AMERICAN LEGAL EDUCATION: REFLECTIONS IN THE LIGHT OF ORMROD [1]

THE next two years show every sign of being vital for the future of legal education in both England and America. In England, presumably, there will be some decision on the recommendations of the Ormrod Committee Report [2] within the next few months. In the United States it will also be an active period. The Ford Foundation recently convened a meeting to discuss the Report on the Future of Legal Education undertaken by the Association of American Law Schools. (The basic recommendation of this group, incidentally, is that law school should be reduced from *three* to *two* years.) [3] By the end of 1973 the Carnegie Commission on Higher Education will have issued its report on legal education. In the meantime, the American Bar Association's Section on Legal Education and the National Conference of Bar Examiners are to issue significant reports on accreditation of law schools and a national bar examination respectively.

LAW IN ENGLAND AND AMERICA

But, " so what? " you may say. Is there merit in attempts to draw analogies between English and American legal education?

The law plays a very different role in England and America. So does the lawyer. So, inevitably, does legal education. This seems axiomatic. Those of us who have been reiterating the point over these last few years have at times been accused of reiterating the obvious. But I am prepared to wager that the obvious will by no means be entirely apparent to all of those—both English and American—participating in the joint meetings between the American Bar Association and the Bar Council and Law Society in July. I fear we shall all be subject to more than our share of painful platitudes about the " bonds of the common law binding together the English-speaking peoples."

Yet at the same time—for a number of reasons, but particularly in the light of the Ormrod recommendations—I would argue that in the next few years there may well be a remarkable *rapprochement* between legal education in the two countries. Comparisons, therefore, are timely, at least in considering the basic rationale

[1] Extracts from a University of London Public Lecture, delivered at the London School of Economics on May 6, 1971.
[2] Report of the Committee on Legal Education, Cmnd. 4595, March 1971.
[3] A.A.L.S., *Training for the Public Professions of the Law*, 1971, mimeograph.

of legal education in the two countries, and the rather similar pressures which are shaping it.

THE UNIVERSITY IN ENGLAND AND AMERICA

Some of the reasons for the *rapprochement* are unrelated to legal education *per se*. They go more to inevitable developments in western industrialised societies. The advent of television and the jet plane, together with the internationalisation of the Press and academic life, have meant that student images and symbols travel remarkably rapidly, creating a similarity among student expectations from country to country.

There is also the undeniable fact that the role of the English and the American university is growing increasingly close. In the 1950s the typical American university was radically different from the English university. The English scene in higher education was dominated by Oxbridge, and Oxbridge, in turn, was dominated by what seems, only twenty years later, a quaintly nineteenth-century view of academic life. To suggest, for instance, that the university should train rather than educate was a heresy.

Some of this attitude was, it is true, also characteristic of undergraduate education in America in the 1950s. The " Ivy League " still regarded itself as " the cradle of the nation "; the liberal arts college was in full flower. But the bulk of American higher education was purposive. The typical university—private or public—was preparing students for careers. Law schools were primarily to train lawyers.

What has happened in the last twenty years, has been that the English concept of higher education has come much closer to the American norm. The establishment of the new universities, the upgrading of the technological universities, the increasing politicisation of the University Grants Committee, the Robbins Report, the acceptance of " the Tech " and the teacher-training college as almost legitimate parts of higher education, have all made the English scene more familiar to the American observer.

I sense, too, that even the older English universities have become more openly " vocational." " Scholarship for its own intrinsic value " has a dated ring. It could never really have survived Robbins. No society can afford to put the money into higher education which this country now does, and still pretend that higher education is solely to " broaden the mind." There is also the basic conflict between the acceptance of higher education as a right for all (implicit in Robbins) and the élitist educational purpose of university teaching designed for a minority, which had, up until then, been the tradition in England.

The present time, however, is one of transition. If Ormrod is implemented, and, if for all practical purposes, the law becomes a graduate profession, the English law school will become increasingly

purposive. In this sense, Ormrod is following in the footsteps of Todd [4] and Fulton.[5] All these reports represent a step towards professionalism and away from amateurism; a movement which involves making the teaching of professional skills in a university an almost respectable endeavour. In short, if Ormrod is implemented, the purpose of legal education in England and the United States will become more similar.

Such a statement does not mean, of course, that the future American and English lawyer will be interchangeable. The different histories and functions of lawyers in the two countries promise continuing and important distinctions. This is particularly so in considering the élite of the élite, the large firm corporate lawyer in America and the barrister in England. Yet the reiteration of the differences among élite groups (and élite law schools) in the two countries can itself be misleading.

Ironic as it may seem, at the grass roots, the typical English lawyer has a profile surprisingly similar to the typical American lawyer. Indeed, if the legal profession becomes a graduate one in England, the perspectives of Anglo-American comparisons may have to be altered. Instead of looking at those handful of élite American law schools all English academic lawyers know about, or even those fifty or so the *cognoscenti* have heard of, one should perhaps ask questions of the 120 law schools most of my colleagues at Yale have never heard of. For the clientele the better of these 120 schools cater for parallels of those English lawyers who, in the past, have not been to the university, but have passed into the profession through articles.

Thanks to the late lamented Prices and Incomes Board, we now know what the typical English solicitor does with his time. He is not busy on the telex to New York negotiating some new stock option, nor even lounging in his Paris office discussing the finer points of patents legislation in the Common Market. For the average solicitor nearly 56 per cent. of his income comes from conveyancing and almost 14 per cent. from probate and administration, and probably about 5 per cent. from negligence work.

The typical American lawyer has rather wider interests *but not appreciably so*. Once again, images are misleading. The typical American lawyer is not sitting at the right hand of some captain of industry, nor is he serving in a Legal Services Office in the ghetto.

The average Florida lawyer, for instance, earns nearly 20 per cent. of his income from conveyancing; and more than 20 per cent. from probate and administration. He differs from the typical English solicitor mainly in that a further 18 per cent. of his income comes from negligence work. In South Carolina, the same three

[4] Report of the Royal Commission on Medical Education, Cmnd. 3569, 1968.
[5] Report of the Committee on the Civil Service, 1966–68, Cmnd. 3638.

areas—conveyancing, probate and personal injury—provide the basic income of no less than 80 per cent. of the Bar. And even in more industrialised states the situation is similar. Conveyancing is the primary source of income for 25 per cent. of practitioners in Pennsylvania and 26 per cent. in New Jersey. Probate is responsible for 24 per cent. and 20 per cent. of incomes respectively in these states, and negligence for 15 per cent. and 27 per cent. respectively.[6]

With the exception of " running down " (P.I.) cases, then, the " typical " American attorney is not appreciably different from the " typical " English solicitor. In terms of professional structure, too, the differences are not so great. The only difference is that the typical English solicitor is, contrary to all the prejudices, more likely to be organised in a partnership. Incidentally, contrary to old wives' tales, he will be earning—in buying power—as much as his American equivalent.[7]

I have allowed myself what is, in a sense, a digression, to emphasise the parallel nature of the least studied parts of the two professions. But I also raise these issues because it is for these " typical " solicitors that the Ormrod Report is going to cause radical change.

THE GROWTH OF COMPULSION IN AMERICA

We learn from the Ormrod Report that about 95 per cent. of those going to the Bar have degrees, with 85 per cent. of them having read law. In contrast, less than half of those becoming solicitors have law degrees. Compulsion is coming to solicitors as it has during the last fifty years to the typical American attorney. Indeed, it is eminently worth looking at what has happened in American legal education for the average practitioner as a fruitful basis for comparison with current educational possibilities in England.

It frequently comes as a surprise to American lawyers—both practitioners and academics—to discover how recent the development of the formal structures of legal education is. Bryce's remark, in the *American Commonwealth*, that he did " not know if there is anything in which America has advanced more beyond the mother country than in the provision she makes for legal education " is now well known. But what is far less well known is that in the eighties and nineties, when Bryce was writing, the vast majority of American lawyers had no university training at all,

[6] For more detailed analyses of these figures, see Stevens (ed.) *Law Schools and Law Students*, Chap. 4. To be published 1973.

[7] In 1965 the median for the solo practitioner in Florida was $14,000. In 1970 the median income of a solo practitioner in England was £4,075 (in London £4,501). In South Carolina it was $15,000. Of course salaries are not meaningful in terms of exact exchange. But, if one relates them to national average incomes, in relative terms the English solicitor proves to be financially in at least no worse position than the typical American attorney.

either in law or any other subject. A significant number of states did not even require apprenticeship. (Indeed in 1890 only twenty-three did.) None required attendance at a law school. The situation was appreciably more fluid than the English scene today. Indeed, this flexibility was one of the things which so attracted Bryce.[8]

But the corollary was that the law schools were (as is largely true in England today) for a handful of the élite. Persons still went into practice directly from high school, after passing the most rudimentary of Bar exams. It is true that the recognised form of training for the Bar was through apprenticeship. Law schools thrived through their own intellectual rigour and excitement. But with regard to most lawyers, the public was protected, or competition discouraged—depending on your perspective—by Bar examinations.

Two important forces were to change this. The one was the American Bar Association (A.B.A.), founded in 1878, whose purposes included the " raising of standards in the profession." The second force was the Association of American Law Schools (A.A.L.S.), which broke off from the A.B.A. in 1899, and was the academic lawyers'—or rather law schools'—trade union.

From early in its career the A.B.A., representing the élite of the profession,[9] was convinced that law schools were a " good thing." The A.B.A.'s first battle was to try to persuade state legislatures and supreme courts—who controlled the regulations—that time spent at law school should be taken into account in the length of apprenticeship to be served. In 1892, for instance, the A.B.A. took the line that no one should be allowed to practise law who had not spent two years *either* apprenticed *or* at law school; a figure advanced to three years in 1897.

Meanwhile the A.A.L.S. was getting under way. Not surprisingly, from the beginning it was uninhibitedly restrictive. It would admit to membership only those law schools who had two-year programmes and who admitted only those who had graduated from high school (*i.e.* had O levels). These were scarcely devastating criteria. Nevertheless they were high in terms of standards of the time. The interests of the A.B.A. and the A.A.L.S. co-

[8] After praising the leading schools, he added: " Here at least the principle of demand and supply works to perfection. No one is obliged to attend these courses in order to obtain admission to practice, and the [Bar] examinations are generally too lax to require elaborate preparation. But the instruction is found so valuable, so helpful for professional success, that young men throng the lecture halls, willingly spending two or three years in the scientific study of the law which they might have spent in the chambers of a practising lawyer as pupils or as junior partners." Lord Bryce, *The American Commonwealth*, 1888, Vol. 11, p. 623.

[9] For the crucial years of change, it never claimed membership of more than 10 per cent. of the Bar. But that 10 per cent. included almost 100 per cent. of the élite.

incided. Both wanted a graduate, or more properly, a post-graduate, profession; both wanted lawyers as a narrow élite.

But, even then, things moved slowly. By 1917 there was still no jurisdiction which *required* attendance at law school. Thus the A.B.A. and the A.A.L.S. in that year set out on a final determined effort to change the face of American legal training. This culminated in 1919, when the A.A.L.S. packed the A.B.A. meeting and voted through the establishment of a Committee on Legal Education, chaired by Elihu Root. The Root Committee worked out a compromise. It announced that " only in law school could an adequate education be obtained " and that everyone should have two years in college before law school. But as a sop to less élite parts of the profession, it was agreed that four years of part-time law school could be treated as the equivalent of three years of law school.

The A.B.A. revelled in the Report. William Howard Taft took the apparently neutral position that the Report involved nothing less than " saving society from the incompetent, the uneducated, and the careless ignorant members of the Bar." But other A.B.A. worthies were less guarded. A delegate from West Virgina argued forcefully in favour of pre-Law College training " where proper principles are inculcated, and where the spirit of the American Government is formed." The " influx of foreigners " into the cities consisted of " an uneducated mass of men who have no conception of our constitutional government." Root himself felt that two years of college would ensure that prospective lawyers " will be taking in through the pores of [their] skin, American life and American thought and feeling." A New York delegate defended the college requirement with less sophistication: it was " absolutely necessary " to have lawyers " able to read, write and talk the English language—not Bohemian, not Gaelic, not Yiddish, but English." It was a sad day for the minority groups.

Of course things did not change overnight. Contrary to some mysterious belief in this country, the United States is in fact, innately, the world's most inefficient society. Change took time. But the proposed requirements of college education before law school, and of a compulsory university legal education for all lawyers, gained increasingly in currency. The Root proposals were pushed in a series of meetings in 1921 and 1922. Meanwhile, during the twenties it became increasingly common for law schools to have three-year programmes, and an increasing number had pre-Law College requirements, although the States were slow to follow suit with their requirements.[10]

The urge to keep out Jews, immigrants and " the ethnics "

[10] In 1926, nine jurisdictions had no requirements at all for practice of the law except passing the Bar examinations; 37 jurisdictions allowed law school or apprenticeship as alternatives. Only four jurisdictions *required* any attendance at law school.

might ultimately in itself have made the American legal profession a graduate one. But the A.B.A. and A.A.L.S. had to work through State legislatures. Their urgings were not, however, the decisive factor. The professionalisation urges of the twenties became reality in large part because of the financial stringencies of the Depression. Restriction of numbers became a battle cry in law, as in other professions, whose incomes declined rapidly in the 1930s. It was argued that " overcrowding " at the Bar would be solved by making everyone go to college and law school.

By the end of the Second World War, then, apprenticeship had been abolished in fifteen States. Today, entry to the profession via apprenticeship is possible in theory in only a handful of States—and in practice is virtually unknown. For all practical purposes, every jurisdiction except one requires attendance at a three-year law school, and thirty-eight jurisdictions require at least three years of college before law school. In the 1930s it was still possible for a lawyer to be admitted without any university education. Today the budding lawyer must effectively take seven years of formal university education. Law had become a graduate or post-graduate profession.

LESSONS TO BE LEARNED FROM THE UNITED STATES

I have spent this time describing the work of the typical attorney and the evolution of the compulsory aspects of the American legal education, partly because the evolution is poorly known.[11] But, with the possible implementation of Ormrod in the offing, there are parables and morals to be drawn from the American experience.

PROFESSIONAL TRAINING AND PROFESSIONAL CONTROL

The first moral is that compulsory law training in the universities, whatever its merits, brings the threat of even greater professional control. A powerful élite profession is not likely to hand over powers of admissions to a group of academics over whom it has no control—at least, not without a fight.

Of course the Ormrod Report was not only aware of this, but sophisticated in handling it [12]: " It is vital to the success of our proposals that there should be mutual trust and respect between all concerned with legal education." And of the proposals themselves the Report added [13]: " Legal education will be in the hands of professional educationalists, whereas the profession itself can never be more than enlightened amateurs who can only give part-time attention to its problems." As a good trade unionist, my natural instinct is to enthuse over such sentiments. For the success of the

[11] I have attempted to fill in some of the gaps in this history in " Two Cheers for 1870," in *Law in American History*, ed. Donald Fleming and Bernard Bailyn, Boston, 1972, pp. 404–548.
[12] At p. 47.
[13] *Ibid.*

proposals, however, I can only say that I hope the statements are realistic. I have in my mind the nagging doubt that Max Weber, with characteristic insight, sowed in relation to the allocation of prestige in the English legal system. Weber described a system where, unlike the civil law countries, prestige was allocated to the judges and leading practitioners, rather than to the professors.[14] The prestige of academic law in England has undoubtedly risen over the last few years, but will the profession *really* be prepared to abandon the Bar exams *and* the system of exemptions and hand over control of the syllabus to the universities, subject only to the teaching of five core subjects?

It is here that I wish to draw morals from the American tale. Even the best American law school is strangely confined by professional pressures. It is true that the structural standards laid down for law schools by the profession were modelled on the requirements of Langdell's Harvard of the 1870s, but they now bind all. Even the most élite of the schools must have two fifteen-week terms (or their equivalent). The wording of some state requirements is such, for instance, that " class hours " has been used to veto programmes of individual research, which some of the leading law schools have been seeking to develop.

It is true that at the leading universities the pressures are subtle. Yet even in these days when it has become fashionable for students to deny any intention of entering traditional areas of the law, the evidence in practice belies the claim. The *Yale Law School Catalog* reads rather like a *New Statesman* competition—with a prize for the most unlikely course title. But in a recent study of what courses students took, it emerged that 90 per cent. of the choices were for traditional and vocational subjects appearing on the Bar examinations. And recent empirical studies at Yale and several other schools [15] shows that 99 per cent. of students at American law schools still plan to take their Bar exams.

If one passes to regional and local schools, however, the control of law school curricula by the Bar becomes even more obvious. Everyone has his favourite story of a law school dean, fired when his students consistently did poorly in the Bar examinations, rather in the proverbial way the coach is fired after a bad football season. And at the level of the proprietary or unaccredited school, no pretence of academic goals is even made. The only purpose of study there is that of passing the " local Bar."

I am not saying that all this is *directly* relevant here. But supposing the legal profession does not accept the logic of Ormrod, even the Report conceded that " the gap between the academic and the professional bodies " might widen. This would then lead to

[14] M. Weber, *On Law in Economy and Society*, ed. M. Rheinstein, Cambridge, Mass., 1954, pp. 198–204.
[15] See n. 6 above.

" some form of specification." [16] At that stage there may arise the unenviable choice between direct control over the contents of the curriculum or indirect control through professional examinations. Given this choice, it may be that tough professional exams and no direct control over the curriculum is to be preferred. The subtle influences over the leading American schools are, I suspect, not so bad as the direct control of curriculum by the professional bodies. Abolition of the Bar exam coupled with a compulsory degree—unless it is accompanied by complete trust and respect—will make the last situation worse than the first. There could be more professional control than there is today.

THE DANGERS OF UNIFORMITY

If Ormrod is implemented in full, there may yet be another moral to be learned from the American experience. For, in transferring formal legal education from the law office to the university, American legal education has been saddled with a type of uniformity or conformity which, to different groups, at different times, has proved particularly irksome.

I have already attempted to describe the rising formal structures which have engulfed American legal education. As part of the crusade to " raise standards," the professional élite enlisted the help of the Carnegie Foundation. But unlike the Flexner Reports which called for a uniform medical education, the two Reed Reports —published during the 1920s—suggested a series of different types of law school, catering for different segments of the community and, more importantly, serving different interests within the legal profession.

The professional leaders of the 1920s were outraged by the Reed Reports. They insisted that the profession was monolithic, or, at least, unitary. Every lawyer must be treated alike and trained alike. The skills needed in any branch of the profession were identical. And so on. Perhaps they were right. It certainly sounds on the surface like a red-blooded all-American democratic approach.

But I have my doubts. As you are no doubt aware, there has been not a little student dissatisfaction with the American law school over the last few years. Even the Chairman of the A.A.L.S. Curriculum Committee has recently said [17]:

> " Fundamental changes must be made soon. It is not only that law students over the country are reaching the point of open revolt, but also that law faculties themselves, particularly the younger members, share with the students the view that legal education is too rigid, too uniform, too narrow, too repetitious and too long."

[16] At p. 47.
[17] Meyers, " Report of Charles J. Meyers," A.A.L.S., *1968 Annual Meeting Proceedings*, p. 8.

As an unreconstructed élitist, my guess is that the complaints are different in different types of school. In the so-called national schools, students are irritated by the largely uniform teaching methods, the absence of effectively supervised research, the still-dominant large class, and the frequent absence of intellectual challenge—at least after the first year. The truth is that the good students at the good schools have outgrown the syllabus. At local schools, however, the irritations may be very different. There may well be resentment against the case method—but more because it teaches method rather than substance, and because the substance is national rather than local.

One of the tragedies of modern American legal education is the feeling of the need to conform. National schools feel they must not be too different from their neighbours; the local school feels it must project a national image. They all feel obliged to assume a homogeneous legal profession. The idea of tracking, or different roles for different schools, is still regarded with suspicion. (And who—after all—wants to be thought of as No. 2?) Yet, I would argue that this thirst for uniformity has undermined many creative reforms and has had an overall inhibiting effect on American legal education at all levels.

The American legal profession is not monolithic. It is a congeries of professions performing services for a pluralistic society. There are thus those who are beginning to question whether each law school should offer the same subjects; indeed—the same programme. There are those who are suggesting that there should be differing programmes in the same schools. Perhaps some schools or programmes should be oriented to private practice; others geared to the public interest. Perhaps some should be oriented to academic research; others to serving some specialised part of the community or profession. I am sufficiently heretical to suggest that it may not even be necessary for every law school to have terms of identical length—and even the norm of a three-year degree course should not necessarily be sacrosanct.

Will this be a problem for England? If every English lawyer of the future is to be a graduate, does that mean he will be subject to the same type of law degree? Will a time ever come when six years' training for a solicitor and five for a barrister will seem too long? (This may be tied in with a still broader issue—what will the role of the lawyer in England be?—a subject largely ignored by the Ormrod Committee.) Is the English legal profession monolithic—or like the United States, are there really a series of legal professions?

In England not all law students will necessarily be law lords or partners in City firms. What needs to be accepted is that institutional preparation for practice of law, whether for a future Q.C. or a country solicitor, can be an intense and exciting intellectual experi-

ence. In this regard, I think it a pity that Ormrod twice passed over the issue of specialisation. (Indeed Ormrod seems to me to have ignored the *content* and *purpose* of legal education with studied care.) For if one regards general practice as a speciality in its own right, a view gaining ground within medicine in both England and America, the acceptance of even a limited form of specialisation could encourage various interpretations of legal education.

I realise that one of the most attractive aspects of English higher education is a relative uniformity of standards. I am sure that social snobberies between universities still exist, but at least traditionally a B.A. or LL.B. from University X implied standards similar to a B.A. or LL.B. from University Y. It would be sad if this were to change. But it would be even sadder if English universities, having gained a monopoly of English legal education, were to fritter that victory away by being obsessed with uniformity.

So far I have talked about one aspect of Ormrod which may—in the light of American experience—give concern; will the profession really be prepared to let the university law schools develop intellectual milieux of their own; and then the related question—will the universities have sufficient internal urge to push forward with their own perceived purposes? I should now like to raise the issue of in-service training.

IN-SERVICE TRAINING AND CLINICAL LEGAL EDUCATION

In passing directly to this, I rather sadly pass over the split recommendations on vocational training—partly because I assume the hostility of the Law Society will ensure the success of the minority. But unanimity was at least attained on the need for some in-service training: the retention of pupillage for barristers and a limited practising certificate for solicitors in lieu of articles.

As I suggested earlier, the American legal establishment, in its drive to eradicate the inferior practitioner, drove out any whiff of contact between law students and clients. Law students had been rescued from the law office and the then new breed of superman, the academic lawyer, was determined to make the break a clean one. Langdell, Ames and Pound took the view that by exposing students to appellate cases—the distinguished or notorious case method depending on your perspective—they were in fact exposing students to the "real world." Pound analogised the situation of a student looking at cases to that of the biologist peering through his microscope at specimens. But from the time of the Reed Report on, there have been mavericks wondering whether perhaps the American law school has not gone too far in isolating its students from the real world.

During the last few years, there have been increasing cries from law students in America demanding more clinical experience. In part this has been stimulated by social pressures in the "real"

world, not specifically related to legal education. In part it has been related to the overlong and overstructured nature of higher education in America. But many academics, even if not the typical practitioner, are now more reconciled to the idea of some clinical experience. They may find it difficult to accept that the clinical experience would occur as part of the law school training, but I suspect the idea of a limited practising certificate—as envisaged by Ormrod—would seem strongly attractive.

If the American analogy is at all relevant, we may envy you the in-service arrangement. The current American solution could not be more absurd. The good student goes off to clerk for a judge, or to work for a prestigious law firm or some government agency. To a greater or lesser extent all these provide a form of in-service training. The poorer student, who needs in-service training most, goes to work for an indifferent firm or even goes out to practise on his own at once. Most of us would happily shorten the length of law school in return for your solution.

TWO OTHER POINTS

I have tried, then, to draw three analogies from the United States, with respect to the recommendations of the Ormrod Report. But if there is any validity in American analogies, I should mention two other matters which are dealt with only tangentially in the Report: teaching and research. For here, too, I suspect the increasing similarity between the systems is greater than the increasing divergencies.

Law teaching

As a profession we academic lawyers have been remarkably vague as to what rationale we think underlies legal education. One does not have to go far into the literature to hear rather extravagant claims, not only for legal education described as a vehicle for professional success, but equally for law study as "liberal," "humanist," "the core social science" and so on.

But when you begin to unpack these concepts many of the claims seem somewhat thin. One should not be surprised about this—the whole theory of legal education and the nature of legal skills is a difficult and largely unexplored one. And perhaps for this reason Ormrod asserts the tripartite nature of legal education, rather than arguing it: "intellectual training . . . much teaching of substantive law and a general liberal education." But of these three the first is thought the most important—the intellectual process of "thinking like a lawyer."

I suspect few American academics would disagree with this; teaching students to think like a lawyer is the most obvious purpose of American legal education. But, looking at the history of the American law school, as a rationale "thinking like a lawyer" was

arrived at late, and, the uncharitable would say, by default—a by-product of the development of the case method of teaching, which in turn was part of Langdell's modernisation of the Harvard Law School, begun in 1870.

There is evidence to suggest that English legal education is moving towards greater reliance on the case method of teaching. Thus this may be an appropriate moment to stop to ask the cost of this move. Both Redlich—in his famous study of the case method—and Reed in his two reports, pointed out many of the defects: a superb system when used by a great teacher, but perhaps not otherwise; excellent for the good student, but not for the weaker one; an encouragement to the production of books of materials but a discouragement to scientific studies and of treatises about the law; and finally, they alleged, the case method tended to make lawyers look at law as " a wilderness of single instances," rather than as a coherent whole. To these complaints, our students have added, in recent years, the charge that the case method is a form of psychological warfare.

I am not suggesting that all these dire consequences will suddenly flow from an emphasis on the " thinking like a lawyer " approach to legal education. But when the Ormrod Report says " the curriculum must therefore be prototypical in character so that the student can apply the modes of thinking and the methods of research which he has learned in the study of a limited number of law topics to other fields as and when the occasion arises," [18] I am vividly reminded of the Reed Report [19]:

> " American law [has become] for the student not a field to be surveyed broadly, but a thicket, within which a partial clearing, pointing in the right direction, is made. The young practitioner is then equipped, with (a so-called) ' trained mind,' as with a trusting one, and commissioned to spend the rest of his life chopping his way through the tangle."

The move from the primary purpose of law school as a means of transferring substantive knowledge to a process of training students to " think like lawyers " may in the end shorten law school and bring programmed learning to the profession. Since the 1930s, law students at the leading American schools have been alleging that three years is too long to go on to be taught to think like a lawyer—and the pressures are rising to shorten the length of the law degree. The case method, or at least the so-called Socratic method, is under attack; its intellectual purpose is achieved in well under three years; its ability to teach substance may well be queried. Ormrod appears to signal a similar shift in this country. That may be desirable.

[18] At p. 43.

[19] *Training for the Public Profession of the Law*, Carnegie Foundation, New York, 1921.

But if it does signal a change, the shift should be a conscious one; the implications should be fully understood.

Research

Finally, I should like to take up the issue of research. At various points in the Ormrod Report, there is emphasis on " psychology, sociology and criminology, and the other sciences." [20] Rather courageously, the Report compares the role of social sciences today to that of " philosophy and history and even religion " in the past.[21] The need for inter-disciplinary research is put most strongly: " If it can be developed, it will put the legal profession into a strong position in the society of the future; if it is not, the profession will be in real danger of becoming a stagnant backwater."

Rather charitably, English advocates of inter-disciplinary research look to the United States as a place where such research is under way. In one sense it is true—in another it is over-flattering. The very nature of American Antitrust Law and Labour Law has compelled evaluation of the relevant laws in the light of principles of macro- and micro-economics. The political philosophies inherent in the Constitution have meant that constitutional law cannot be entirely divorced from political theory. But to assume that the interaction in these fields is neat and harmonious—or even sophisticated—is kinder than it is entirely accurate. Many of us still sense that law and the social sciences are like two ships, passing in the night, but oblivious of one another's existence.

Thus, for instance, while the empirical study of the legal profession and legal institutions has made some progress, and criminology and family law have made considerable progress in their use of the social sciences, the overall development of the sociology of law is in its infancy. In terms of theoretical studies the American contribution is depressingly small. Even in terms of empirical studies, there has been more talk than action.[22]

But in one sense you are writing on a clean slate. And you may be able to do much better than we. With law as an undergraduate study, you may well be better placed to co-operate with other social science departments. While several American law schools today

[20] Ormond at p. 40.

[21] At p. 87.

[22] I do not mean to belittle the empirical work of persons like Smigel, Kalven, Carlin, Conard, Rosenberg and Skolnick. They have all added greatly to our factual knowledge. But their collective contributions in some sense appear a mouse when one considers the mountain of rhetoric—from the claims of Professor Munsteburg at the turn of the century, through Llewellyn, Oliphant and the rest at Columbia in the 1920s, and then the Johns Hopkins Institute with Cook and Yntema, to Moore, Clark, Hutchins at Yale in the 1930s. Then, in the post-1945 period, the claims continued at Chicago with the jury and arbitration projects. Finally, in the 1960s, it was the time of the Meyer Foundation and the Russell Sage programmes for the study of law and the social sciences. Perhaps we have now arrived; but the verdict is by no means certain.

claim social scientists as members of the law faculty, I would argue that it is a poor substitute for true inter-departmental co-operation.

And, perhaps most vital of all, English law faculties have excellent faculty–student ratios—at least three times better than American schools. (The A.A.L.S. only require 1 to 75 faculty–student ratio for accreditation.) The best schools have a 1 to 25 ratio. It is little wonder that American educators have talked of " the unfulfilled promise of legal education." [23] With a 1 to 10 ratio you could provide the kind of supervision needed to bring students into empirical and other types of inter-disciplinary work. There really would be an opportunity " to empiricise legal theory and make empiricism more theoretical." [24]

CONCLUSION

In conclusion, therefore, I would suggest that Ormrod is important not only for what it says, but what it represents. It may well be a watershed. If it is, in discussing its merits or demerits, I would argue that there are both warning notices and guide posts to be seen by looking at parallel American activities.

ROBERT STEVENS.*

[23] See A. Goldstein, " The Unfulfilled Promise of Legal Education," in *Law in a Changing America*, ed. G. Hazard (1967), at p. 157.
[24] See H. Kalven, " The Quest for the Middle Range: Empirical Inquiry and Legal Policy," *ibid.* p. 56.
* Professor of Law, Yale University.