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TRAINING THE NEXT MILLENNIUM'S LAWYERS: IS THERE A CASE FOR JOINT PROFESSIONAL LEGAL EDUCATION?

By PHILIP KNOTT*

Introduction

IN 1993 the Law Society introduced the Legal Practice Course (the LPC), on the basis of validating a number of institutions (currently 27) to deliver and assess their own courses within a defined framework. When the Bar Council followed suit with its own Bar Vocational Course (the BVC) in 1997, it validated six new providers (including Nottingham Law School), each one of which also runs an LPC. The experience of designing, developing, delivering and evaluating both courses within the same law school provides an ideal opportunity to readdress the issue of joint training, which has of course been on the agenda for a number of years.

The debate on joint training has been led by the Lord Chancellor's Advisory Committee on Legal Education and Conduct (ACLEC) Report on Legal Education, which favoured some form of common vocational legal education, concluding that "we are convinced that this is essential. . .".[1] By way of reminder, the ACLEC Report, having considered a range of alternative models for common/joint/complementary training, proposed a common core (to last between 15 and 18 weeks), followed by shorter, more specialist BVC and LPC courses (also lasting 15 to 18 weeks).[2] More recently, joint training has been placed back under the spotlight by virtue of the government's commitment to allowing all solicitors and barristers to acquire equal rights of audience before the courts on qualification. As reported in the Law Society Gazette: "the change could come at the basic level with common vocational education for all law students".[3]

Within this rapidly-developing context, I intend in this paper to examine whether the ACLEC model for joint training, or indeed any other model, stands up to scrutiny in the light of actual experience in the design and delivery of each course. Before doing so, however, it is pertinent to look briefly at the changing nature of the legal profession, because it is vital that legal education, particularly at the vocational stage, reflects changes in legal practice. Are the providers of professional

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1 *The First Report on Legal Education and Training*, April 1996, at p. 73.

2 *Ibid.*, p. 32. A Master's degree in Professional Legal Studies would provide an alternative route.

3 8 July 1998.

legal education preparing students for a "Profession" in the traditional sense, and should we be talking about a single or multiple legal profession?

The Nature of the Legal Profession

It is notoriously difficult to define a "Profession", partly because it involves a degree of self-perception, based on notions of community, self-governance and the setting of high and altruistic standards.[4] The Law Society has published a survey of 15 self-selected professions, and the factor unifying these and other professional bodies is that the members subscribe to a regulatory regime that binds them through an enforceable code of conduct.[5] Doctors and lawyers are the groups who most clearly and traditionally embody this notion of a profession, while accountants, architects and nurses (but not alas teachers) may also claim to be included. Classically, perceptions have been based on more nebulous concepts, such as collegiality, but attitudes inevitably change. For example, until recently both the Law Society and Bar Council banned advertising, on the basis that self-promotion was inconsistent with the altruistic ethos of a true profession. However, advertising is now permitted, and actively embraced by many firms of solicitors.

Within the legal profession, the Bar epitomises the traditional view of a liberal profession. It remains primarily a referral profession, with exclusive court dress, whilst employing clerks to deal with the "business" side of its work. Moreover, barristers remain self-employed, and have a high level of individual responsibility through their regular external contact with the court. The wearing of wigs in court illustrates the desire of a profession to maintain exclusivity, in that it continues to emphasise

4 See Richard L. Abel, *The Legal Profession in England and Wales*, (1988), Oxford, at p. 7. An alternative, and less flattering, perception is that Professions provide a form of social closure, conferring enhanced status and market control on those privileged to have membership (Abel, p. 10).
Note also the *Royal Commission on Legal Services*, which defined the five main features of a profession as:
"A governing body (or bodies) [that] represents a profession and has powers of control and discipline over its members.
[Mastery of] a specialised field of knowledge. This requires not only the period of education and training but also practical experience and continuing study of developments in theory and practice.
Admission . . . dependent upon a period of theoretical and practical training in the course of which it is necessary to pass examinations and tests of competence.
[A] measure of self-regulation so that it may require its members to observe higher standards than could be successfully imposed from without.
A professional person's first and particular responsibility to his client. The client's case should receive from the adviser the same level of care and attention as the client would himself exert if he had the knowledge and the means.
(1979, vol. 1: 28, 30).

5 *Organising UK Professions: Continuity and Change* (1994), Janet Allaker and Joanna Shapland, the Law Society's Research and Policy Planning Unit (Research Study 16). I would exclude social workers from their list on the basis that membership is voluntary.

the separateness of barristers from solicitors. One might regard such a matter as peripheral to the nature of legal practice, but the battle over whether solicitors should be permitted to wear wigs in the higher courts, which has been sustained over the past decade, shows that the participants regard such symbols as of great importance.

Solicitors on the other hand have been regarded as professionals[6] for a far shorter period, and appear to be moving away from the traditional view more rapidly. Most solicitors are now employed, often in very large practices and with little direct contact with individual clients. Indeed, Mayson believes that the growth of law firms into major businesses may have compromised the very notion of "professionalism". In the late 1980s the pursuit of money became for some more important than professional values and collegiality. More optimistically, he believes that in the longer term the future of legal practice is still tied in with the notion of a profession, in that the most successful firms will be those which operate in both a *business-like and professional* manner.[7] This view is echoed by Paterson when he states that ". . . we live in an era when professionalism is being re-negotiated. The crisis is not for professionalism *per se*, but for the traditional concept of professionalism".[8]

Solicitors can therefore be argued to be moving from being a liberal towards becoming a *commercial profession*. Is this an oxymoron? Many at the Bar will no doubt think so. But the advent of conditional fees and the contraction of legal aid makes such a change inevitable and accelerated for both branches of the profession if they are to survive. And professional legal education will have to reflect such changes if it too is to survive in its current form.

The above may reflect a certain ambivalence about whether lawyers can be regarded as a single profession. Although people tend to refer to "the legal profession", technically there are two: the Bar Council and the Law Society each having statutory powers of enforceable regulation over all of their respective practitioners. Moreover, within the solicitors' profession there are emerging a number of different structures for solicitors' firms whose aims and requirements are becoming so diverse that I would question whether they can long remain regarded as a single profession. There can be no definitive way of identifying such structures, but I would suggest three: the major corporate city firms; substantial

6 It is difficult to pinpoint when solicitors became recognised as a Profession in their own right, but the current Law Society was formed in 1825 (having been preceded by the Society of Gentlemen Practisers). For a detailed historical account, see the *International Journal of the Legal Profession*, Vol. 3—Special issue: The Solicitor's Profession in Transition (1996).

7 Stephen Mayson *Making Sense of Law Firms* (1997) Blackstone Press at pp. 17 and 528. A less optimistic view would be that clients have become "consumers" or "purchasers of services" (demanding both power and accountability). For example, the Legal Aid Board has become a classic purchaser of services, contracting out work, and not necessarily to solicitors or barristers exclusively.

8 Alan A. Paterson, "Professionalism and the legal services market", *International Journal of the Legal Profession*, Vol. 3, Nos. 1/2, at p. 158 (1996).

corporate/commercial practices in London and our larger regional centres; and general high street firms (heavily dependent, for the time being, on legal aid). The Bar too is undergoing major changes in the way it operates, with the emergence of an expanding number of specialist associations, currently standing at 18, suggesting that its own homogeneity is being challenged.

So technically we have two professions, and considerable fragmentation within those professions, particularly amongst solicitors.[9] In conclusion, I suggest that law is a multiple profession, and that for the purposes of determining the direction of professional legal education, and in particular the case for joint training, the key question is whether there is sufficient identity of interest within the legal community to enable some form of combined training to take place.

An Evaluation of Course Content

Within this framework, I will now turn to the courses themselves. By way of direct comparison, I intend to look at the BVC and LPC first in the context of their overall aims and objectives, and then to examine in turn their knowledge, skill and ethical components.

Overall Aims and Objectives

Explicitly, the aims and objectives of the two governing bodies are very similar. The Bar Council's aim can be summarised as "to prepare students for . . . pupillage",[10] whilst the Law Society's is "to prepare students for practice . . . under supervision".[11] These explicit aims are broadly consistent, within the framework of the differing roles of solicitors and barristers. However, it should be noted from the outset that the Bar Council goes further in saying that the BVC should "equip [students] to perform competently . . . during the second six months of pupillage" (after which they can practise independently). Solicitors on the other hand have to wait two years to qualify, and a further three years before they can embark upon independent practice. The courses will vary therefore in the implementation of their respective aims, in that the proximity to practice of students on the BVC affects significantly the way in which the course is delivered and assessed.

9 R. Cranston, in *Legal Ethics and Professional Responsibility* (1995), Oxford (Clarendon Press), describes the profession as variegated (at p. 31).

10 The General Council of the Bar, *Bar Vocational Course Specification Guidelines*, September 1995, at p. 3.

11 *The Legal Practice Course Board's Written Standards*, December 1996.

Knowledge

Each of the courses has a core of compulsory assessable knowledge comprising primarily substantive and adjectival law. As can be seen from the table below, the courses have a litigation core in common. However, whilst for the BVC litigation is the beginning and end of the knowledge content, in the LPC business and conveyancing play the major role. Indeed, on the Nottingham LPC the non-contentious elements comprise 70% of the prescribed knowledge, reflecting the emphasis of the reviewed LPC on commercial/corporate practice.

LPC		**BVC**	
Litigation:	30%	Litigation:	100%
Civil		Civil	
Criminal		Criminal	
Evidence		Evidence	
Business			
—including Tax/Accounts			
Conveyancing			

Not only is the actual knowledge content different, but also the approach to the delivery of that knowledge varies in a fundamental manner. The LPC is essentially *transaction-led*[12] with knowledge comprising up to 75% of the prescribed course content, whereas the BVC is *skills-led* with knowledge comprising only 40%. For example, in civil litigation the LPC will focus on the whole transaction from initial instructions to taxation of costs, whereas the BVC focuses on specific and often specialist elements of the "brief", where the barrister is most likely to be instructed.

Before accepting that their content is so disparate as to preclude any commonality one ought to pose the question: do the courses accurately reflect current legal practice? Taking the LPC first, it has recently been reviewed, based on wide consultation within the profession, and confirmed by research conducted by my colleague Scott Slorach.[13] Inevitably the course is a compromise in such a fragmented profession, and to satisfy all constituencies we would probably need two or more LPCs! Indeed, if there were further compromise, to reflect the needs of the Bar, such "dilution" (as it would be perceived) may tip the fragile balance towards separate corporate and generalist LPCs. Importantly, the reviewed LPC moves further away from the BVC by placing greater emphasis on business law (almost non-existent on the BVC), at the

12 A transaction for these purposes being a "legal task" that involves "either playing-out or blocking problems", Stephen Nathanson, *What Lawyers Do*, Sweet & Maxwell (1997), at p. 35.

13 Scott Slorach, *The Legal Practice Course—Benefits in Practice*, Nottingham Law School, February 1996.

expense of negotiation and criminal litigation (which are key components of the BVC).

The BVC endeavours to ensure that it retains currency with practice by commissioning ongoing research carried out by Professor Shapland and others, most recently updated in 1998.[14] My own analysis, based on the practice areas of barristers' chambers taking pupils, shows the likelihood of a pupil barrister being exposed to the major areas of practice:[15]

Practice area	Proportion of pupillages
Civil	77%
Criminal	70%
Family	53%
Personal Injury	48%
Landlord & Tenant	47%
Professional Negligence	37%
Commercial	36%
Employment	32%
Chancery	24%

These figures demonstrate that the BVC has broadly taken the correct approach in focusing on general civil and criminal litigation skills. Indeed, even those who specialise in their first six months of pupillage often revert to basic litigation skills in their "second six", when they can practise in the courts. Nevertheless, the potential exposure of pupils to commercial work is significant enough to suggest that the BVC should include some element of business/commercial law as a core component of the course (at the moment, such content is consigned to the non-assessed backwater of a "background subject"). Such a change would also fill a real lacuna in the BVC, in that it focuses almost entirely on contentious work.[16] Even those who are destined exclusively to become civil or criminal litigators ought as qualified lawyers to have some exposure to practice in non-contentious areas that deal with the creation and maintenance of legal relations. Given that much litigation arises from such non-contentious work, there is sufficient nexus in my submission to justify all trainee barristers being exposed to a significant (and assessable) commercial element. Put another way, the BVC is currently focused on transactions which play-out conflict (litigation), yet

14 Joanna Shapland and Angela Sorsby, *The Junior Bar in 1997*, The Institute for the Study of the Legal Profession, Chapter 3.

15 Based on the number of pupillages offered by sets of chambers within the specialisation codes from the *Chambers Pupillages & Awards Handbook*.

16 Except for those who may choose a non-contentious option.

ignores those important and related aspects of lawyering which involve blocking conflict in the first place (non-contentious work).[17]

Turning to another aspect of the knowledge curriculum, each course contains an optional element. On the LPC, students study three "electives" over 10 weeks, while BVC students take two options over six weeks. It would make much sense to combine these optional elements where possible, but on a closer examination there are difficulties. Because of the differing subject content of the compulsory courses, students have reached different levels at the point at which they embark upon the options. The BVC students have a greater depth of knowledge than their LPC counterparts in litigation-based subjects, whereas the converse is true in relation to commercial and property based options. There is therefore no common point at which most of the options could start. Another technical difficulty is that the LPC starts earlier and devotes longer to its electives, and it is doubtful whether either the Bar Council or the Law Society would restructure its course to render the two more compatible in this respect.

Returning to the compulsory knowledge content, the inclusion of a modest non-contentious business element in the BVC would have the effect of reducing to some extent the incompatibility between the courses. However, there is currently such a different approach in both content and delivery of the knowledge curriculum as to present a major hurdle to the idea of a single joint course in the short-term. Leaving this issue aside for the moment then, I now turn to the question of whether there is a case for *elements* of common training, through for example a joint foundation course as proposed in the ACLEC Report. In this context I will look first at the skills, and then the ethical components of the courses.

Skills

On the face of it, there is clear commonality between the broadly defined skills elements of the courses, as can be seen from the following table:

	BVC	LPC
Advocacy	✓	✓
Drafting	✓	✓
Fact Management	✓	✓
IT	✓	✓
"Interviewing"	✓	✓
Negotiation	✓	x
(Opinion) Writing	✓	✓
Research	✓	✓

17 Nathanson, *op. cit.*, n. 12.

Is there then a case for a joint foundation course preceding the BVC/LPC that could deal with, *inter alia*, skills? Given the potential synergy between the skills elements of the courses, this must be a possibility, particularly if one breaks legal skills down into their constituent elements by identifying sub-skills (as in the influential McCrate Report in the USA, which identified 41 fundamental lawyering sub-skills[18]). This is an attractive idea, which enhances transferability, and with much educational theory to back it up. Indeed, initially the BVC, and many LPCs, had foundation skills courses.

However, these formal foundation courses have now largely been abandoned as professional legal education has moved towards a more integrative, contextualised approach to the learning of legal skills. To quote Professor David Cruickshank: "Integrated learning involves skill learning and the use of prior knowledge. Unfortunately the term 'skills' seems associated with 'technical', 'non-academic' or unreflective. This misrepresents the cognitive challenge of integrated learning."[19] This cognitive challenge is both to students to learn in an integrated, transferable manner; and to teachers in developing integrated learning programmes.

Indeed, in Nottingham we have developed this approach further into an integrated "problem-solving"[20] philosophy. From this perspective, we do not teach skills in isolation, but place them *immediately* in the context of transactions that are relevant to the needs of the particular students. By integrating relevant substantive law, procedures and skills we therefore tie the teaching of skills into the knowledge elements of the respective courses which, as we have already seen, are very different. For example, BVC students will be better motivated towards "interviewing" skills if taught specifically in the context of a *Conference—i.e.* what a barrister will actually do in practice.

A further difference between the skills elements of the courses is that the reviewed LPC focuses to a greater extent on written skills, whereas the BVC's prime (at least highest profile) focus is quite properly on advocacy skills. This again is entirely appropriate, given that BVC students will currently have rights of audience a mere six months after entering practice.

In summary, although skills need some discrete tuition to ensure transferability, I believe that essentially knowledge and skills are best taught in an integrated problem-solving context. I would therefore oppose the idea of a joint skills foundation course, principally because experience suggests that student motivation and effective learning suffer

18 http://www.abanet.org/legaled/maccrate.html (selected excerpts).
19 ACLEC Report, *op. cit.*, n. 1, at p. 79.
20 For a succinct exposition of the nature of the skill of legal problem-solving, see Stephen Nathanson, "Bridging The Divide Between Traditional and Professional Legal Education", *Journal of Professional Legal Education* (1997), Vol. 15, No. 1, p. 15

unless there is a relevant knowledge context for the delivery of skills programmes.

Conduct/Ethics

Earlier in this paper I argued that an enforceable code of conduct is the defining attribute of a Profession, which means that conduct and ethics should play a major role in legal education at all levels. However, in fact there is little formal inclusion of ethics within the whole continuum of legal education, that is at undergraduate, professional, research[21] or practice levels. Most of the limited time spent in this area is devoted to understanding and applying the rules of professional *conduct*, rather than acquiring an *ethical framework* within which to operate. As Cranston has forcefully argued: "Law schools in this jurisdiction have washed their hands of the responsibility to teach legal ethics".[22]

If the attitude towards the teaching of both the specific rules of conduct and the wider ethical curriculum is to change, then there needs to be a radical new approach throughout legal education. A very powerful case has been put forward by Webb[23] for introducing ethics into our undergraduate curriculum, whilst in the USA the MacCrate Report recommends that law schools "should play an important role in developing the skill of recognising and resolving ethical dilemmas".[24] My own view is that the formal codes of conduct should where possible be avoided at our academic stage, otherwise there is a danger that students will from the outset see the whole area as rule-based, rather than value-based. At undergraduate level, I believe therefore that teachers should try to raise awareness of ethical issues in a generalised context. The aim at this stage should be to sensitise students to the ". . . ethical underpinnings of legal practice",[25] so that they can internalise appropriate behaviour from an early stage.

An anecdotal example from our first Legal Practice Course may illustrate the point. In introducing the skill of negotiation we of course told students that they must not mislead their opponent. Nevertheless, under the pressure of a confrontational negotiation a significant minority did just that. Not to put too fine a point on it, in their desire to "win" the negotiation they lied to their opponent, despite the fact that they were being recorded on video and a tutor was in the room taking notes! Clearly such students had failed to internalise the ethical dimension sufficiently to be able to retain it under pressure. More objectively,

21 Although the new *Journal of Legal Ethics* will contribute towards addressing this particular deficiency.
22 *Op. cit.*, n. 9, p. 30.
23 "Teaching Legal Ethics", *The Law Teacher*, Vol. 30, No. 3, p. 270.
24 *Op. cit.*, n. 18, Recommendation C.16.
25 Cranston, *op. cit.*, n. 9.

Maughan *et al.* examined undergraduate student responses to a negotiation exercise, and concluded that an anti-cooperative theory of action is ". . . powerful enough to generate a dilemma for [the lawyer] in practice which is strong enough to provoke ritualised and possibly unethical behaviour".[26] In my submission, it is only through continuing exposure to ethical and conduct issues that students can acquire a sufficiently clear set of professional values to take into practice, and to continue to learn from their own experience.

At the professional stage, I believe that it is important for students initially to solve specific ethical problems within a general ethical framework, before they are referred to the detailed rules of conduct. To the Law Society's credit, such a framework can be found in Solicitors' Practice Rule 1,[27] which is worth setting out in full:

> "A solicitor shall not do anything in the course of practising as a solicitor, or permit another person to do anything on his or her behalf, which compromises or impairs or is likely to compromise or impair any of the following:
>
> (a) the solicitor's independence or integrity;
> (b) a person's freedom to instruct a solicitor of his or her choice;
> (c) the solicitor's duty to act in the best interests of the client;
> (d) the good repute of the solicitor or of the solicitors' profession;
> (e) the solicitor's proper standard of work;
> (f) the solicitor's duty to the Court."

In addressing problems through this framework, students can then develop an awareness that the principles are not always entirely consistent, that there are inherent dilemmas in many situations, and that there are often no easy answers to ethical problems. Once the ethical framework has been established, the course can then move towards solving problems by specific reference to the provisions of the code. Thereafter, it is equally important that conduct should pervade all substantive teaching, as conduct problems in practice do not always come labelled as such.

I would argue therefore that professional legal education has a role in the development of an ethical approach to the practice of law, which is at the heart of the definition of a profession. However, this can only be really effective if undergraduate legal education also takes this vital and neglected area seriously. If, by the time they enter practice, solicitors have been exposed to ethical dilemmas and conduct rules through their undergraduate studies, the LPC, the Professional Skills Course[28] and the

26 "Confronting Adversarial Attitudes to Negotiation", by Caroline Maughan, Mike Maughan and Adrian Thornhill, *The Law Teacher*, Vol. 32, No. 1, p. 91.
27 *The Guide to the Professional Conduct of Solicitors* (1996), The Law Society, p. 1.
28 A compulsory course taken during the training contact, with a significant conduct element.

training contract, then the educational process will have done all that can really be asked of it to create ethical practitioners.

Given the significance of ethics to the very nature of a profession, is this then at last an area for joint training between the BVC and LPC? Clearly it would be helpful to create a framework for inculcating the core common values underpinning the legal profession into all aspirant lawyers, and the idea has received support from both a city firm training director and a prominent QC.[29] However, I believe that this should primarily be the role of the academic stage. At the vocational stage one can only spend a limited time on the ethical framework before getting to grips with the separate codes of conduct relating to barristers and solicitors. Regrettably, the Bar Council's Code of Conduct has no statement of principle equivalent to the Solicitors' Practice Rule 1, making it difficult to make conduct in the regulatory sense an area for joint teaching.

Another difficulty in the joint teaching of ethics/conduct mirrors that in relation to skills. I submit that conduct issues in particular should be integrated (or pervade) in the context of ethical dilemmas which the students will actually face in practice. Young independent barristers in court every day before judges have sole responsibility for their own actions, and will face different, and more frequent, ethical dilemmas than young solicitors in commercial practice who increasingly operate in big teams on major transactions, possibly for a single client.

In conclusion, professional ethics has potential for joint teaching, perhaps through a neutral medium such as the "Code of Conduct for Lawyers in the European Community", which is clear, concise and generic in its approach. However, the need to place such issues in the context of each (branch of the) profession's codes of conduct means that any such joint teaching would probably be limited to a short foundation course.

The Way Forward

Joint Training in the Short Term

In the short term is there then a case for the straightforward amalgamation of all or parts of the BVC and LPC to provide some form of joint training? In my view there is not. Admittedly there is a degree of synergy between the overall aims and objectives of the courses, the range of skills taught, and the ethical framework within which the legal profession operates. However, the knowledge content differs widely, as does the balance between knowledge and skills. Moreover, the

29 In the letter pages of *Axiom* magazine, issues two and three.

knowledge/skills/ethical components need to be integrated to achieve the greatest level and depth of learning.

Currently, the BVC and LPC are focused on their own particular professional requirements. The BVC is focused on the particular knowledge and skills required for an advocacy/specialist profession, in the knowledge that pupils will have full rights of audience within six months, and may become independent practitioners after 12 months. Solicitors on the other hand take a year longer to qualify, and then require a further three years of supervision before they can practise independently. This means that trainee solicitors require a broader-based and more transactional approach to learning, as they will initially operate within a varied but more protected law firm environment, normally being exposed to at least four areas of practice during the training contract.

I conclude therefore that the BVC and LPC should each retain its own distinctive framework for the delivery of knowledge, skills and professional values in a practical context, which is relevant to the distinctive needs of prospective pupil barristers and trainee solicitors. The appropriate context will continue for some time to differ as between BVC and LPC students, reflecting the functionally different roles of barristers and solicitors.

Complementary training

Joint training, in whatever form, is not the only option. One can also look at the prospect of some form of complementary training, with the two courses operating in parallel and developing links as appropriate. This was indeed envisaged as a possibility in the ACLEC Report,[30] and in this context it is significant that seven of the eight BVC providers also offer the LPC. The opportunity clearly exists for what Mary McAleese has called "organic twinning and overlap"[31] between the two courses.

Take for example civil litigation, where major changes are about to take place with legal aid, conditional fees and Lord Woolf's civil justice reforms. This has involved Nottingham Law School embarking on a wholesale rethinking and rewriting of our litigation courses at BVC, LPC and Practice Masters levels, and the incorporation of a new lawyering skill: "risk management". This provides a real opportunity to create multi-use case studies, which can be adapted to the specific needs of BVC/LPC students. All courses might be based on the same or similar materials, but using different activities and their own teams of tutors.

30 *Op. cit.*, n. 1, at p. 74.
31 In the *S.P.T.L. Reporter* 1996, 13, 17–21.

To finish on a pragmatic, even parochial note, in the short term complementary training would be much easier to deliver than a joint course, and would provide a better platform for each course to develop and integrate its curriculum, linking where appropriate, but not compromising on the essentials. Entrants into each branch of the profession would continue to be prepared for their own particular professional needs, whilst developing a greater understanding of how the other operates. Doubtless, if such a development proves desirable and manageable for both the BVC and the LPC, complementarity will evolve naturally without any need for outside prompting or direction, whilst retaining a flexibility to develop only as far and fast as is appropriate.

Joint Training in the Longer Term

The Government's commitment to equal rights of audience may well result in the first cohort of new-style solicitor advocates coming on stream by the year 2003. This, together with other factors affecting the nature of the legal profession, has rekindled the debate, and may strengthen the case for joint training in the medium term. Certainly it can be argued that a restructured approach to the delivery of professional legal education would produce more rounded lawyers, with the client focused solicitor, and the specialist/advocate barrister, each having a greater understanding of how the other operates, to the benefit of all (including, one hopes, the client!). It would also provide a further opportunity and incentive to instil the core common values of the legal profession into all those entering it, whether as solicitors or barristers.

If there is a sustained movement towards some form of joint training, then what might such a course look like and what would be its potential impact on the structure of the profession? It would need to reflect the prominence of litigation and commercial work in current legal practice, and allow the integration of skills and conduct in so far as they coexist between the branches of the profession. The course would also need to be structured so as to develop from the general towards specialism as it progresses. The key then to any successful joint course would be to find a sufficient core of knowledge to enable skills and conduct to be taught in an integrated manner. Having already argued for the inclusion of a business component into the BVC, this area and civil litigation would be the leading contenders for inclusion. I would suggest therefore dividing such a course into three stages:

I.	Core:	Knowledge (Business/Litigation) Skills Ethics

II.	Routes:	Commercial
		Litigation
III.	Specialisms:	Corporate
		General practice
		Advocacy

This first core stage would have to be designed to incorporate the essential lawyering knowledge and skills within a commercial/litigation framework. At the second stage, those with a clear career path would begin to develop their specialist routes, but sufficient flexibility would be retained for those who wished to keep their options open, by including key transactions such as property transfer where appropriate. At the final stage, the corporate and advocacy routes would be truly specialist, but those aiming for more generalist practice would still retain a degree of choice. (In view of the Government's proposals, advocacy may of course have to take a substantially higher profile for all students than hitherto.[32])

From the Law Society's point of view, this model would not, I believe, involve a significant comprise for the solicitor trainees. Indeed, the "funnelling" process towards specialist practice would arguably provide a more relevant course for those with a specific career direction, yet retain flexibility for others.

The principal danger in such a proposal for the Bar is the considerable risk that the larger would subsume the smaller, at a number of levels. The Bar itself, in opposing joint training in the ACLEC Report, claimed (rightly in my view) that the LPC would "give the centre of gravity to the focus of the course".[33] Furthermore in relation to the values of each profession, the Bar will seek to retain the distinctive culture and ethos to which I have already referred. With joint training, there is danger that its culture will be subsumed. Finally, there is the danger that the Bar itself becomes subsumed: not that a joint course of itself could bring about fusion, but it could certainly act as a catalyst in that direction. If there is to be fusion, this should be client-driven, reflecting the needs of the profession, then feeding into legal education—not the other way round, by the back door of bringing about change through the education process.

As acknowledged in the ACLEC Report:[34] "Differences will remain between the BVC and LPC so long as there are divergences in the functions of barristers and solicitors." The future of the legal profession

32 An alternative model would be to reduce this to two stages comprising an initial core followed by a range of modules from which students would choose. This would reduce the dangers of early specialisation for those who had not yet determined their career path, but give timetablers nightmares.

33 *Op. cit.*, n. 1, at p. 73.

34 *Ibid.*, at p. 76.

should therefore be determined by its functional needs, and the task of professional legal education is to reflect those needs. The argument for joint training posits that the needs of all trainee lawyers are sufficiently congruent to enable some element of their training to be combined. However, the trend is towards greater specialisation for barristers and solicitors, both between and within the two professions (or branches of "the profession"). The ACLEC proposal in 1996 was for 50% commonality. The structure outlined above would achieve about 30% commonality in 1999. By the time 2003 arrives, we may be talking about a two-week joint foundation course. It begins to look as though joint training may have passed its sell-by date.

A Single Route to Qualification

Ultimately, the debate is about the point at which divergence in legal education or practice should take place. Currently, it is at the beginning of the vocational stage, following a common academic stage (with the notable but niche exceptions of the integrated degree at Northumbria University, and a smattering of sandwich courses. The proponents of joint training advocate that the divergence should be postponed until the fledgling lawyer enters the professional training period (training contract or pupillage). At the other end of the spectrum is fusion, where no divergence takes place at all.

But there is another model with a considerable track record in the common law world, that of the unified qualification. To take an amalgam of the structures existing in New South Wales, New Zealand and Scotland, this model typically involves initial generic qualification as a lawyer. This is followed by specialisation and additional training (principally in advocacy in its widest sense) for those who wish on or after qualification to practise at the equivalent of the Bar. In England and Wales this would most readily translate into initial qualification as a solicitor. This could be coupled with a wider range of training opportunities to include one or a mixture of: solicitors' firms; barristers' chambers; solicitors' chambers; in-house legal departments and legal advice agencies.

Would such a development spell the end of the independent Bar? The experience of the above jurisdictions suggests not.[35] The specialist advocate would first obtain a broad litigation training and develop a network of contacts, before going on to the further specialist training for entry to the independent bar if s/he chose to do so. Many who arrive at

35 A view apparently shared by Dan Brennan Q.C., Chairman of the Bar, "Come what may as a result of wider rights of audience, even fusion of the two sides of the legal profession, Mr. Brennan maintains the experience of every common law country shows that a cadre of specialist advocates survives". Interview in the *Law Society Gazette*, 6 January 1999.

this point would do so at a later stage in their career, and the effect may well be some reduction in the size of the Bar, particularly at the junior end. But the advent of solicitor advocates is likely to have this effect anyway.

Ultimately, a move in this direction may well lead to the restructuring of the profession. For example, one can envisage a greater divergence between "corporate/commercial lawyers" and "litigation lawyers", each with their own independent specialist advisers and advocates. Advocates would then choose whether to practise independently or within a law firm, as barristers or solicitors (a development already signalled by the launch of the Solicitors Chambers Association in October 1998).

One advantage of a single route to qualification would be to provide greater flexibility for students. We are in times of great uncertainty for many students aspiring to enter the legal profession, particularly at the Bar where applications for pupillage far exceed their availability. The opportunity to qualify first as a lawyer, using a variety of training routes, and to postpone the final choice as to whether to practise as a solicitor or barrister until qualification or later, would allow many young lawyers to make a more informed and financially secure decision about their career direction. This flexibility would of course continue throughout one's career, developing the idea of "portability" envisaged by equal rights of audience, with greater numbers moving between one branch of the profession and the other in both directions.

Conclusions

The legal profession is in a major state of flux, arising from increasing consumer demands, rights of audience, conditional fees, multi-disciplinary partnerships and globalisation, to name but a selection. Joint training looks increasingly anachronistic in such an environment where specialisation is becoming a necessity for survival in an increasingly competitive world. The most flexible, evolutionary way forward in such an environment is complementarity, which the Bar Council has facilitated (whether by accident or design) in validating seven new providers of the BVC, all of whom also offer the LPC.

In the longer term, it may well be that we move inexorably towards a fragmented series of specialist mini-professions, each with their own training and qualification routes. If such a scenario at some time seems likely, the best alternative in my view would be to strengthen the concept of a single legal profession by devising a unified route to qualification that can promote diversity, flexibility and ultimate specialisation both for those entering and already within the profession.