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ST42 Les enjeux politiques et académiques des réformes de l'enseignement du droit : perspectives comparées

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British University Law Schools, the Practicing Professions and the State

Introduction

This paper focuses on the role of academic university law schools in England and Wales and their relationship with both the state and the practicing professions.¹ The paper both tries to analyse what the present position is in relation to these matters and also look at the likely future. Its primary purpose is neither to argue what the role of law schools should be nor to advocate a particular relationship with the state but, rather, to show what that role and relationship actually is.² As will be seen these matters are contested. Although it will be argued that there are dominant views within the law school with regard to both these questions this is not to suggest that these views are held by all legal academics. More importantly it will be argued that the views of legal academics, who form a separate cultural and professional community, are largely at odds with the position of both the practicing professions and the state itself.

The issues raised in this paper are things that are in a constant state of flux. The precise role of law schools in the present day, ten years ago and ten years in the future are different things; so to with respect to their relationship to the state. This paper will argue that it is possible to describe a trajectory in both areas; it will not, however, suggest that there is stasis. Superficially the topics covered in this paper appear to be ones that are currently the subject of change. The practicing professions have, for example, recently announced a review of legal education and training.³ At the same time there have recently been considerable

¹ Law schools that are involved in academic legal education constitute the vast majority of university law schools in England and Wales. However there are also a number of law schools in the England and Wales that teach professional courses, usually in departments that are separate from those parts of the school concerned with academic education.

² For an analysis of what university schools should do see A Bradney "Conversations, Chances and Choices: The Liberal Law School in the Twenty-First Century" (2003) Hart Publishing: Oxford.

³ See further D Edmonds "Training the lawyers of the future – the regulator's view" (2011) 45 The Law Teacher 4.

changes to the way in which universities in general and university law schools in particular are to be financed in the future.⁴ Both these matters may be of consequence in terms of the issues that are central to this paper. However the paper will argue that continuity is key to analysis. The contemporary academic legal community in England and Wales is a mature body with an established culture that is not easily altered.⁵

Universities are specific to their origins; university law schools are, to an even greater degree, specific to their legal jurisdictions. Three types of actors, academics, practitioners and representatives of the state, are or may be involved in the work of such schools.

“The interrelationships of these three parties have been determined by political experiences, often in the distant past, and thus form a unique configuration in every country...”⁶

This paper is about academic university law schools in England and Wales.⁷ What is argued here may not hold true even in the case of law schools in the other jurisdictions in the United Kingdom; still less are the arguments that are put forward here necessarily applicable to other jurisdictions outside the United Kingdom.⁸

University Law Schools in England and Wales

The Solicitors Regulation Authority (SRA), the body now responsible for regulating the education and training of solicitors, currently lists 103 institutions as providing a Qualifying Law Degree.⁹ Students who obtain such a degree can then go on to take either the Legal Practice Course to qualify as a solicitor or the Bar Professional Training Course to qualify as a barrister.¹⁰ Almost all of these

⁴ “Spending Review” Cm 7942 (2010) Her Majesty’s Stationery Office: London p 53.

⁵ More generally educational practices are “inherently conservative...[l]arge patterns change only very slowly” (S Marginson “Competition and Markets in Higher Education: a ‘glonacal’ analysis” (2004) 2 Policy Futures in Higher Education 175 at p 183). For an analysis of the academic legal community in England see F Cownie “Legal Academics: Culture and Identities” (2004) Hart Publishing: Oxford.

⁶ M Burrage “Practitioners, Professors and the State in France, the USA and England” in S Goodlad (ed) “Education for the Professions, *Quis custodiet...?*” (1984) Society for Research into Higher Education and NFER Nelson: Guildford p 26.

⁷ Law schools that are involved in academic legal education constitute the vast majority of university law schools in England and Wales. However there are a number of law schools in the England and Wales that also teach professional courses, usually in departments that are separate from those parts of the school concerned with academic education.

⁸ On the difficulties of comparative work in university legal education see A Bradney “Can There Be Commensurability in Comparative Legal Education?” (2007) 1 Canadian Legal Education Annual Review/Revue de l’enseignement de droit au Canada 67.

⁹ <http://www.sra.org.uk/students/courses/qualifying-law-degree-providers.page>.

¹⁰ Graduates who do not have a qualifying law degree need to obtain the Common Professional Examination or Graduate Diploma in Law before going on to the Legal Practice Course or Bar Professional Training Course.

institutions are state bodies offering a full-time degree.¹¹ However the SRA's list also includes private institutions, such as the University of Buckingham and the BPP School of Law, that offer such degrees.¹²

Individual law schools in England and Wales vary in size. The largest have a first year intake of 500 to 600 students whilst the smallest have an intake of less than 200.¹³ In 2009, the last year for which figures are available, in total there were 29,211 applicants to study law at undergraduate level in England and Wales.¹⁴ In the same year there were 13,433 graduates in law.¹⁵ However in the year 2009/2010 only 4,874 new traineeships for solicitors were registered.¹⁶ Similarly only 1,256 people were called to the Bar in 2010.¹⁷ Some of those law graduates who do not become solicitors or barristers will take up other occupations, for example as a paralegal or a legal executive, that involve giving legal advice on a full-time basis.¹⁸ Reliable figures for the numbers of such graduates are not available but they are unlikely to be large. It is thus clear that there is an asymmetric relationship between academic law schools and the practicing professions. Whilst both the Bar Council and the Law Society regularly observe that the largest single group of people coming into the legal professions hold qualifying law degrees becoming a solicitor or barrister is something that only a minority of law graduates do.¹⁹ University law schools are the starting point for the majority of English and Welsh lawyers' experience of education, training and acculturation as a lawyer but becoming a lawyer is not what most law graduates do. This, amongst other things, provides a source

¹¹ In small number of these institutions it is possible to undertake study on a part-time basis. On part-time students see A Francis and I McDonald "Part-time Students: The Forgotten Cohort" (2005) 39 *The Law Teacher* 277. The Open University offers a Qualifying Law Degree by distance learning. For the Open University see <http://www.open.ac.uk/>.

¹² For the University of Buckingham see <http://www.buckingham.ac.uk/>. For BPP see <http://www.bpplawschool.com/>.

¹³ There have been no recent surveys of student numbers in individual law schools in England and Wales. However a 2004 survey did report on, inter alia, the number of staff, including both academic and non-academic staff and full-time and part-time staff, in United Kingdom law schools and this serves as a proxy for law school size. 10 institutions reported having 20 or fewer staff whilst three reported having more than 100 staff (P Harris and S Beinhart "A Survey of Law schools in the United Kingdom, 2004" (2005) 39 *The Law Teacher* 299 at p 344).

¹⁴ "Trends in the solicitors' profession: Annual statistical report 2010: Executive summary" (2011) *The Law Society*: London p 6.

¹⁵ "Trends" loc cit.

¹⁶ "Trends" loc cit. This was 16.1 per cent down on the previous year.

¹⁷ "Bar Council Annual Statistics: 2010" http://www.barcouncil.org.uk/assets/documents/Table_5_Annual%20Statistics%202010.pdf.

¹⁸ See, for example, F Wright "Bradford University Law School: Following a Different Path" Spring 2011 *The Reporter* 6 at p 9. On legal executives see <http://www.ilex.org.uk/>. On paralegals see <http://www.theiop.org/>.

¹⁹ See, for example, "Trends in the solicitors' profession: Annual statistical report 2007" (2008) *The Law Society* p 28.

for tension in the relationship between university law schools and the practicing professions.²⁰

The Cultures of the Legal Professions in England and Wales²¹

The range of work done in contemporary professional legal practice in England and Wales makes it clear that it would be incorrect to write about one professional culture in that practice. To the traditional but changing division between the role of the barrister and solicitor has been added an increasing degree of specialisation within many areas of legal practice.²² The relative paucity of research done into legal practice means that in many areas of practice the precise details of that which is done remain opaque. However it is clear that the nature of professional practice in law in some parts of the legal professions in England and Wales has radically changed in recent years.²³ One area where this is true is the emergence of very large law firms in England.²⁴ Up until 1967 the maximum number of partners that there could be in a firm of solicitors was set by statute at 20.²⁵ However following statutory and economic changes by 2009 there were 60 firms with 81 or more partners.²⁶ Although these firms comprise only 0.6 per cent of the total number of firms they employ 25.1 per cent of all solicitors.²⁷ These firms are plainly an important part of the contemporary solicitors' profession; equally clearly the way in which they work is very different to the traditional image of the solicitors' firm.

Whilst there has been comparatively little research into very large law firms in England several features of these firms are clear. First they are commercial

²⁰ See further, "The Education and Training of Solicitors: Time for Change" (2010) Legal Services Institute (<http://www.legalservicesinstitute.org.uk/lsi/home/>) p 19 and pp 21-27.

²¹ The next two sections of this paper draw in part upon A Bradney "How to Live: Aristocratic Values, the Liberal Law School and the Modern Lawyer" in F Cownie and C Lista (eds) "One World, Different Cultures, Clashing Values: legal education in a global context" [2011] 2 Web JCLI (<http://webjcli.ncl.ac.uk/>).

²² Most solicitors would now describe themselves as specialists (G Chambers and S Harwood "Solicitors in England and Wales: Practice, Organisation and Perceptions" (1990) The Law Society p 57; see also A Boon, L Duff and M Shiner "Career Paths and Choices in a Highly Differentiated Profession: The Position of Newly Qualified Solicitors" (2001) 64 Modern Law Review 563; "Earnings and work of private practice solicitors in 2007" (2008) The Law Society at p 11 and R Moorhead "Lawyer Specialisation – Managing the Professional Paradox" (2008) Cardiff Law School. Specialisation is not limited to solicitors. See, for example, D Price and A Laybourne "The Work of the Family Bar: Report of the Week-At-A-Glance Survey 2008" (2009) King's Institute for the Study of Public Policy: London p 105.

²³ D Muzio and S Ackroyd "Change in the Legal Profession: Professional Agency and the Legal Labour Process" in D Muzio, S Ackroyd and J Chanlat (eds) "Redirections in the Study of Expert Labour: Established Professional and New Occupations" (2008) Palgrave Macmillan: London p 31.

²⁴ Within the United Kingdom these firms are an English phenomenon with there being no similar firms in any of the other jurisdictions within the United Kingdom.

²⁵ The limitation was abolished by s 120(1)(a) and s 121(1)(a) of the Companies Act 1967.

²⁶ "Trends in the solicitors' profession: Annual statistical report 2009" op cit p 24.

²⁷ "Trends in the solicitors' profession: Annual statistical report 2009" op cit p 25.

firms with commercial clients.²⁸ Their websites set out their practice areas, each being very similar to other firms of the same size.²⁹ Many areas of legal practice do not fall within their purview. The work that they do is narrowly focussed both in relationship to the areas of law covered and the sections of the community that they work for. The nature of their work and the nature of their clients puts into question the degree to which they can be said to adhere to the service ideal which would be central to many longstanding definitions of professionalism.³⁰ It is hard to marry the ideas of altruism or service to the community and, for example, Clifford Chance's revenue of 1,262 million pounds in 2009.³¹ Many and perhaps all of these large law firms engage in pro bono work and, indeed, have a broader corporate responsibility programme.³² Their altruism, their demonstration of adherence to a service ideal, is, however, not something that is seen in their day-to-day working lives where "large law firms will define professionalism as a commitment to commercially focused expertise".³³ Equally significant is the way those in such firms describe their work. The firms present themselves as being more concerned with the fact that they are businesses rather than the fact that they are concerned with law. Thus, for example, the comment of Michael Bray, then the Chief Executive Officer of Clifford Chance, that

"[t]he City is driven by transactions. It is a very, very transactional driven practice; it is deals, deals, deals. People become partners at the age of 32, they are doing deals; at the age of 40, they are a partner, they are doing deals; at the age of 50, they will still be doing deals..."³⁴

is significant both because he positions large law firms as being part of "the City", the financial heartland of the United Kingdom, and because of his emphasis on commercial behaviour as being the essence of what a lawyer in a

²⁸ See further G Hanlon "A Profession in Transition? – Lawyers, The Market and Significant Others" (1997) 60 *Modern Law Review* 798 at pp 806-808.

²⁹ See, for example, the website of Clifford Chance (http://www.cliffordchance.com/about_us/about_the_firm/) and that of Allen & Overy (<http://www.allenoverly.com/AOWeb/Home/AllenOveryHome.aspx?prefLangID=410>)

³⁰ See, for example, G Millerson "The Qualifying Associations" (1964) Roulledge & Kegan Paul: London p 4.

³¹ "Clifford Chance: Annual Review 2009" (<http://www.cliffordchance.com/reports09/ar/other/financial-information.html>).

³² See, for example, http://www.cliffordchance.com/about_us/corporate_responsibility/?LangID=UK&

³³ R Greenwood "Your Ethics: Redefining Professionalism? The Impact of Management Change" in L Empson (ed) "Managing the Modern Law Firm" (2007) Oxford University Press: Oxford p 194. Boon writes of "[a] culture constituted by work pressure, pressure to bill, fuelled by cynical commercialism and organisational conformity..." (A Boon "From public service to service industry: the impact of socialisation and work on the motivation and values of lawyers" (2005) 12 *International Journal of the Legal Profession* 229 at p 231). Similarly Hanlon, when describing the culture of large law firms, writes of "commercialisation [which] involves a downgrading of values such as public service...in favour of market values..." (Hanlon op cit at p 802).

³⁴ R Susskind (ed) "The Susskind Interviews: Legal Experts in Changing Times" (2005) Sweet and Maxwell: London p 74.

large law firm does.³⁵ “The very language used in these [large law] firms has changed: law is a *business* and has to be explicitly *managed*, ‘practice development’ is ‘marketing’, ‘professional development’ is ‘training’, and so on.”³⁶

An increasing focus on the commercial nature of legal practice is not just a feature of the work of solicitors in very large law firms. Firms of solicitors engaged in legal aid work in England and Wales are very different from very large law firms in almost every way.³⁷ Rather than being corporate their clients are private individuals, the areas of law the work has comparatively little overlap with that of the very large law firms, they are much smaller than very large law firms, they are less well remunerated and finally legal aid fees come from the state.³⁸ Nevertheless, notwithstanding these very real differences that exist between them and very large law firms, legal aid practices do have something in common with very large law firms. A contraction in state funding for legal aid and changes in the way in which such funding is organised has resulted in the ways in which legal aid firms work. There is concern over the level of funding available, the bureaucratic mechanisms that must be used to access the funding and the resultant decline in time that can be given over to actual clients.³⁹

Put broadly the concerns noted above are that in a variety of legal cultures within legal practice in England and Wales the focus has changed from a concentration on notions of autonomy, altruism and service to the community to one where finance and bureaucracy prevail; the very notion of the autonomous professional is put into question.⁴⁰ These concerns are not uncontested with

³⁵ The title Chief Executive Officer is also significant. “The title ‘chief executive’ is sometimes used in firms seeking to distance themselves from an overtly traditional, professional, partnership style” (S Mayson “Law Firm Strategy: Competitive Advantage and Valuation” (2007) Oxford University Press: Oxford p 324).

³⁶ Greenwood *op cit* p 190. In a study of the most elite “magic circle” firms Galanter and Roberts date the change to business-like structures of governance to the second half of the 1980s (M Galanter and S Roberts “From kinship to magic circle: the London commercial law firm in the twentieth century” (2008) 15 *International Journal of the Legal Profession* 143 at p 162).

³⁷ Relatively few firms of solicitors deal exclusively with legal aid clients. In a Law Society survey of solicitors’ earnings only eight per cent of firms reported themselves as dealing exclusively with legal aid clients. In the same survey those who did deal with such clients reported spending, on average, 57 per cent of their fee-earning time on legal aid work (“Earnings and work of private practice solicitors in 2007” (2008) *The Law Society*: London p 16).

³⁸ For example a Law Society study found that the average (median) annual salary for those solicitors working with legal aid clients was £39,000 compared with £56,000 for those solicitors working exclusively with other clients (“Earnings and work of private practice solicitors in 2007” (2008) *The Law Society*: London p 24).

³⁹ See, for example, R Moorhead “Legal Aid and the Decline of Private Practice: Blue Murder or Toxic Job?” (2004) 11 *International Journal of the Legal Profession* 157 at pp 168-176.

⁴⁰ Although some would caution that links with commerce go back to the origins of the solicitors’ profession (see, for example, D Sugarman “Simple Images and Complex Realities: English Lawyers and Their Relationship to Business and Politics, 1750-1950” (1993) 11 *Law and History Review* 257).

some arguing that the degree of change has been exaggerated.⁴¹ Equally some areas of legal practice continue to be held up by some commentators as exemplars of a culture of professionalism.⁴² However it would appear that there are now some areas of professional practice in England and Wales where the focus is more on business and business efficiency than on professional behaviour.

Government, Higher Education and the Economy

In the last few months of its life the last Labour administration's Department for Business, Innovation and Skills issued a paper on higher education entitled "Higher Ambitions: The future of universities in a knowledge economy".⁴³ The paper contained genuflections to "[t]he process of knowledge generation and stewardship...[as] a public good" and to the idea that "[r]esearch and learning in universities have intrinsic values aside from any economic consideration".⁴⁴ However the main thrust of the paper lay in another direction. The paper asserted that "[t]he creation of BIS [the Department for Business, Innovation and Skills] signals the central role that the Government envisages for higher education in contributing to our economic strength and competitive potential".⁴⁵ It went on to argue for the "need to harvest every possible economic and social benefit from research [in universities]", involve businesses in course design in universities and require universities "to demonstrate how they prepare their students for employment".⁴⁶ The basic argument in the paper was that universities should become more closely attuned to business, both in relation to research and to student learning.

In several senses "Higher Ambitions" was not a contentious document. When Lord Mandelson, the then Secretary of State for the Department for Business, Innovation and Skills, introduced the paper in the House of Lords, Lord de Mauley, the then Shadow Secretary, welcomed "the main themes" of the paper.⁴⁷ Much of the paper contained little, if anything, that was new. The argument that there needs to be a realignment in the relationship between the universities and business goes back at least as far as 1985. In that year the then Conservative Government published a Green Paper, "The Development of

⁴¹ See, for example, J Faulconbridge and D Muzio "Organizational professionalism in globalizing law firms" (2008) 22 Work Employment and Society 7 and A Pinnington and T Morris "Archetype Change in Professional Organizations: Survey Evidence from large Law Firms" (2003) 14 British journal of Management 85.

⁴² See, for example, W McMahon III "Declining Professionalism in Court: A Comparative Look at the English Barrister" (2006) 19 Georgetown Journal of Legal Ethics 845.

⁴³ <http://www.bis.gov.uk/wp-content/uploads/publications/Higher-Ambitions.pdf>.

⁴⁴ "Higher Ambitions" p 41.

⁴⁵ "Higher Ambitions" loc cit.

⁴⁶ "Higher Ambitions" p 57, p 42 and p 51.

⁴⁷ Hansard, House of Lords, 3rd November 2009 para 126.

Higher Education into the 1990s”, in which it argued that the universities should be

“concerned with attitudes to the world outside higher education, and in particular to industry and commerce, and to be aware of ‘anti-business’ snobbery”

and, further, that the universities should “foster positive attitudes to work” and “go out to develop their links with industry and commerce”.⁴⁸ The present Coalition Government has continued in the same vein. In “The Coalition: our programme for government” it stated that

“the Government believes that our universities are essential for building a strong and innovative economy. We will take action to create more college and university places, as well as help to foster stronger links between universities, colleges and industries”.⁴⁹

In a similar fashion although the recent Browne Review on the financing of universities noted a number of benefits to individuals, from improvements to health to higher wages, if they participated in higher education it also observed that “[h]igher education matters because it drives innovation and economic transformation. Higher education helps to produce economic growth, which in turn contributes to national prosperity”.⁵⁰ The rhetoric of an “age of austerity” in reaction to the current economic situation in the United Kingdom is part of the panoply of arguments used to justify the Coalition Government’s position in relation to the role of higher education as in much else.⁵¹ The reality is very different. The political consensus that higher education should be seen as a good in itself gradually disappeared in the United Kingdom in the 1970s.⁵² Since then neo-liberal assumptions about the place of education in society have prevailed.⁵³ The present situation differs only in details from the situation that has obtained for the last few decades.⁵⁴

⁴⁸ “The Development of Higher Education into the 1990s”(1985) Cmnd 9524 para 1.6.

⁴⁹ “The Coalition: our programme for government” (2010) Cabinet Office p 31.

⁵⁰ “Securing a Sustainable Future for Higher Education: An Independent Review of Higher Education Funding & Student Support” (2010) <http://www.independent.gov.uk/browne-report> p 14.

⁵¹ David Cameron, now the Prime Minister, spoke about a forthcoming “age of austerity” prior to the 2010 election (D Cameron “The Age of Austerity” (2009) http://www.conservatives.com/News/Speeches/2009/04/The_age_of_austerity_speech_to_the_2009_Spring_Forum.aspx

⁵² M Kogan and D Kogan “The Attack on Higher Education” (1983) Kogan Page: London p 29.

⁵³ D Harvey “A Brief History of Neoliberalism” (2005) Oxford University Press: Oxford p 65.

⁵⁴ A new Government paper on higher education is expected imminently. It would be a major surprise if it contained any changes to the main tenets of political thinking on the universities.

There is a certain synergy between the legal cultures briefly described in the previous section of this paper and the dominant political discourse described above. Money is seen as the measure of everything. Money gives things value and if things do not generate money they have no value. Moreover, in the main, money ought not to be given over to things that do not produce wealth. Very large law firms have their pro bono work and governments occasionally speak about the importance of supporting particular cultural values but these are asides from the main business of the day. In some instances the synergy may be more forced than in others. Legal aid firms are perhaps driven to accept the importance of money values whilst very large law firms do so entirely willingly; nevertheless the fit is there. The question is then, what place do university law schools and individual legal academics have in this picture?

Legal Academics

Wholly reliable figures for the number of academics working in law schools in England and Wales do not exist. Harris and Beinart's 2004 survey of law schools reported that there were 2,436 staff working in their sample population.⁵⁵ However their study looked at United Kingdom law schools, not just those in England and Wales, and their recording of staff numbers did not distinguish between academic and non-academic staff. It is clear that the total number of legal academics in English and Welsh law schools is much smaller than the number of people working in the main legal professions.⁵⁶ On the 31st July 2010 there were 150,128 solicitors on the Roll with 117,862 holding practising certificates.⁵⁷ In December 2010 there were 12,420 barristers who were self-employed. In addition there were 2,967 barristers who were in the employed Bar.⁵⁸

In 1925, following the creation of the Society of Public Teachers of Law, a body, then primarily though not entirely, the only association for those lecturing in university law schools, Holdsworth asserted that legal academics were "the third branch" of the legal profession, alongside solicitors and barristers.⁵⁹ The idea that legal academics were more lawyers than academics continued to be

⁵⁵ Harris and Beinart op cit p 345.

⁵⁶ Other occupations also claim professional status as lawyers. The Institute of Legal Executives asserts that they are "one of the three core regulators of the legal profession alongside barristers and solicitors" (http://www.ilex.org.uk/about_ilex.aspx). The Institute of Paralegals asserts that it is "the oldest incorporated professional body for paralegals in the whole of the United Kingdom" (<http://www.theiop.org/>).

⁵⁷ "Trends in the solicitors' profession: Annual statistical report 2010: Executive summary" (2011) The Law Society; London p 5.

⁵⁸ <http://www.barcouncil.org.uk/about/statistics/>.

⁵⁹ (emphasis added) W Holdsworth "The Vocation of a Public Teacher of Law" (1925 Journal of the Society of Public Teachers of Law 1 at p 1). For a history of the Society of Public Teachers of law, now the Society of Legal Scholars, see F Cownie and R Cocks "'A Great and Noble Occupation!': The History of the Society of Legal Scholars" (2009) Hart Publishing; Oxford.

common throughout much of the twentieth century. However the situation is now very different. Twining, on the basis of unpublished data collected by Halsey for his 1992 book “Decline of Donnish Dominion”, argues that that information showed that academic lawyers “very closely resembled the profile of the academic profession as a whole, especially colleagues in the Humanities and Social Sciences”.⁶⁰ Thus, for example, newly starting legal academics are no much more likely to have PhDs than in the past and are much less likely to be qualified as lawyers.⁶¹ In her study of legal academics in English university law schools Cownie concludes that “[t]he discipline of law is embedding itself firmly within the academy”.⁶² Elsewhere she observes that her survey evidence suggests the most common reason for legal academics enjoying research was satisfying intellectual curiosity and that in teaching “the principal aim was to teach students to think for themselves”.⁶³ What is significant in this is the degree to which legal academics are separated from the legal professions. Cownie’s respondents rejected the view that law in universities was a vocational subject where the aim of the law school was to train good lawyers.⁶⁴ Equally “[w]hen asked about their personal view of success, their aim was to establish themselves as an expert in their fields...they did not look outside academia for peer approval.”⁶⁵ As I noted earlier in this paper there are a range of attitudes and opinions amongst legal academics about their work. Some academics have advocated greater co-operation between legal academics and the judiciary; others have argued that legal academics should ally themselves more closely with the legal professions.⁶⁶ However the dominant ethos in the contemporary era appears to be plain; the legal academy is a separate entity wherein knowledge is pursued, in increasingly diverse ways, for its own sake. Thus, for example, although there is evidence that the senior judiciary in England and Wales increasingly turn to academic work when writing their judgements how far most academics care about what the judiciary think of their work is open to question.⁶⁷ There is in this a fundamental clash of values between legal academics and both government and the practicing legal professions. In the latter two areas commercial values prevail but these values have little place within the legal academy where academic values prevail.

⁶⁰ W Twining “Blackstone’s Tower” (1994) Stevens and Sons/Sweet and Maxwell: London p 202.

⁶¹ See further A Bradney “University Law Schools and the Legal Profession: The Academic Legal Profession - Academic or Legal?” (2004) 1(2) European Journal of Legal Education 1.

⁶² F Cownie “Legal Academics: Culture and Identities” (2004) Hart Publishing: Oxford p 206.

⁶³ Cownie op cit p 113 and p 76.

⁶⁴ Cownie op cit p 77.

⁶⁵ Cownie op cit p 206.

⁶⁶ See, for example, P Birks “The academic and the practitioner” (1998) 18 Legal Studies 397 and N Savage and G Watt “A ‘House of Intellect’ for the Legal Professions” in P Birks (ed) “Pressing Problems in the Law: Volume 2: What Are Law Schools For?” (1996) Oxford University Press; Oxford.

⁶⁷ N Duxbury “Jurists and Judges: An Essay on Influence” (2001) Hart Publishing; Oxford p 105.

University law schools are subject to pressures from outside the academy. The disjunction between the values of the academy and values which are dominant elsewhere has led some academics to argue that law schools in England and Wales are in the process of change and the future of law schools will be very different.⁶⁸ Whether this is so is a contentious matter. It would be wrong to ignore the external pressures on university law schools and individual legal academics. Yet there is significance in the fact that these pressures are longstanding ones. Governments over the last three decades have sought to redirect universities to the service of the economy but during this period law schools in fact have become more not less academic. In some instances things that were intended to make universities more tied to the needs of the economy have been used by law schools to emphasise their increasingly academic nature. Thus, for example, in 1985 regular external audits of the quality of research were introduced. The then Conservative Government saw high-quality research as being that which would improve the economy.⁶⁹ However successive law panels emphasised that high quality research was about the production of knowledge; as a result contributing to practitioner journals became less valued within the academic community.⁷⁰ Moreover, in considering the likely future role of university law schools, it would also be wrong to ignore the fact that resistance to external pressure is not just a matter for individual academics. There are a number of professional associations for legal academics. The largest of these, the Society of Legal Scholars, has between 2,500 and 3,000 members.⁷¹ It lobbies heavily on behalf of its members with government and the practicing professions. Other academic organisations, whilst smaller, also actively engage with the outside world on behalf of legal academics.⁷² It would also be wrong to ignore the fact that universities have what Trow has called both a public life and a private life.⁷³ The private life of higher education, what goes on in individual seminars and offices, is as much part of the culture of law schools as is the public life that is witnessed in things such as school mission statements. Changing the public life of university law schools in ways that legal

⁶⁸ See, for example, R Collier “‘Nutty Professors’, ‘Men in Suits’ and ‘New Entrepreneurs’: corporeality, subjectivity and change in the law school and legal practice” (1998) 7 *Social and Legal Studies* 27.

⁶⁹ “The Development of Higher Education into the 1990s”(1985) Cmnd 9524.

⁷⁰ D Vick, A Murray, G Little and K Campbell “The Perceptions of Academic Lawyers Concerning the Effects of the United Kingdom Research Assessment Exercise” (1998) 25 *Journal of Law and Society* 536. For a discussion of the way that this audit has effected legal research see A Bradney “Conversations, Chances and Choices: The Liberal Law School in the Twenty-First Century” (2003) Hart Publishing: Oxford pp 182-186.

⁷¹ The Society works in both the United Kingdom and Ireland. It also has some foreign members. See further <http://www.legalscholars.ac.uk/>.

⁷² These organisations include the Socio-Legal Studies Association (<http://www.slsa.ac.uk/>), the Association of Law Teachers (<http://www.lawteacher.ac.uk/>) and the Committee of Heads of University Law Schools (<http://www.chuls.ac.uk/About.aspx>). On the work of these bodies see further A Bradney “Micropolitics and the Preservation of Academic Autonomy in British University Law Schools” (2009) 3 *Canadian Legal Education Annual Review/Revue de l’enseignement de droit au Canada* 115.

⁷³ M Trow “The Public and Private Lives of Higher Education” (1975) 104 *Daedalus* 113.

academics do not approve of has proved to be very difficult in the last few decades; changing its private life is inherently even more difficult.

Conclusion

Upon the face of it the position of university law schools in England and Wales appears to be fairly weak. Professional bodies for practicing lawyers, the Solicitors Regulation Authority and the Bar Standards Board, set out in the Joint Statement on Qualifying Law Degrees minimum standards for the content of the qualifying law degree that has to be taken if law graduates are to go on directly to professional courses.⁷⁴ Academic freedom thus appears to be constrained. However the content of that statement has to be arrived at in consultation with university law schools. A recent proposal, suggesting that legal ethics ought to be part of the curriculum of the qualifying law degree, sought to couch the change in ways that would be compatible with the notion of a liberal law degree because that is the dominant approach to legal education within university law schools in England and Wales.⁷⁵ Even those with regulatory power over the public life of university law schools, as in the case of the Joint Statement, cannot simply impose their will on law schools. The introduction of the Law Benchmark similarly shows how difficult it is to alter the life of law schools. Benchmarks were intended to be statements of what graduates in various disciplines could do.⁷⁶ Like the Joint Statement they appear to be a constraint on academic freedom, dictating what individual law schools could do in their curriculum.⁷⁷ However in practice Benchmarks have not become part of the vocabulary of law schools. Cownie's study of legal academics, "Legal Academics: Culture and Identities", does not discuss the Law Benchmark because none of her respondents referred to it although they did discuss other ways in which law schools were audited.⁷⁸ The Law Benchmark is largely ignored and it is questionable whether most legal academics know what it says.

The future will certainly see further attempts to alter what university law schools do by both Government and the practicing professions. Those attempts will meet with resistance in various ways. Whether that resistance will be successful is uncertain. However Cownie ends her study of legal academics

⁷⁴ For the current Joint Statement see <http://www.sra.org.uk/students/academic-stage.page>.

⁷⁵ A Boon "Legal Ethics at the Initial Stage: A Model Curriculum" (2010) The Law Society: London pp 10-12.

⁷⁶ See further J Bell "Benchmarking: A Pedagogically Valuable Process" [1999] 2 Web JCLI (<http://webjcli.ncl.ac.uk/>). For the current Law Benchmark see <http://www.qaa.ac.uk/academicinfrastructure/benchmark/honours/law.asp>.

⁷⁷ See further A Bradney "Benchmarking: A Pedagogically Valuable Process? An Alternative View" [1999] 2 Web JCLI.

⁷⁸ Personal communication with author.

with the observation that “overall, the culture of academic law and the professional identities constructed within it display a great deal of resilience, both retaining a fundamentally academic orientation”.⁷⁹ The situation in England and Wales shows a mismatch between the state’s view of higher education, the cultures of at least some areas of legal practice and the academy’s view of what legal education should be like. It is probable that the academy’s view will prevail, particularly in the private life of law schools, because, in the end, the question of what law schools should do matters more to legal academics than it does to others. For them it is question about who they are.

⁷⁹ Cownie op cit p 206.