bring out that complex


of knowledge, understanding, imagination and social and ethical responsibility which marks out the true professional.

Of course, knowledge of law is not an end in itself. As T.S. Eliot wrote:

"Where is the wisdom we have lost in knowledge?
Where is the knowledge we have lost in information?".72

We live in a world in which there is too much legal information—it invades our newspapers, serves as public entertainment in endless TV dramas and live Court transmissions, and can be accessed in a staggering variety of forms world-wide through the internet. Some teachers subject their students to ever-longer lists of cases and try to cover every corner of their subjects. We and the students have far too little time to distil that information and to think about it. We need to spend not only our student years but all our lives in the search for wisdom, of which the legal imagination forms a significant but relatively small part. Pablo Casals was asked by a student: "You are 95 years old, and the greatest cellist in the world. Why do you practise five hours a day?" The answer was: "I think I am still improving." That sense of humility and commitment to life-long learning is the greatest gift that a liberal education can give us.

72 Chorus from The Rock.