DEVELOPMENTS IN LEGAL EDUCATION: BEYOND THE PRIMARY SCHOOL MODEL

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The late nineteen-eighties have been the occasion for a spate of birthday celebrations in law schools around the Commonwealth. This reflects the fact that the nineteen sixties saw an enormous expansion of legal education throughout the common law world, including the foundation of many new law schools, some of them the first in a given jurisdiction, country or region. The age of majority of a law school seems almost invariably to be set at either twenty or twenty-five years. Some institutions have marked their coming of age by publishing collections of essays that in different ways reflect on the past with pride or nostalgia or disillusion. Most view the future with apprehension, largely because of the economic crisis that faces higher education in nearly all countries in the English speaking world.

Four recent publications exemplify the mood. The Faculty of Law of the University of Lagos, born in 1961, celebrated its anniversary with a collection of essays on Law and Development to mark the event.[1] Dar-es-Salaam, born within weeks of Lagos, but hardly an identical twin, produced an imaginatively conceived collection of largely autobiographical essays poignantly entitled *Limits of Legal Radicalism.*[2] Two other recent publications perform similar functions for legal scholarship: the now venerable *Modern Law Review* marked its fiftieth birthday with an illuminating survey of the state of legal scholarship in the common law world; this exhibits the wry acceptance of lowering of sights by an ageing radical.[3] Finally a relative youngster, the University of Trento, has published an interesting symposium on *Legal Scholarship* in *Africa*

which even more clearly that other documents many of the practical constraints, political, economic and social, under which contemporary legal researchers and scholars operate, especially in the Third World.[4] In their different ways all of these publications combine reports of significant achievements with a sense of aspirations not really fulfilled and a quiet pessimism about the future about the future. In short, the mood of many institutions on their twenties seems to be one middle-aged acceptance of second best.

Nearly all of these documents have quite understandably adopted the relatively parochial standpoint of academic lawyers in university or polytechnic law schools. The central concerns are with the familiar, but narrow, issues of curriculum, scholarly output and what might be called the ideology of legal education … the much-rehearsed litany of differing approaches to academic law loosely labelled "blackletter" or "expository", "trade school", "socio-legal", "contextual", "law and development", "clinical", "skills", "critical" and so on.

In this paper I propose to adopt a broader perspective in two respects: I shall look at some general trends and issues in the Commonwealth, that vast and amorphous network of countries that are loosely linked together by a shared imperial past, by the common law, and perhaps most important in the long run, by the English language: I shall interpret legal education more broody to include not only specialized education and vocational training in university, polytechnic and independent professional training schools, but also a whole range of activities from law in schools to continuing education of the judiciary at all levels; from formation of paraprofessionals to the development and retraining of specialists; and the vast but relatively neglected subject of legal education for non-lawyers, which ranges far beyond mis-named "service" teaching of law for businessmen, accountants , social workers and the police to include activities aimed at raising the consciousness of and providing practical tools for grass-roots activists, trade unionists and ordinary citizens to help them to understand and use and cope with law as it affects them in their daily lives and work.

In one respect, however, my focus will be narrow: legal education (or mis-education) is delivered and takes place in many

arena and contexts besides specialized law schools. It occurs in law offices, government departments, plush hotels, schools, factories, villages and the home. It is delivered by non-lawyers and the media as well as by those who call themselves law teachers. However, I shall focus on specialized law schools as the actual or potential hub of any system of legal education. In the second part of the paper I phase law schools need to take more seriously than they have done in the past the idea that they should conceived, planned, financed, and equipped to become multipurpose centres that are concerned in a sustained way with all levels of legal education in society.

This argument is not new. It was advanced in a report by the International Legal Center in 1975 entitled *Legal Education in a Changing World*[5] with which Professor Yash Ghai and I were associated. That exercise was an education for me. Since then the world, legal professions, patterns of practice, legal education and some of my own views and perceptions have changed, but largely in ways that confirm and strengthen the main themes of that report. The argument is not intended to provide a blue-print for all law schools to follow; it is rather to suggest that perceptions, discussions and decisions within the higher reaches of legal education need to take account of some far-reaching trends and a wider agenda of issues than the traditionally inward-looking discourse of legal education has encompassed.

TRENDS

I have undertaken to say something about trends in legal education in the Commonwealth in the last 20–30 years. The more one considers the subject the more one realizes that, even in relation to a single country, legal education is much more complex than most discussion and reports acknowledge. That is one reason for the extent of the literature and the persistence of controversy. If one is considering the whole Commonwealth over a long period of time the dangers of generalization are obvious. Accordingly before delivering on this rash undertaking, I must enter a feeble caveat: all I can offer is some impressionistic hypotheses about some trends and tendencies that seen to be widespread, but which are clearly not universal. That it is possible to do so at all is a tribute to the extraordinary strength of the network of contacts between law schools in the common law world.

One convenient starting-point for such an overview is a document, entitled *Law As An Academic Discipline*,[6] prepared for the Heads of University Law Schools in England in 1983 and submitted to the University Grants Committee as part of a plea to take account of the resource needs of the subject in a situation of rapid change and economic adversity. Although it was a piece of advocacy by an interested group, it represented an unusual consensus, which was also endorsed by the Heads of Polytechnic Law Schools in England and the Heads of Scottish Law Schools. Because it attempted to catalogue recent trends and likely developments over the period we are concerned with, it is worth quoting at length:

> *Recent Trends in Law as a Discipline*
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> There have been very significant changes in the scale, content and styles of legal education and research in this country in recent years. Fifteen years ago law as an academic discipline was centred very largely on the teaching of three-year undergraduate degrees (except in Scotland and Northern Ireland) that were strongly, but not exclusively, oriented towards preparation for private practice. The primary focus was on the exposition and analysis of legal doctrine as it was to be found in cases, statutes and textbooks. Syllabuses were much the same nationally, with a strong emphasis on private law. Legal research was similarly oriented and was almost entirely library-based. Law faculties often had the worst staff-student ratios in the University and were viewed as having more modest resource needs than most other disciplines, except in respect of library provision. The past fifteen years or so have seen number of important changes that have cumulatively contributed to a new perception of law as a discipline. In the present context the following are particularly significant:
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> 1 An increase in the scale of legal education at all levels.
> 2 Diversification of the content and styles of undergraduate law degrees (for example, interdisciplinary courses; degrees with a contextual or socio-legal orientation; sandwich courses; English and Foreign law degrees etc.); a similar diversification of types of legal research (especially socio-legal research).
> 3 Entry into the European Community has made the study of both EEC Law and European Law especially important; there has also been a corresponding growth in interest in both International and Comparative Law and in encouraging combinations of law and languages.
> 4 Changes in patterns of legal practice, the broadening of perspectives on law, and other factors have led to several subjects, previously neglected or underdeveloped within academic law, becoming accepted as standard. These include: Administrative Law, Consumer Law, Family Law, EEC Law, Housing Law, Intellectual Property, Labour Law, Planning and Environmental

Law, Revenue Law and Welfare Law. There has been a significant trend towards increased emphasis on public law generally on inter-disciplinary fields such as Law and Economics, Criminology, Sociology of Law, Law and Medicine and Legal and Social History. A substantial number of further subjects is offered in some law schools. A few subjects, notably Roman Law, have declined in importance, but by and large the range of standard subjects has greatly increased.

5 Some Polytechnics have undertaken education and training for professional examinations (including some direct teaching of practical skills).

6 Both Universities and Polytechnics contribute to the rapidly developing field of continuing legal education for the legal profession and for industry and commerce generally. The range and quantity of short courses have expanded very significantly in recent years and this trend is likely to continue.

7 Demands for the teaching of particular aspects of law to students reading a wide range of other disciplines have increased and the proportion of time and resources devoted to teaching in these areas has increased correspondingly. This is particularly true in the Polytechnics, but almost all institutions of higher education with law schools the latter make substantial contributions to the teaching programmes of other departments or subject areas.

8 The computer (and related technologies) has begun to make a significant impact on the study of law, so far mainly, but not exclusively, in relation to information retrieval.

9 The number of students reading for four-year degrees in law has steadily increased, especially in connection with mixed degrees and English and Foreign law degrees.

10 Many law schools are involved in some way in the provision of legal services, mainly legal advice. In many institutions students are actively involved. Some institutions undertake clinical legal education, another potential growth area, that is notoriously labour-intensive in respect of teaching and supervision.

11 Academic lawyers have been increasingly involved in law reform activities.

12 There has been a significant expansion of A-level law; in the long-term this may have implications for law as a significant component in general education at undergraduate level.

13 The diversification of legal research and other developments in academic law have led in recent years to a significant increase in need for sabbatical leave and leaves of absence.

14 A significant development over the past ten years has been the appearance of a number of institutes and research centres in the establishment of which law schools have played a significant part. These centres are designed to establish links with related disciplines and also to encourage collaboration with, inter alia, the professions, trade and industry. In addition to providing specialised research facilities, they promote conferences and organise lectures and short courses in their area of speciality.

All of these developments have financial implications, mostly in

the direction of increasing unit costs in legal education and research; computer hardware, the need for visits by staff and students to other parts of Europe, and a broader conception of what is legally relevant in library provision, as well as the effects of inflation and currency fluctuations, all affect unit costs; the expansion of the range of standard subjects has produced enormous pressure to extend the period of undergraduate study and has increased demand for postgraduate and post-qualification opportunities; clinical legal education and skills teaching are labour intensive; field work and empirical research tend to cost more than library research. Some of these developments have significantly increased the need for sabbatical leave and special grants (unheard of in most law faculties fifteen years ago); this in turn is another factor that makes traditional unfavourable staff-student ratios less and less acceptable. Law is still one of the most cost-effective subjects and probably the least expensive of professional subjects, but it is neither realistic nor acceptable to base assessments of its resource needs on out-dated perceptions of the discipline.

Likely Future Developments

Significant developments in legal education in the next ten to fifteen years are likely to include:

1. continuing pressure to expand the range of subjects and to adopt broader approaches within the LLB;
2. similar pressure at postgraduate level, especially in respect of inter-disciplinary work research training and expanding fields such as foreign law in relation to commerce, trade and economic development;
3. possibly, an expansion of mixed two-subject honours degrees;
4. possibly, a more substantial legal input into other general, non-vocational degree courses;
5. a continuing increase in the demand from other disciplines for legal inputs into vocationally oriented courses;
6. more emphasis on computer applications to legal education and research, not solely in respect of information retrieval, but also, for example, in the development of expert systems;
7. a rapid expansion of continuing legal education and of part-time studies, for the legal profession and for a great variety of other groups; it is particularly significant that from 1985 continuing legal education for solicitors in England and Wales will be compulsory for the first three years of practice;
8. developments in teaching of practical skill, simulation exercises and clinical legal education;
9. changes in the nature and environment of legal practice, including increasing complexity, shifts in markets for legal services and the varying impacts of information technology will continue to exert pressure on the legal education system to anticipate and adapt to changing conditions.[7]

That was written in 1983. Since then there have been other

significant trends, including the rapid growth of international and interdisciplinary practice, an increasing interpenetration of professions, the institution of in-house trainers, and increased interest in access, distance learning and education about human rights, especially at grass roots level.

Clearly some of the particular items listed do not apply to most Commonwealth countries (for example, membership of the European Community); others are only within reach of more affluent law schools. Yet it would be surprising if many of these items would be unfamiliar, at least as ideas and aspirations, to most law teachers in the Commonwealth. The fact that one can easily supplement the list in 1989 underlines the dynamic nature of our discipline. There is, however, one factor which fundamentally affects the picture — that of economics.

With a few notable exceptions, institutions of higher education in the Commonwealth have been experiencing a long and depressing period of financial cuts, freezes and squeezes. But there is a qualitative difference between the situation in richer and poorer countries in this regard. In my own country, for example, morale within higher education is probably at a lower ebb than at any time this century and the signs are that things will get worse before they might get better. Law, by virtue of high demand, traditionally low unit costs, and its capacity to attract certain kinds of external funding, including high fees, is probably better cushioned than most other disciplines. Nevertheless, libraries have declined, support services have deteriorated, students cannot afford to buy books, and there is a crisis in recruiting and retaining staff, especially younger academics and specialists in just those areas in which we are expected to expand, such as commercial law, international trade and finance, intellectual property and computer applications. Nevertheless we have been able to keep going and even to take some modest new initiatives.

For an English law teacher to visit law schools in Ghana, Kenya, Lesotho and Tanzania, as I have done in recent months, is to be given a sharp lesson in relative deprivation. Again generalization is dangerous, but the overall picture is grim. In England we complain about falling behind the earnings of other professional groups; in several African countries law teachers are worried about being able to feed their families, even if they have

been able to find second or third jobs. In England we complain about cancelling periodical subscriptions and not being able to buy expensive monographs; in some African Law Libraries hardly any foreign books or periodicals have been acquired in the last ten years and as local legal works wear out they are not replaced. Where we complain of cuts in the Xerox budget, they have to cope with shortages of paper and even of chalk. Students often do not have access to adequate materials on local law, let alone recent foreign literature. Facilities for research and for preparing teaching materials have, like the once fine libraries, declined drastically. I would blush to mention figures in comparing our gripes about staff-student ratios with those of Nairobi. What is remarkable is the spirited way in which students and staff cope with such adversities: students get taught and obtain respectable, sometimes outstanding, degrees; some research gets done despite all the difficulties; and some initiatives are taken, such as the Tanzanian legal aid camps to which I shall refer later. When I gave some lectures in Nairobi in 1989, I found myself facing as highly selected and intelligent a group of undergraduates as I have encountered anywhere in recent years.

The crises facing nearly all African law faculties is part of an acute financial problem affecting African universities, a situation that is not unique to Africa. In response to this crisis an informal consortium of African law school deans is currently planning an initiative which, it is hoped, will highlight the nature and extent of the resource problems of African law schools and make practical recommendations in a form that will mobilise efforts to stem the decline of these important institutions, including assistance with such matters as basic equipment for the production of local teaching materials, library provision, regional co-operation and staff development. They are important institutions not only because of their actual and potential contributions to national life, but also because they continue to attract a very high proportion of the best-qualified school leavers, an elite of an elite.

This problem is one that is particularly suitable for Commonwealth co-operation, although the contribution of foreign assistance to local law schools can at best be marginal. Yet one of the obstacles is the persistence in some quarters of the idea, which some of us thought had been debunked in the sixties, that law is not

"developmentally relevant". Professor Keith Patchett has cogently reargued the case for law in this context[8] and, I hope, some of the themes in this paper will lend support to his case. News of interesting, even exciting, new developments and ideas in our discipline needs to be balanced by a sense of realism about the sombre facts concerning its economic base in many countries. Nevertheless, despite this and other difficulties, law as a discipline can hardly be said to be stagnating in the Commonwealth. This can be illustrated by describing some of the activities with which the Commonwealth Legal Education Association (CLEA) has been recently associated. I do not do this to beat the drum for CLEA … although I am proud to be connected with that admirable organization … but rather to give some examples of ways in which the frontiers of legal education are being expanded and of the kind of potential for low-key cooperative action that is open for Commonwealth NGOs in disseminating information, facilitating local and regional initiatives and in stimulating thought, debate and action on neglected and important topics.

I shall be selective. I have already mentioned the proposed initiative by African law school deans. During recent years CLEA has been involved or associated with a wide range of projects and activities all of which have been reported in its *Newsletter*.[9] These include localization of legal literature and information; the Commonwealth Moot competition, which last took place in New Zealand in April, 1990; law library provision and continuing legal education (both in co-operation with the Commonwealth Lawyers Association); research and development into legal skil1s;[10] regional judicial training workshops in Zambia and Trinidad (jointly with the Commonwealth Magistrates Association); legal education in multi-lingual societies;[11] law foundations;[12] the preservation and management of legal records of semi-current and archival value; law teaching clinics (exported from Canada); an annual conference at Cumberland Lodge and a number of mundane, but useful activities relating to the dissemination of information and bibliographical work.[13]

Let me look briefly at five activities each of which illustrates the twin themes of Commonwealth co-operation at the frontiers of legal education.

Distance Education

Distance learning or distance education are relatively new names for long-established practices that have gone by less enticing titles, such as correspondence courses and external degrees. The re-naming, which started with talk of open universities, signifies a recognition that this kind of study, which has often been the Cinderella of higher education, has a crucial role to play in increasing educational opportunity. With the aid of modern technology and education methods it need not be a second best to more traditional full-time study. The Commonwealth of Learning was established by a decision of the Commonwealth Heads of Government in 1987 and has recently set up its headquarters in Vancouver. It is worth bearing in mind that there has been a long tradition of distance learning in Law. The London External LLB, for example, was started in 1850 and has been open to students from all over the world since 1858.[14] Currently the number of students enrolled for that degrees exceeds the total number of internal undergraduate students enrolled in the five law schools of the University of London. Law students also represent about 70–75% of all enrolments in London external degrees, a dramatic indication of the buoyant, some would say excessive, international demand for opportunities to study law. Two aspects of recent developments are relatively new: first, a determination to exploit the possibilities of modern technology and educational theory; and, second, a growing realisation that this form of learning may be at least as significant in respect of access courses, postgraduate, continuing and specialist education and training as it is for primary academic and vocational work. Recently, at the suggestion of Professor John Goldring of Sydney, Australia, CLEA has begun to develop a project to explore the needs, possibilities and methods of developing distance learning in law at international level.[15] One crucial issue will be whether primary legal education is the best place to start.

The Commonwealth Human Rights Initiative

In September, 1989 a consortium of Commonwealth NGOs representing journalists, doctors, trade unionists, lawyers and law teachers launched a major initiative in the field of Human Rights. A

distinguished Advisory Committee chaired by a former Canadian Minister for External Affairs, Ms Flora MacDonald,[16] has undertaken to prepare a report on the promotion of Human Rights in the Commonwealth in time for the meeting of Heads of Government in 1991. CLEA has urged that considerable attention should be given to issues concerning education and dissemination of information and training needs of "front-line" functionaries in both private and public sectors, including trade unionists, social workers, police and prison officers, school teachers, journalists, organizers of women's groups and other grass roots activists. This emphasis has been endorsed by the declaration at the close of the recent Commonwealth Conference of Heads of Government Meeting in Malaysia.[17]

It is too early to predict details of the precise approach that will be adopted by the CHRI Advisory Committee, but it seems likely that it will place considerable emphasis on education and dissemination of information and the role of NGOs in promoting human rights at grass roots level. Again it is worth noting that human rights is another area in respect of which ideas about legal education are extending far beyond specialised undergraduate education and primary vocational legal training. It does not follow from this that law schools are not or should not be involved in these efforts. One of the most interesting recent projects in this area has been pioneered by the Faculty of Law in Dar-es-Salaam. For several years, as resources have permitted, the Legal Aid Committee of the Faculty of Law has organised legal aid camps in which small teams of lecturers and others go outside the capital to towns and villages and bring law to the people through public lectures, seminars for special groups and legal advice clinics. The response seems to have been very positive and their reports make fascinating reading.[18] No doubt such activities are to be found in different forms in many places and it is hoped that the CHRI exercise will provide a systematic account and analysis of current projects and problems and future possibilities.

Law Student Mobility in the Commonwealth

It would be cynical to say that the term student mobility is merely a euphemism for differential fees. It has encompassed more than that. Nevertheless, the Commonwealth Standing Committee

on Student Mobility, under the Chairmanship of Sir Roy Marshall, was set up as a response to the charging of differential fees by several Commonwealth governments, and particularly by the United Kingdom Government in 1979–82.[19] Its reports make depressing reading. For not only has overall student mobility declined, but these policies have had a number of side-effects, some of which have involved considerable hardship for individuals. The effects on Law have been complex. On the one hand opportunities for study abroad have been greatly reduced especially for less well-off jurisdictions and individuals. Insofar as there has been some increase in scholarships, although not nearly enough to offset the effects of the policies, Law has often suffered by virtue of its alleged lack of "developmental relevance" referred to above. And we are all familiar with the less attractive effects of the introduction of commercial values in this context. On the other hand, the results have not all been bad. Local facilities for legal education have sometimes been strengthened, including at postgraduate level, by the decrease of opportunities to study abroad. Attention has been focused on the special problems and needs of overseas students. And the pressure to give value for money has led to often overdue reviews and tightening up of some courses and their administration.

For the past ten years CLEA has opposed differential fees on principle, has tried to monitor their operation and to mitigate their effects. A Working Party, chaired by Jill Cottrell, has recently issued an interim report[20] and liaison with the Marshall Committee will be maintained. This nevertheless remains one of the sorrier Commonwealth stories in recent years.

Access to Legal Education and the Legal Profession

Access to higher education has been a subject of concern in many countries and is likely to gain increasing attention in the nineteen-nineties. A recently published book on the subject,[21] with which I was personally associated, suggests that there are some international trends and patterns and that some strategies and solutions may also be transferable. One theme that runs through most of the contributions is the sheer intractability of the problems; another is that changes in admissions policies to law degrees are unlikely to make a significant difference on their own without other

measures, such as access courses, adjustments to curriculum and flexibility in respect of educational provision and routes to qualification. In short, the problem of access is not solely or even mainly a problem of selection. One encouraging point is the way in which the gender ratio at undergraduate level has greatly improved in many jurisdictions in the past fifteen years, probably as a part of wider trends rather than because of factors internal to legal education. Less encouraging are the statistics in respects of class, ethnic minorities and the educationally deprived. One lesson for me has been that law schools which take the problem of access seriously will need to become much more involved in access courses and remedial provision, if they are to make much impact, and this, like most other developments in legal education, costs money.

Skills Teaching

A companion volume[22] to the book on access takes stock of the state of direct teaching of skills, mainly at the vocational stage. The bulk of the book consists of teaching materials and course plans used in Australia, Canada, England, Hong Kong and New Zealand in relation to particular skills or skill-sets such as interviewing, drafting negotiation, counselling, analysis of evidence and advocacy. Canadian, and so indirectly, American influence, is very apparent. The publication of the book coincides with a strong international movement to switch emphasis from knowledge to skills, especially at the vocational stage. The collection reflects a considerable increase of sophistication in this kind of teaching over the past decade. It also suggests a welcome convergence between the priorities of professional trainers and of upholders of traditional values of classical liberal education in respect both of transferable intellectual skills and concern with ethical dimensions of practical problem solving.[23] In the present context, however, one further point is particularly germane: if the materials in this book are at all representative of what is being done by way of skills training in the Commonwealth, including in continuing legal education, it suggests that attention has so far been focused almost exclusively on introducing basic skills to a minimum level of competence at best rather than developing excellence over time. In short, skills training is still concentrated at the primary level.

DISCOURSE ABOUT LEGAL EDUCATION

Most discussions and debates about legal education and training are data-free. The ILC exercise revealed how little solid information there existed in nearly all countries about most facets of legal education, even in respect of elementary statistics. We had to proceed and pontificate on the basis of pooled impressions, biases and extraordinarily patchy information. The same point was dramatised by an acrimonious debates in Hong Kong in 1983 about direct teaching of professional skills in which it was apparent that neither side had any empirical basis for their assertions about the value or effectiveness of such training.[24] I am pleased to report that that particular occasion led almost directly to the establishment of programmes in Windsor, Ontario and London which are attempting to pioneer serious research into legal skills despite enormous methodological difficulties.[25]

This paper inevitably also has to proceed largely on the basis of impressions and faith. There is of course a very extensive literature of variable quality, some of which contains detailed and reliable information about particular matters. For the purpose of developing my argument, I shall use a selection from one part of that literature: official and semi-official reports on legal education in Commonwealth jurisdictions.

The modern history of legal education has been marked by an extraordinary number of such reports with a geographical reach ranging from single law schools, a provincial or state jurisdiction (such as Northern Ireland or New South Wales or Ontario) to a region or continent or, in the case of the ILC report, the whole of the Third World. Whether or not these reports have been implemented or have been influential in other ways, they have been significant events, which have focused attention, stimulated debate and produced considerable judgments as well as evidence in which opinion and prejudice have usually outweighed hard data by a significant ratio. They are at the very least a significant part of the archeology of modern discourse about legal education and they provide something to react to.

Some of these documents mark historical milestones: for example, the Denning Report on *Legal Education for Students from Africa*[26] (1959–60) opened the way to the decolonisation of legal

education in anglophonic Africa. Immediately post hoc, if not propter hoc, law schools were established in Ghana, East Africa and Nigeria, to be followed in a relatively short period of time by the establishment or upgrading of local institutions in nearly all anglophone countries in Africa. The Ormrod Report in 1971,[27] despite the non-implementation of many of its specific recommendations, established a clear and rather rigid structure for legal education and training in England that shows signs of continuing for many years to come. In the United Kingdom the Ormrod structure became the starting-point for a further series of colloquially eponymous documents. Armitage and Bromley in Northern Ireland, Hughes in Scotland, Benson, Marre and MacKay in England again.[28] Both before and after Ormrod there have been major reports of a similar genre in many Commonwealth countries, for example, Wooding (1967) in the Caribbean; Bowen (1979) in New South Wales; Pearce (1987) in Australia; McNally (1985) in Zimbabwe.[29] Other reports, such as the much-debated Arthurs Report on *Law* and *Learning* (1983),[30] probed particular issues with depth and authority. Taken together these documents constitute a substantial body of literature which, despite a generally weak empirical base, reflects a greatly increased sophistication in the discourse and practice of legal education and training in the past thirty years.

Much could be said about this body of literature both as contributors to and indicators of developments in legal education in the Commonwealth in this period. A history of these developments which was based solely on them would be both thin and misleading. However, two aspects of the genre are directly relevant to my argument. First, almost without exception they either assumed or espoused the structuring of professional legal education and training into a series of distinct stages which to a large extent reflected different spheres of influence rather than an agreed educational philosophy. The Gower model as it has come be known, whether fairly or unfairly,[31] carved up legal education and training into three or four distinct stages: academic, vocational, apprenticeship and continuing. This structure has become established in nearly all jurisdictions of the Commonwealth that have developed local systems of legal education. There are some exceptions, including Canada and India.[32] There have also been

some significant variants: in particular, in some instances the vocational stage has been treated as a substitute for formal apprenticeship, whereas in others it is regarded as a preparation for it; in some countries, as in the Caribbean, England, Kenya and Nigeria the vocational stage takes place in professional law schools that are entirely separate from those providing the academic stage; in others, such as Hong Kong, Northern Ireland, Scotland and Zimbabwe the vocational stage takes place within universities, although typically with special arrangements in respect of governance, staffing etc. In most Commonwealth countries, continuing legal education is still at an early stage of development and provisions for specialist training and for re-training are almost non-existent.

I am not here directly concerned with the controversy surrounding the costs and benefits of the Gower model and its variant.[33] But two points about it are relevant to interpreting current trends in the Commonwealth. First, in adopting this structure most Commonwealth countries have rejected other possible models that once were realistic options: the medical school model, the American law school model, and the significantly different Continental European model, which in its Prussian version was seriously argued for in England in the nineteenth century.[34] To put the matter boldly, the rigid four-stage structure marginalizes the contributions of academics (in respect of research and policymaking as well as teaching) to matter dealt with at the later stages and to the operation of the legal system generally. The contrast in the contributions and status of scholar-teachers of law in the United States and most civilian countries, and academics in medicine more widely, is attributable, in large part, to a structure which confines primary activities to the primary stage of legal education and training. The consequences are becoming increasingly apparent in respect of legal theory. Some of the most interesting modern developments in respect of legal reasoning, analysis of evidence, probabilities and proof, and negotiation are normally more directly relevant to practitioners, judges and reformers in the higher reaches of a legal system than to undergraduates and fledgling practitioners. Yet in systems which have adopted the primary school model, theory is generally regarded as something one grows out of after graduation. As a legal

theorist I have found that mature postgraduates and American judges are my most receptive audiences, provided that we have enough time to deal with a topic thoroughly.

Another point about the Gower model is that it seems to be in process of coming under severe pressure at present. The introduction of a five year integrated LLB in several leading Indian law schools, including the new National Law School in Bangalore, and the collapsing of the academic and vocational stages into a single four year integrated course in Zimbabwe, although triggered by different factors, may be the start of a trend to break down the rigidity of the barriers between the academic and vocational stages. In England I sense that the three year undergraduate degree is coming under conflicting pressures that will almost certainly force some changes over time. On the one hand, there is pressure from the legal profession to increase the number of standard subjects covered in the already overcrowded curriculum, to include, for example European Community Law, Family Law, Company Law, International Trade, Human Rights etc as standard, if not core subjects, while at the same time there is the quite different complaint that law graduates emerge with cluttered minds and underdeveloped intellectual skills, such as the capacity to write clearly, construct a cogent argument and use a library intelligently.[35] Symptomatic of the increase in standard subjects is that the number of options offered in the London LLM has increased from about 30 in 1965 to well over 100 in 1989. I am told that Monash law school at the time offered nearly 70 options as well as eight required subjects in its first degree. At both undergraduate and postgraduate level the number of standard subjects has increased over the years, but the time available for studying them has generally remained unchanged. At the same time one possible way of mitigating the pressures of an overcrowded curriculum, increasing the standard length of law degrees to four years, is rendered harder, though not impossible, by the joint factors of the economic squeeze and a desire to promote access. There are other factors that are putting the artificial rigidity of the Gower structure under strain, but it is so deeply entrenched that in most countries it is likely to survive for the foreseeable future.

The second feature of this body of literature that is relevant to my theme is that it concentrates almost exclusively, indeed often

obsessively, on a narrow range of issues concerning law degrees and basic professional training. Lip-service is sometimes paid to potential contributions of law schools to interdisciplinary work, continuing legal education, postgraduate studies and law for non-lawyers and even to the idea education is a life-long enterprise, which will increasingly involve retraining and possibly re-certification. But they are treated as secondary, the financial implications are rarely considered and institutional prestige tends to be more tied up with primary level teaching than with anything else.

The focus of these reports fortifies existing attitudes and practices. For the self-perception of nearly all law schools and most law teachers and, equally important, the basis for their funding, is dominated by the idea that their essential role is the teaching of full-time undergraduates or, in the case of professional law schools, intending lawyers before they start apprenticeship or practice.[36] Everything else is treated as peripheral and is marginalised. One consequence of this is that the vast bulk of the efforts of specialist professional legal educators, the full-time teachers of law, is focused on some of the most elementary forms of legal education, usually under severe time-constraints, the rest being treated either as external work or left to practitioners for whom teaching is at best an avocation. It is rather as if, in a given system of education, all the trained full-time teachers and educators were concentrated in primary schools.

The standard image of a law school is thus an institution concerned almost exclusively with full-time undergraduate education or with preliminary vocational training or a combination of the two. An alternative model is presented in the ILC report.

Law Schools as Multipurpose Centres for Legal Development

> Legal education (like agricultural or health education) can be seen as a system of activities. The activities include: training (formal and non-formal) for different law roles; diffusion of education about law in society; education to enable a particularly important kind or participation in the world of affairs; research to produce better understanding of the content, underlying assumptions, social context and effects of law and to stimulate reforms in the legal system and processes of implementing development policies. Despite the existing situation, legal education can in theory be planned and developed to serve a wide range of goals — just as agricultural education can be planned as a means for agricultural development.

> The university law school is only one element in this system, but it probably is a crucial one. Law schools, perceived as multipurpose centres, can develop human resources and idealism needed to strengthen legal systems; they can develop research and intellectual direction; they can address problems in fields ranging from land reform to criminal justice; they can foster the development of indigenous languages as vehicles for the administration of law; they can assist institutions engaged in training paraprofessionals; they can help to provide materials and encouragement for civic education about law in schools and more intelligent treatment of law in the media; they can organize, or help organize, advanced specialized legal education for professionals who must acquire particular kinds of skills and expertise.[37]

It might be objected that few existing law schools are only involved in primary legal education and that, in nearly all countries, it would be unrealistic to expect one institution (or even a group of them) to live up to the idealised picture of law schools as the multi-purpose hub of a comprehensive system of legal education, especially in a period of economic adversity. It might further be objected that primary legal education is critically important and might suffer by a radical extension or diversification of the functions of law schools. I largely agree with these points, but do not consider that they are serious objections to my argument. I agree that many law schools are involved in some of the developments discussed in this paper[38] though rather spasmodically and often with an unsatisfactory financial and administrative base. Activities perceived as marginal will usually be marginally financed. Clearly there will always be problems of priorities; it is not self-evident that primary legal education should always be the highest priority for a given institution. Nevertheless it is likely in practice to be given a high priority in respect of resources and attention. After all, secondary schools could hardly exist without primary schools.

Both the “primary school model” and the “multipurpose model” are only models or ideal types, that is to say they are tools of analysis rather than blueprints. In the present context they may be useful for analysing the actual and potential functions of law schools in different societies and for challenging some standard assumptions about the scope and role of legal education in any given society. My impressionistic survey of some recent trends suggests that some of the most interesting recent developments fall largely outside the primary model. I have suggested that increasing

access involves much more than adjusting admissions policies; that there is a need for theory, research and development concerning what constitutes excellence as well as competence in respect of skills and how both of these are best developed;[39] that academic lawyers could contribute much to the evolution of continuing, specialist and judicial training as well as to legal education for non-lawyers and the important field of education and dissemination of information about human rights; and they have a crucial role to play in the localisation of legal literature and information, as has been shown in Northern Ireland.[40]

In short, the agenda of issues central to law as a discipline is changing and ways of thinking and debating and making decisions about the subject need to adjust to this. In particular much more attention needs to be given to the social functions of law schools in developed as well as developing societies and to the practical implications of becoming seriously involved in a wide range of activities beyond primary legal education and traditional research. There are many implications, some obvious, some less obvious, not least in respect of finance, organization, power and authority, and the nature of the academic legal profession itself. As a preliminary to confronting these issues legal education needs to be reconceptualised. The perspective adopted in *Legal Education in a Changing World* and borrowed in this paper at least offers a starting-point.

* University College, London; Chairman, Commonwealth Legal Education Association (hereafter CLEA). This paper was presented at a conference to commemorate the twentieth anniversary of the Faculty of Law of the University of Hong Kong, 15–16th December, 1989. It was published in R Wacks (ed) *The Future of Legal Education and the Legal Profession in Hong Kong* (University of Hong Kong, 1989) and is reprinted by kind permission of the publishers. © 1991. (1990–91) 2 *Legal Educ Review* 35.

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7 *Id.*

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12 J Cooper, *Law Foundations in the Commonwealth: A Campaign Strategy* (London: CLEA Working Paper No. 1,1989).

13 See for example JD Elliot, *Pacific Law Bibliography* (Canberra: Commonwealth Secretariat, CLEA, 1988); J Watt, *The Legal Skills Sourcebook* (St Leonards, NSW: College of Law, 1989).

14 For details see W Twining, 1836 and all that: Laws in the University of London 1836–1986 (1987) 40 *Current Legal Problems* 261, at 280–85.

15 J Goldring, Distance Teaching in Law: A Proposal for Commonwealth Co-operation (1989) 57/58 *CLEA Newsletter*, Annex 11; J Goldring, Distance Teaching in Law: Possibilities for Commonwealth Co-operation (1990) 2 *Legal Educ Review* 83 .

16 Professor Yash Ghai, of Hong Kong Faculty of Law, is the CLEA nominee. Other members are Dr George Barton (New Zealand, nominated by the Commonwealth Lawyers Association), Mr John Morton (United Kingdom, nominated by the Commonwealth Trade Union Council), Professor Beko Ransome-Kuti (Nigeria, nominated by the Commonwealth Medical Association) and Mr George Verghese (India, nominated by the Commonwealth Journalists Association). An interim report was published after this paper went to press: *Put our World to Rights: Towards a Commonwealth Human Rights Policy* (London: CHRI, 1991).

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18 Legal Aid Committee, *Reports* (University of Dar-es-Salaam). These include annual reports and special reports on particular Legal Aid Camps.

19 For a general review see R Marshall, International Education: Keeping for Doors Open on International Student Mobility in the Commonwealth (1989) 56 *CLEA Newsletter* at 33, Annex 2.

20 J Cottrell, Overseas Law Students in the Commonwealth (1989) 57–58 *CLEA Newsletter* 31 (interim report of a working party).

21 R Dhavan, N Kibble &W Twining eds, *Access to Legal Education and Legal Profession* (London: Butterworths, 1989).

22 See Gold et al., *supra* note 10.

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26 *Report of the Committee on Legal Education for Students from Africa* (The Denning Report) (London: HMSO, 1971) Cmnd 1255.

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Report) (London: HMSO, 1980) Cmnd 7846; *Report of the Royal Commission on Legal Services* (Benson Report) (London: HMSO, 1979) Cmnd 7648; *A Time for Change; Report of the Committee on the Future of the Legal Profession* (Marre Report) (London: Bar Council and Law Society, 1988); *Legal Services: A Framework for the Future* (White Paper presented to Parliament by the Lord Chancellor, Lord Mackay) (London: HMSO, 1989) Cmnd 740.

29 *Report of the Committee on Legal Education in the West Indies* (Wooding Report) (Institute of Commonwealth Studies, 1967); *Legal Education in New South Wales: Report of Committee of Inquiry* (Bowen Report) (Sydney: Government Printer, 1979); *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission* (Pearce Report) (Canberra: AGPS, 1987); *Report of Committee of Inquiry into the Qualifications for Registration as a Legal Practitioner* (McNally Report) (Harare, 1985).

30 *Law and Learning: Report of the Consultative Group on Research and Education in Law* (Arthurs Report) (Ottawa: Social Sciences and Humanities Research Council, 1984).

31 The Gower model was developed in the special circumstances of Ghana and Nigeria. See LCB Gower, *Independent Africa: The Challenge to the Legal Profession* (Cambridge: Harvard UP, 1967).

32 Most Canadian Provinces have introduced vocational courses which run from two weeks to eight months; this represents a convergence with the Gower structure, but Canadian law schools are still closer to the US model.

33 See W Twining, The Benson Report and Legal Education: A Personal View, in PA Thomas ed, *Law in the Balance: Legal Services in the 1980s* (Oxford: Martin Robertson, 1982) ch 8.

34 *Report from the Select Committee on Legal Education* (London: BPP, 1846) vol X.

35 Twining, *supra* note 23.

36 To illustrate the depth of the attitudes to which I refer, let me give some examples from my own recent experience. If a full-time teacher in the University of London involves herself in anything other than undergraduate teaching it has traditionally been treated as being over and above her normal duties. Although more than a third of our students at University College are Postgraduates it is only in the last few years that teaching Postgraduate courses has counted in one's official teaching load and that still does not regularly apply to supervision of research students. Involvement in continuing work and even the External London LLB are all treated as outside work which is both voluntary and separately remunerated. At nearly every Faculty meeting I remind my colleagues that our postgraduates are part of our academic community and it is only relatively recently that this has formally been recognized by having an elected postgraduate representative on the Faculty.

37 Committee on Legal Education in Developing Countries, *supra* note 5, at paras 101–2.

38 One of the functions of international networking is to disseminate information about worthwhile activities: my personal list of examples that deserve attention includes (the order is not significant): Servicing the Legal System (the Queen's University Belfast); the Legal Resources Foundation (Zimbabwe); the admissions policy of the Faculty of Law, the University of Windsor, Ontario; the Access course at the Polytechnic of the South Bank, London; the Canadian Law Teaching Clinic; the Hong Kong Law Journal (not out of deference to my hosts); the Nairobi Law Monthly; the Tanzanian Legal Aid camps mentioned in the text; and , beyond the Commonwealth, the enterprising European Law Students Association (ELSA).

39 An interesting attempt to study what constitutes excellence in advocacy has

been undertaken by the Ontario Advocacy Institute. See N Gold et al, *supra* note 10, at 323–4.

40 *Servicing* the *Legal* System. The Annual Reports are obtainable from SLS, The Faculty of Law, The Queen's University, Belfast, BT7 INN, Northern Ireland.