

WILEY

Cardiff University

Thinking about Law Schools: Rutland Reviewed

Author(s): William Twining

Source: *Journal of Law and Society*, Vol. 25, No. 1, Transformative Visions of Legal Education (Mar., 1998), pp. 1-13

Published by: [Wiley](#) on behalf of [Cardiff University](#)

Stable URL: <http://www.jstor.org/stable/1410452>

Accessed: 11/04/2013 06:53

Your use of the JSTOR archive indicates your acceptance of the Terms & Conditions of Use, available at

<http://www.jstor.org/page/info/about/policies/terms.jsp>

JSTOR is a not-for-profit service that helps scholars, researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. For more information about JSTOR, please contact support@jstor.org.



Wiley and Cardiff University are collaborating with JSTOR to digitize, preserve and extend access to *Journal of Law and Society*.

<http://www.jstor.org>

Thinking About Law Schools: Rutland Reviewed

WILLIAM TWINING*

Thinking about law schools as institutions requires tools of analysis and the questioning of some common assumptions. This paper applies some of the general ideas in the recent report on Legal Education in Xanadu to the Faculty of Law at the University of Rutland, with particular reference to institutional goals and functions, clientele, league tables, and who counts as a 'law student'.

On a recent visit to a respected Commonwealth law school, I asked a group of senior academics: 'What is your staff-student ratio?'¹ They looked a bit abashed. Then one said: 'It is about twenty to one, which is embarrassingly favourable in this country'. I asked how this was calculated. 'Naturally, we divide the total population of LLB students by the number of full-time faculty.' This seemed strange, for the law school aspired to emulate the model of a multi-functional institution that provides a wide range of educational and other services at a variety of levels.² About 35 per cent of their teaching was invested in the LLB, another 20 per cent in courses for non-law degrees, and about 45 per cent in 'outreach' programmes, including seminars for judges; continuing legal education for private practitioners,

** Faculty of Laws, University College London, 4 Endsleigh Gardens, London WC1H 0EG, England*

I wish to thank Tony Bradney, Fiona Cownie, Martin Loughlin, Avrom Sherr, and participants in the Commonwealth Legal Education Association Conference at Kuala Lumpur in September 1997 for helpful comments and suggestions. Responsibility for opinions, errors, heresies is, of course, mine alone.

1 This paper extends the argument in a number of previous writings, especially W. Twining, *Blackstone's Tower: The English Law School* (1994); 'What are Law Schools For?' in W. Twining, *Law in Context: Enlarging a Discipline* (1997) ch. 15; and W. Twining, 'Rethinking Law Schools' (1996) 21 *Law and Social Inquiry* 1007. Although some of the ideas are based on first-hand experience of actual law schools in the United Kingdom, the Commonwealth, and the United States of America, the law schools of Xanadu and Rutland are fictional constructs and any resemblance to any actual institution is incidental.

2 International Legal Center, *Legal Education in a Changing World* (1975) 39, discussed in id. (1994), pp. 51-8.

government lawyers, and local government officials; workshops for law teachers in neighbouring institutions; an access course; a legal literacy programme; and short courses for police, accountants, and social workers. Some, but not all of these activities were included in the school's budget, but in their social organization, their public relations, and their daily discourse only those taking the single-subject honours degree in law counted as their 'students'. Similarly, only full-time salaried teachers counted as 'faculty'.

The steady bureaucratization of universities is bringing to the surface similar disjunctures in such concepts as 'law students' and 'law teachers'. In the United Kingdom, a relatively bureaucratized institution, such as Rutland, may have quite sophisticated notions of 'student load', 'full-time equivalents', and unit costs for accounting purposes, but nuanced or not-so-nuanced deviations in usage in other contexts. For example, in the same institution, the student Law Society is in practice confined to undergraduates; the Alumni Office keeps address lists of graduates, but not holders of diplomas or certificates of attendance; supervising research students has recently been included in 'teaching load', but not involvement in Continuing Professional Development (CPD) or other short courses or a legal awareness programme. Work in the neighbourhood law office is 'voluntary'; seminars for judges and law teachers are unpaid; teaching on the access course is expenses only; external examining attracts a laughable 'honorarium'; but teaching on CPD courses is quite well paid as 'outside work'. The youngest member of staff is typically assigned to 'service teaching' as part of her duties; those whom she teaches count as 'students' for purposes of student load, but they are definitely not 'law students'. As has been noted elsewhere, full-time post-graduates are almost never photographed and are treated as invisible in most other respects until they become alumni.³ The advent of modularization and distance learning will further muddy the waters. What counts as 'moonlighting' by full-time staff is ill-defined and generally not regulated in practice, but two extreme cases in the Business School and one in Architecture have recently resulted in litigation. Similar uncertainties apply to the status and duties of part-time staff. 'Who are law students?' and 'What are law teachers?' are questions that deserve attention.

Some conceptual confusions might be quite easily cleared up through rationalization by a trade union, a dean, or other bureaucrats. For purely administrative purposes, it might be sensible to define 'law student' and 'law teacher' differently for different purposes. But most of the difficulties are not semantic; rather they are symptomatic of wider uncertainties about the actual and potential nature and functions of law schools in rapidly changing situations.

From a bureaucratic or managerial point of view, Rutland is only partly 'reconstructed' compared to other institutions. However, its organization is

³ *id.*, p. 72.

a great deal more sophisticated and complex than the increasingly influential 'league tables' of universities and law schools, pioneered by *US News and World Report* in the United States of America and recently adapted in only slightly less crude form by the London *Times*.⁴ The United States version is explicitly restricted to full-time JD students and has been severely criticized from a number of points of view.⁵ The *Times* tables are relatively new and are in large part based on the findings of the three national assessment exercises dealing with academic audit, teaching, and research. Since we are going to have to live with these comparators, there is a need for a careful appraisal of their assumptions and criteria and the uses that can be made of them.

This symposium recognizes that the time is ripe for a 'rethinking' of law schools. This represents a significant step away from the tradition of talking about legal education mainly in terms of process rather than institutions. A process perspective, however liberal, almost inevitably focuses discussion of legal education onto the early stages of professional formation – as happens with most official committees and reports because of their remit.⁶

Institutional analysis of law schools is no cure-all. First, an institution can be analysed from a variety of standpoints and perspectives: reports on the same law school by a management consultant, a historian, an ethnographer, and a disaffected former student can be unrecognizably different.⁷ Second, no institution is an island, although it is often tempting to present it as a 'total institution'.⁸ Apart from its history, the 'context' of a university law school typically includes the university of which it is a part, the local environs and community, the national higher and legal education systems, and international legal and academic associations and networks. There are also complex international, historical, political, and ideological dimensions that are not easily captured by rational-bureaucratic analysis. Thirdly, the relationship of individual students and academics to particular institutions is changing. Ironically, just as league tables of academic institutions are becoming more influential, the sense of belonging to a community or team

4 For example, *US News & World Report*, 18 March 1996, at 82–6; *US News & World Report*, 10 March 1997, 76–8; the *Times*, 'Good University Guide', 21 May 1997. Compare 'Those League Tables – what do they mean?' (1995) 29 *The Law Teacher* 213 (editorial discussing an earlier version in the *Times Higher Education Supplement*).

5 Richard Lempert did a brilliant critique of the methodology employed by *US News & World Report* at the Law and Society Conference in Glasgow in July, 1996. It is hoped that a revised version of his paper will be published in due course.

6 Twining, *op. cit.* (1997), n. 1, p. 293.

7 Compare, for example, such different genres as US Law School Visiting Committee reports, official 'house histories' (criticized by A.S. Konefsky and J.H. Schlegel, 'Mirror, Mirror on the Wall: Histories of American Law Schools' (1982) 95 *Harvard Law Rev.* 837); the ethnographic account of Rutland in Twining, *op. cit.* (1994), n. 1, chs. 4 and 5, and American 'whinge' literature, for example, Scott Turow, *One L* (1977) and Richard D. Kahlenburg, *Broken Contract* (1992). It is reported that a new genre of 'house history', more detached, scholarly and critical, is being planned for several leading United States law schools.

8 Compare E. Goffman, *Asylums* (1961).

is being undermined. For example, most law teachers are specialists, and modern technology facilitates 'networking' in ways that may profoundly alter the balance between an individual's loyalty to her institution and to her specialism.⁹

Despite these caveats, individual law schools are significant units in respect of finance, prestige, culture, student choice, and forward planning. Rethinking law schools as institutions requires some tools of analysis. In *Blackstone's Tower* and some subsequent papers I sketched a series of ideal types as a first step in this direction.¹⁰ I made the case for most English university law schools moving from being essentially undergraduate institutions ambivalently pursuing ambiguous objectives towards a more self-conscious multi-functional model that serves a more varied clientele, while maintaining a balance between educational, scholarly, and social objectives.¹¹ Subsequently, I used parts of a report on the national system of legal education in Xanadu to develop the approach.¹² The purpose of this paper is to take the process one step further by elaborating some of these ideas and by applying them to the Faculty of Law at the University of Rutland.

As a preliminary, it may be helpful to recap briefly on the general ideas in the Xanadu report. This report is unusual in three ways: first, it looks at the national system of legal education as a whole and at all its recipients. As part of this, it considers the role of law in general culture and intellectual life. Second, it adopts a broad view of legal education, which includes learning about the why, what, and how of legal phenomena, however that learning is acquired. It emphasizes the distinction between informal and formal legal education.¹³ It treats the former as the more significant, even though under the latter it includes judicial training, the education and certification of specialists, and what is sometimes patronizingly referred to as 'law for non-lawyers'. Thirdly, the report focuses on institutions as well as processes and includes in those institutions some that are not specialized to law, for example, business schools, secondary schools, institutes of public administration, and non-governmental organizations, such as associations concerned with civil liberties, consumer protection, and the rights of women and children.

9 Twining, *op. cit.* (1994), n. 1, p. 78.

10 *id.*

11 Social objectives include service to the local, or a wider community, through legal advice, participating in law reform and pressure group activities, and the critical role of legal academics in serving as a part of the conscience of the legal system and of society. The bureaucratization of universities through such devices as research assessment tends to marginalize their social role.

12 Twining, *op. cit.* (1997), n. 1, pp. 298–301, and *op. cit.* (1996), n. 1, pp. 1012–16.

13 Informal' education in this context includes matters learned from first-hand experience (for example, getting married, being arrested, negotiating a loan, entering into a contract), from newspapers, television, novels, and other popular media, first-hand observation, bar-room conversation, and gossip. Institutionalized apprenticeship, however casual, organized work experience, public lectures, law in schools, moot competitions, and continuing professional development are treated in the report as 'formal'.

Naturally, 'mainstream' or 'traditional' legal education and training is given due attention, but it is considered within the context of a total picture of needs and demands for learning about law by a more varied clientele and at a number of levels. Similarly, a great deal of attention is paid to specialized law schools, but as part of a broader picture of other legal educational provision. As institutions dedicated to the advancement, stimulation, and dissemination of learning about law, they have a key role to play in the national system as a whole. This is particularly the case where, as in Xanadu, the Law Faculty of the University is the national law school or, as in Bangalore, a model law school has been set up specifically to upgrade legal education in the country as a whole.¹⁴

The Xanadu report begins by articulating some speculative general hypotheses that might apply to any national system of legal education:

In (almost) all societies

- (i) almost everyone receives some legal education;
- (ii) that process lasts from cradle to grave;
- (iii) the amount of informal legal education (i.e. outside educational programmes) greatly exceeds the amount of formal legal education, even for career lawyers;¹⁵
- (iv) actual and potential demand for formal legal education almost invariably exceeds the supply;
- (v) most formal legal education is delivered by institutions other than law schools;
- (vi) within most countries, specialized institutions called law schools can be quite varied. For example, they vary within and between countries in respect of: wealth; size; manifest and latent functions; prestige and influence; the age, class and gender of students, faculty and other staff; academic standards; conceptions of scholarship; and even architecture;¹⁶
- (vii) the culture of law schools is to some extent international within legal traditions or families, but it is also much influenced by local historical, economic, ideological and other factors, including the structure and financing of higher education, distributions of power and authority, and the nature of the legal system and the legal profession.

In respect of the role of university law schools, the report challenged a number of entrenched ideas inherited from the traditional culture of the common law. These include the following widespread assumptions:

- (i) that all university law schools have the same mission and should be judged by identical criteria. Like football clubs, they compete with each other in a single hierarchy of prestige (the football league model);
- (ii) that the core of that mission is primary legal education and that the term 'law student' refers only to someone taking a first degree in law (the primary school image);¹⁷
- (iii) that the main priority need for legal education is basic education and training for intending and newly qualified private practitioners of law, even in contexts where the absorptive capacity of the legal profession exceeds the supply of new lawyers and most

14 Report of Review Panel on the *National Law School of India University in Bangalore* (1996).

15 Above, n. 13.

16 See, further, Twining, *op. cit.* (1994), n. 1, pp. 51–2.

17 In so far as much of 'the vocational stage' is concerned with introducing practical skills and knowledge in an elementary way it is also arguably 'primary', even though it represents the second stage of professional formation. Similar considerations apply to conversion courses. The main distinction of substance is between elementary and advanced study.

- law graduates start their careers in the public service or non-legal work (the private practitioner image);
- (iv) that the supply of entrants to the legal profession can be artificially controlled by manpower planning, the pass rate in the bar examination, apprenticeship requirements, or other restrictive practices (the numbers game);¹⁸
- (v) that providing legal educational services for other clients is beneath the dignity of university law schools and that this is reflected in treating such teaching as 'outside work' and in the derogatory use of such terms as 'service teaching', 'law for non-lawyers', and (mainly in the United States) 'legal studies' and 'pre-law courses' (the professional snob syndrome);
- (vi) that law is by its nature one of the cheapest subjects in higher education (the cheap subject fallacy).¹⁹

RUTLAND REVIEWED

In 1997, the Faculty of Law at Rutland, decided to review the Faculty's strategic plan in the light of the general ideas in the Xanadu report. The immediate context of this review included several developments at national and local levels. The Lord Chancellor's Advisory Committee on Legal Education and Conduct (ACLEC) had produced its first and second reports on legal education, dealing with the academic stage and CPD respectively.²⁰ Shortly after a new Labour Government took office, the Dearing committee published the first comprehensive report on higher education since the Robbins report of 1963.²¹ In the past three years, the University of Rutland had struggled on in a situation of ever-increasing financial stringency. The Faculty of Law had resisted pressures to increase its undergraduate intake, mainly on grounds of the size of its main lecture theatre, but it had slightly expanded its postgraduate programme. During this period the collective efforts of the Faculty had been somewhat frenetically focused on improving their Research Assessment Exercise (RAE) rating, but it had again been disappointed to be graded 3aB in the 1996 exercise; it nevertheless had been rated 'excellent' for teaching since 1993–94. During the same period there were other noteworthy developments: for example: the National Centre for Legal Education at Warwick had been established, Le Brun and Johnstone's *The Quiet (R)evolution* had been published,²² and the Open University had

18 Twining, *op. cit.* (1997), n. 1, pp. 249–53.

19 The case against this assumption was made, with only limited success, in Heads of University Law Schools, *Law as an academic discipline* (1983).

20 ACLEC, *First Report on Legal Education and Training* (1996); *Continuing Professional Development for Barristers and Solicitors: A Second Report on Legal Education and Training* (1997).

21 *Higher Education* (the Robbins report) (1963; Cmnd. 2154); *Higher Education in the Learning Society* (the Dearing report) (1997).

22 M. Le Brun and R. Johnstone, *The Quiet (R)evolution* (1994) is a substantial monograph applying modern educational theory to the practice of law teaching. It is discussed in W. Twining, 'Bureaucratic Rationalism and The Quiet (R)evolution' (1997) 8 *Legal Education Rev.* 291.

joined with the College of Law in planning a new distance-learning undergraduate degree in law. This was the backdrop to the 1997 review.

In 1994 it had been reported that:

Rutland is in process of transition without very clear ideas about how to cope with a rapidly changing situation. In recent years it has started to diversify its teaching and other activities, but with no definite sense of direction. To some extent its practice has outrun its self-image as essentially an undergraduate institution. It has not committed itself wholeheartedly either to being mainly a professional school, involved at all levels in professional formation and development, nor to diversifying its activities along the lines of the I.L.C. model. Almost all non-degree teaching and other outside activities are done on an individual rather than an institutional basis. At undergraduate level, so long as the faculty is too ambivalent and divided to provide a clear lead and messages from the profession are ambiguous, it seems that a narrow and probably deluded set of vocational attitudes is likely to continue to dominate student culture and to condemn the institution to be and to be treated as little more than a mediocre nursery school for the profession.²³

Not much has changed since that rather depressing judgement. Stimulated in part by the ACLEC report and lowered expectations about opportunities to qualify as a barrister or solicitor, the prospects for gaining credibility for the LLB as providing a liberal education have improved. The RAE result, combined with some changes in personnel, prompted a thoroughgoing review of all the activities of the faculty in a climate which at least recognized that there was a need for change.

THE NATIONAL AND INTERNATIONAL CONTEXT

The goals and priorities of a law school need to be set in the context of its overall mission, the national system of legal education, and specific conditions and trends at local, regional, national, and international levels. Legal Education in Xanadu provides a very general framework for locating a particular institution or programme in the context of a national system of legal education. The review accepted that all of the initial hypotheses could plausibly be applied to England, except that in respect of (vi) there are no reliable figures about the amount of formal legal education that takes place outside law schools in other institutions.²⁴ The scene in England and Wales has been characterized as diversity in respect of institutions, pluralism in respect of educational ideas and methods, fragmentation of stages of professional formation, relative diffusion of power, rapid expansion in a period of financial stringency, and continuous, but less rapid, change at a variety of levels.²⁵

²³ Twining, *op. cit.* (1994), n. 1, pp. 84–5.

²⁴ It is also unclear whether some or all commercial law tutors should count as ‘law schools’ for this purpose.

²⁵ Twining, *op. cit.* (1994), n. 1, ch. 2; ACLEC, *op. cit.* (1996), n. 20, ch. 1.

Rutland is one small part of an extremely complex system. If it is correct that the demand for formal legal education exceeds the supply, this provides Rutland and like places with an opportunity to choose between particular kinds of clientele and by spotting gaps in national provision to establish a 'niche' in respect of one or two areas.²⁶ However, Rutland is a relatively small law school in a middle-sized university and there are considerable limitations on the scale and range of activities that it can sensibly undertake on its own. Almost all developments will in practice have to be self-financing. The range of activities can be increased somewhat through collaboration with other institutions – for example, through pooling resources to achieve 'critical mass' in respect of CPD, other outreach programmes, or even undergraduate modules.²⁷

Given the range of potential demand, it is in theory not necessary for a university law school to be involved in undergraduate legal education at all,²⁸ but that would almost certainly be too sharp a break with tradition for places like Rutland. It would also probably be financially risky in the present climate. The multi-functional New York International Legal Center (ILC) model does not mandate the abandonment of primary legal education, but merely suggests diversification upwards and outwards. In Rutland's case, a move towards allocating about 60 per cent of its teaching resources to non-undergraduate teaching is the most that can sensibly be expected.

THE XANADU 'FALLACIES'

More interesting are the assumptions underlying orthodox discourse about legal education. Some of these appear to apply more clearly to the United States of America than to England and Wales. The United States is almost unique in the world in not subscribing to the idea that law is inherently a cheap discipline (vi);²⁹ in England law is officially treated along with politics

26 To think in such terms does not involve a commitment to the kind of commercialization of education satirized in Frank Partkin's *The Mind and Body Shop* (1987) on which see J.H. Schlegel, 'Talkin' Dirty' (1996) 21 *Law and Social Inquiry* 981, at 989, fn. 13. Rather, it suggests that an institution like Rutland should build up special expertise in a few areas and develop a distinctive persona, based on such factors as a clear ethos, traditional and current strengths in the university and the faculty, geographical location, established links, and so on.

27 Such co-operation need not be restricted to other university law schools or departments in the same university nor, for certain purposes, to institutions in the same locality.

28 This situation has almost been achieved at certain points in history by the Inns of Court School of Law and the College of Law. However, both have in practice been involved in primary legal education in respect of Part I of the Bar and Law Society Examinations and, in the case of the College of Law, with conversion courses for non-law graduates. In 1997 the College of Law announced that it was moving into undergraduate legal education in co-operation with the Open University.

29 But see R. Stevens, *Law School* (1983) at 268–9, 282–3.

as having the lowest unit costs. American discourse about legal education seems to be particularly susceptible to the football league model (i); the primary school image (ii); the private practitioner image (iii); and the professional snob syndrome (v). These are facets of a version of the primary professional school in a system in which most university law schools have hardly been involved in specialization or postgraduate studies and only spasmodically in continuing legal education.

In England all of these are matters of almost systematic ambiguity. I have argued that English law schools are in process of moving away from the primary school model (ii), although our practice still outruns our discourse, for example in respect of who count as 'students'. The proclaimed ideology of nearly all undergraduate law degrees is that they are providing a general, even a liberal, education at the academic stage which is a good preparation for many different kinds of career. This suggests a distancing from the private practitioner image (iii). In practice fewer than 60 to 70 per cent try to qualify and many fewer pursue a career in legal practice. The percentage may be declining. However, as at Rutland, student culture has tended to be more vocationally oriented than either the official line or the job market warrants.³⁰ As in the United States of America, artificial attempts to limit the numbers of people embarking on law degrees or qualifying have usually been rejected; however, our formal apprenticeship systems for barristers and solicitors serve as a bottleneck which both limits numbers and facilitates institutionalized discrimination.³¹ It seems that English university law schools are less prone to 'the professional snob' syndrome, but law teachers in both countries are often accused by students and practitioners of intellectual snobbery.³²

The football league analogy (i) is less straightforward. On the one hand, there are clearly some hierarchies: for example, the dominance of Oxbridge, the 'binary divide' between universities and polytechnics (which has unfortunately been accentuated since its formal abolition), and the recent introduction of external quality assessment in respect of academic audit, research, and teaching. On the other hand, the system of external examining, especially

30 Twining, *op. cit.* (1994), n. 1, at pp. 73–6, 83–5.

31 D. Halpern, *Entry into the Legal Profession; The Law Student Cohort Study 1 and 2* (1994); M. Shiner and T. Newborn, *Entry into the Legal Profession: Cohort Study 3 (Law Society Research Study 18)* (1996).

32 Tony Bradney comments: 'Perhaps some in Rutland still worry about charges of intellectual snobbery but others worry about how little law schools have contributed to the intellectual history of either the United Kingdom or the United States and think that intellectual snobbery, which might be seen as pride in the value of matters of intellect, as appropriate to the university as a house of intellect. What they worry about is the fact that law schools have too little to be snobbish about' (letter to the author, 11 September 1997). This raises complex issues about the marginalization of law in general culture (a central theme of *Blackstone's Tower*), the contribution of law to intellectual life (on which see Twining, *op. cit.* (1997), n. 1, ch. 17), and a tendency among academic lawyers to treat concern with 'skills' or clinical education as anti-intellectual (on which see Twining, *id.*, ch. 9).

during the Council for National Academic Awards (CNAA) era, was intended to sustain a notional 'parity of esteem' about academic standards – how far it does so is a matter of controversy.³³ Largely centralized public funding has a tendency to produce homogenization, yet there has been a genuine diversification of law schools in respect of both function and style. Further, perhaps because we live in a compact country, institutional affiliation is rather less important in career development: there is a good deal of lateral movement, even out of Oxbridge and between institutions that are thought to be approximately equal,³⁴ and the new systems of peer review purport to assess quality in terms of each institution's own goals and to include post-graduate courses. However, some of the bureaucratic pressures associated with external evaluation have stimulated a moral panic and have threatened to drive universities in the direction of an emerging unregulated transfer system that might set a bad example to footballers. Whether that leads to further homogenization or to other kinds of diversification remains to be seen.

At Rutland most of the Xanadu 'fallacies' have been part of the ways of thought of many students and at least some academics, not all of whom would accept that they are fallacies. At least they have belatedly become the subject of open debate. It is worth looking briefly at Rutland's response to one of them: The Football League Syndrome.

Rutland has a dilemma in respect of league tables. On the one hand, like it or not, the law school will be rated and compared with other university law schools according to externally determined criteria. If it plays the game wholeheartedly, it nevertheless has to accept that the most it can hope for is that, like Coventry City, it will have a continuous and anxious struggle to stay in the Premier League; or, less ambitiously, like Oxford United, it can cruise in the middle reaches of the euphemistically named 'First Division', occasionally hitting the headlines with a good run in the Observer Mooting Competition or public recognition of a rising star who will almost certainly be transferred to a more prestigious club. One cost of such a strategy is to marginalize some things that Rutland does well, but for which it gets no points, such as increasing educational opportunity, serving the local community and legal profession in various ways, and involvement in law reform and pressure group activities.³⁵ An alternative strategy is to take down the goalposts that others move so frequently and so arbitrarily and to opt out of the competition by presenting itself as a different kind of institution, like a general sports club that contributes to the health, entertainment, and cohesiveness of the local community while registering only occasional successes in a variety of national sporting competitions.

33 The Dearing report recommended a thorough overhaul and strengthening of the external examiner system (rec. 49).

34 P.S. Atiyah and R.S. Summers, *Form and Substance in Anglo-American Law* (1987) at 386–7.

35 See above, n. 11.

THE RUTLAND REPORT

Not surprisingly, Rutland decided to compromise on this and other issues. After lengthy debate they managed to reach agreement on a mission statement that was both in harmony with the University's avowed mission 'to advance, stimulate and disseminate learning' and which was broadly in accord with the underlying ideas of *Legal Education in Xanadu*. The following extracts from the executive summary of the report of the Review Committee illustrate one attempt to apply the Xanadu perspective to a particular middle-ranking English law school:

The Football League syndrome : The Law Faculty should:

- maintain a balance between educational, scholarly and social functions;
- continue to aim for excellence in teaching;
- prepare carefully for academic audit;
- aim for a 4B in the next RAE;³⁶
- where 'football league' criteria threaten to skew the Faculty's objectives or give a false impression, counteract the effect of that in public relations and recruitment;
- campaign for flexible criteria for national ratings that recognise the diversity of missions and activities of university law schools and that do not penalise or marginalise such policies as liberal admissions or the social and critical functions of law schools;
- review the orientation and balance of the undergraduate programme (see below).

Moving away from the primary school model

The aim of Rutland is to move from being mainly a professionally oriented undergraduate primary school towards becoming a multi-functional institution that contributes to legal education at a number of levels. This will be done over a period of time. In the next 3–5 years the Faculty should:

- increase the postgraduate programme to approximately 30% of student load
- extend the outreach programme to represent approximately 30% of student load
- diversify offerings at undergraduate level (see below)
- in view of Rutland's resources and provision elsewhere, discontinue involvement in the vocational stage of barristers and solicitors, but consider possible contributions to (a) other kinds of vocational training; (b) continuing professional development (see below);

36 The RAE users' guide, *Playing the System* (3rd ed., 1997), includes the following rules of thumb: diagnose what went wrong last time and confront remediable defects; strengthen the research culture of the institution in respect of faculty seminars, research leave, specialist groups, and so on; strengthen the research element in the postgraduate programme; accord parity of esteem to teaching, research, and other institutional activities; do not try to make all members of faculty research-active, but ensure that all faculty are accountable as much for their research plans and performance as they are for their other duties; recruit, encourage, and give real institutional support to outstanding researchers; plan the faculty's research strategy over an eight year (two rounds) cycle, especially in respect of younger colleagues; gear recruitment to the research strategy as well as to the educational programme; build on strengths in three or four areas in which the faculty can hope to build an international or at least a good national reputation; try to harmonize faculty research interests with teaching at all levels.

- aim to make the postgraduate programme and the 'outreach' programme, considered as units, self-financing;³⁷
- give priority to an advanced programme of research and teaching in at least two areas, such as Law and Medicine (or Science) and Law and Communications or Law and History;
- adjust the content and organization of postgraduate offerings to fit the needs and situation of local part-time candidates;³⁸
- review the Ph.D. programme;³⁹
- recognize that involvement in access courses, legal literacy, or law in schools may be best done through teacher training colleges and other institutions rather than through direct provision. The Faculty of Law may have a constructive role to play in helping to design, accrediting, evaluating, or advising on targeted activities such as 'training trainers';⁴⁰
- offer short courses on teaching civil liberties and other particular topics in schools in collaboration with the Faculty of Education and the Rutland College of Higher Education.

Undergraduate teaching

- maintain and possibly increase total undergraduate numbers;
- reduce the LLB intake, but try to increase the proportion of LLB and joint honours students taking four years over their first degree;
- review LLB admissions criteria to ensure, as far as is feasible, that (a) the target of a minimum of 20% mature students is maintained; (b) those admitted accept the objectives and ethos of the LLB; (c) the criteria are not biased directly or indirectly in respect of gender, class, or ethnic origin;⁴¹
- reduce the number of required courses in the LLB and tailor the programme to individual needs of overseas students;⁴²
- introduce an element of structured choice into the LLB curriculum, including requiring all LLB candidates to do one advanced option and one 'foreign law' option as part of their degree;
- increase involvement in integrated inter-disciplinary programmes and options offered at undergraduate level;⁴³

37 Rutland's strategy involves a significant move away from dependency on public funding and the vagaries of government policy. Such semi-privatization creates dilemmas for institutions that are largely dependent on fee-income, but are committed to policies of enhancing educational opportunity. This is an area in which the experience of American universities, especially 'private' institutions, in providing financial support for students is, at the very least, suggestive. This is too large a topic to pursue here.

38 W. Twining, 'Postgraduate Legal Studies' in *Reviewing Legal Education*, ed. P. Birks (1994) 98.

39 For criticism of Rutland's past practice, see *id.* at pp. 99–100.

40 In *Legal Education in Xanadu* it is stated: 'Police training or judicial seminars may best be done mainly by police and judges respectively ("judges should teach judges how to judge, but legal educators can teach judicial trainers how to teach")'. Whether this applies to England is an open question.

41 A current concern at Rutland is the class bias of A-level performance. See, generally, Twining, *op. cit.* (1997), n. 1, ch. 13.

42 For example, even if local students are required to take English Land Law, this should not be compulsory for students from other jurisdictions. Of course, overseas students wishing to qualify in England may opt to take such courses for exemption purposes.

43 This is in line with the Dearing report's call for broader degrees, but runs counter to the pressures of RAE criteria and league tables, which may have the effect of discouraging inter-disciplinary co-operation.

- design and implement an attractive and coherent foundation course on 'Introduction to Law' open to the whole university. This should be self-standing, it should serve as a pre-requisite for most/nearly/all other law modules, and it should involve the best teachers;
- increase the range of modular options, including packages of options, offered to the rest of the university;
- develop expertise in presenting legal topics and materials to 'non-lawyers' at all levels.

The 'private practitioner image'

In view of Rutland's move towards the ILC model, it will be necessary to redefine the Law School's relations to the private practice of law. However, the multi-functional ILC model is entirely consistent with strong involvement with the legal profession and vocational training in appropriate areas, judged by resources and needs.

The Faculty should:

- re-emphasise that the LLB aims to provide a liberal education in law with a strong emphasis on transferable intellectual skills that will be relevant to a variety of occupations, including most kinds of private practice of law;⁴⁴
- ensure that LLB students, and some others taking modular degrees, will have the opportunity but will not be required to satisfy the requirements of a 'recognised degree' for purposes of exemption;
- provide Rutland graduates who have not completed all the requirements with an opportunity to take up to two 'add-ons' after graduation in order to qualify for exemption;
- develop, in collaboration with two or three other parts of the university, other institutions and with relevant professional bodies, a continuing professional development programme that meets some identified local needs and concerns and that includes advanced work at a high level of excellence in a few areas that may have national standing;
- recognise that the CPD programme need not be confined to barristers and solicitors in private practice, but could include others involved in legal work or other occupations.

These extracts are merely illustrative of a particular perspective. The full report deals with a number of other topics, including finance, staffing, and faculty governance. Of these finance is crucially important, but the Xanadu perspective suggests that semi-privatized law schools may have more control over their own destinies than they had in the past, especially in areas where demand for formal legal education exceeds the supply. As with similar institutions, consensus was not easily or fully achieved, even within the framework of an apparent agreement about objectives in the mission statement. Rutland is not exactly a radical institution and its internal review represents a relatively quiet evolutionary adjustment to a different model of university law schools in a changing situation. Next time you visit Rutland, look at the photographs in Denning House: maybe they have radically redefined their conception of a law student.

44 On Rutland's shift to an emphasis on intellectual skills, see W. Twining, 'Intellectual Skills at the Academic Stage: Twelve Theses' in *Examining the Law Syllabus: Beyond the Core*, ed. P. Birks (1993) 93–5.