REFLECTIONS ON THE ORMROD COMMITTEE REPORT

" New schemes of professional education and training must be . . . based upon an accurate appreciation of the work which is actually done . . . and the functions which the practitioner will be called upon to perform. . . . Some attempt must also be made to forecast the developments and changes which are likely to occur in the profession in the foreseeable future. . . . The most striking feature of the legal profession is the enormous width of its spectrum, both in function and subject matter, combined with the relatively narrow limits within which individual practitioners actually operate. . . . In spite of this great range, however, the elucidation of difficult ' points of law ' will be an exceptional task for all but the experts. . . . The work of most lawyers . . . consists in a multitude of factual variations on a relatively small number of legal themes. . . . A great deal of his time will be spent . . . in finding the facts. . . . Proficiency in foreign languages will become of much greater importance to many lawyers than it has ever been in the past. . . . The demands . . . and the roles . . . are so varied and require such different qualities that the profession will always need to recruit men and women of widely differing character, temperament and intellectual attainments. . . . We recommend that the professional bodies should now recognise all . . . existing first degrees in law as part of the qualification for practice. . . . The universities and colleges alone can provide the essential element of ' growth ' in legal education. . . . Non-communication breeds distrust, ignorance and misunderstanding. It is essential, therefore, that a forum should be established in which, and through which, the two sides can fully communicate . . . and discuss matters of mutual interest and concern. . . . We therefore recommend that as soon as possible an Advisory Committee on Legal Education should be set up. . . . It is clearly impossible to include representatives of all the law faculties . . . on the Committee. . . . The Committee might . . . consider giving any faculty . . . the opportunity of raising with it, and taking part in discussion on, any particular problem which is troubling it. . . . In a more general way, the influence of ideas, knowledge and attitudes derived from psychology, sociology and criminology, and the other sciences, must make an increasing impact on the law in practice, and the profession will need to equip itself to use such material in an informed and critical manner. . . ."

ALL these statements come from the Ormrod Report on Legal Education and there are many more besides which will give comfort to

the peasants and workers in the fields of legal education. The committee's scheme is simple. There should be two stages in the education and training of lawyers, the academic and the professional. The academic should be in the hands and largely under the control of the universities, guided by a joint Advisory Committee. The committee itself was divided as to the responsibility for the second professional stage. The majority thought it should also take place in association with a university. The minority thought it should be the task of the professions which they would delegate to the existing Law Society School at Braboeuf Manor and the Council of Legal Education, and to a new institution to be established in the North. Throughout its discussion of the academic stage the Committee emphasise the need to allow the universities to develop in the way they think best, subject to a minimal requirement that they teach certain core courses listed by the committee as constitutional law, criminal law and land law, contract and tort. They reject proposals to go further and to prescribe more subjects even though at the same time they suggest that those who are responsible for the professional stage should give up teaching subjects simply as a means of securing a wider coverage of substantive rules of law, as happens now in the existing Part II courses, and should concentrate on subjects immediately relevant to practice such as conveyancing, evidence and procedure. For the universities this is their most crucial proposal and will be the real test of whether the Committee's views will have succeeded in removing the existing pressure on them to shape their courses to give exemptions from existing Part Is and to prepare their students for an easy run up to the Part IIs.

One of the most difficult of the tasks facing the Committee has clearly been to provide for the practical and professional training of future practitioners. Many of the arguments that it sets out are totally convincing, especially if the university law courses are to be freed of the responsibility from running practice-oriented courses. The Committee notes the haphazard quality of present articles and pupilage, the difficulty of finding a place, the difficulty of securing an introduction to a broad range of practice, the difficulty of finding principals and masters able and willing to instruct. In the case of barristers it emphasises the way in which the current availability of work from the very beginning of a young barrister's practice cuts down the time, which he previously had, to learn by sitting at his master's feet. This leads it to see a need for a more generalised vocational preparation in an institutional setting. It admits that experience in this kind of teaching is limited and that neither the materials nor the staff are yet available. In its view the profession cannot be relied on to provide the instruction because it is itself too busy. Experience of the Council of Legal Education's attempts to employ barristers for instruction would on the whole confirm this. In any competition between a barrister's clerk and his

students awaiting instruction the clerk is almost always bound to win.

Step by step this leads the majority of the Committee to recommend that even the professional stage of a lawyer's instruction should take place in a university setting and they suggest that some two or three universities might be willing to undertake the task. The existing professional schools could merge into the University of London and the University of Surrey, for example, to form a London and a Southern training institute, and there might be similar institutes attached to the Universities of Birmingham and Manchester. A further argument that is used to support this conclusion is the suggestion that at this stage students would benefit from an introduction to non-legal subjects such as the behavioural sciences, which it would be easier to provide in a university where specialists, and, perhaps more important, books, in these disciplines could be found.

It is difficult to say whether it is the majority, or the minority which favour this stage of the training being left in the hands of the existing professional schools, which is the more optimistic. The minority argue amongst other things that the College of Law and the Inns of Court School of Law have already begun this kind of training and have already gained much experience of the organisation and development of practical exercises. This, they say, has been done by the existing staff, and the training of further staff is but a gradual process. If the confidence of the minority really does rest on experience to date of the attempts of the professional institutions to create courses of practical training of the kind envisaged by the Committee as a whole, they must clearly take the prize. Whether the minority realised it or not the proposals of the Committee are far more ambitious and imaginative than anything of which present activities could be regarded as the seed. Nor can the present staff of the professional institutions, recruited as they have been for quite different functions, be expected to be able to undertake the tasks now proposed for them.

Where the majority's optimism lies is in the expectation that they will find staff who are both competent and willing to do the kind of thing they clearly hope will be done, at a standard which they envisage. Apart from the financial implications, the question of staff is probably more important even than where the instruction is to be carried out. Looking at existing law teachers in universities and polytechnics it is likely that amongst them there are more people able to devise practical courses than amongst the staff of the professional institutions. In part this is just a question of numbers. But partly it is also a question of ingenuity and the inherent likelihood that there will be more people actually interested in the problems of educational technique in the educational institutions than in the professional institutions. In either place they may at the moment feel frustrated, but it seems more likely that the man

with original ideas about getting things across, not in the form of encapsulated statements of substantive law dictated to be learnt by rote, is more likely to be suffering in Guildford or Gray's Inn than in, say, a university, which at least in principle should be constantly on the outlook for new techniques to communicate new insights and skills.

The task of recruitment for such a task, in fact, would not be much different from the task facing a law school which wants to teach law in a social context. Existing institutions are simply not structured in such a way to have a monopoly of the kind of person one wants. They are more likely to be languishing throughout the country wondering whether it is they or their colleagues who should be locked up. Personal observation of law teachers over a number of years suggests that the opportunity to create practical training courses at the highest level would give opportunities to people whose talents are at the moment wasted on the perpetual churning out of new arrangements of principles of substantive law, punctuated only by an occasional paper for the Law Commissioners.

Just as the institution seems on the face of it to be less important than the staff, so does the institution in some ways seem less important than the geographical location. It is when one thinks of the geographical location that the question of the institutional setting begins again to assume importance. Take for example Birmingham. Here is a strong local Bar with a good reputation, a local Law Society with a strong interest in the problems of legal education, and progressive in its concern to see that future practitioners should have a thorough grounding in law before being launched upon the public—although in its evidence to the Committee the Birmingham Law Society was strongly in favour of continuing articles as the chief mode of giving solicitors practical training, the Committee thought its opinion was the result of its success in catering for students in its own area, success not shared by other Law Societies. In the same city is a well established law school of reasonable size, with a practice oriented tradition. On its periphery is the new established Institute of Judicial Administration with its interests in the way law actually works and indeed a current interest and project in legal services. Near by is the Birmingham Polytechnic, home of Mr. Asterley Jones, one of those who has devised practical exercises of the kind the Committee has in mind. Looking at the situation from the outside it looks like an ideal setting for a co-operative venture. To house it in the university makes sense not because members of university law faculties are innately better equipped to teach, which is one of the reasons put forward by the majority which clearly upset the minority, who specifically rejected it as a reason, but because it would be an attractive proposition for anyone engaged in such an activity to work in a teaching environment and because its association with a university would be a statement of the level at which it was

expected to operate. Such an association would also have advantages for the law faculty which could draw on the staff of the institution, who might themselves wish to participate in undergraduate teaching, and would provide a welcome forum near to it for discussions of a practical nature with members of the profession in the area and further afield, in an atmosphere which was neither purely academic nor purely professional. This would overcome some of the problems of communication which one often finds when one asks practitioners to speak directly to undergraduates and academic staff. A Director of such an Institute would probably, too, wish to show an interest in the activities of the Law Commission, which often fit ill with the day to day activities of university law teachers, and, if he is wise, operate the Institute to include research activities and graduate studies, which are activities conspicuously absent from current programmes of the professional institutions, and indeed too long neglected by both the Council of Legal Education and the Law Society.

The only obvious danger would be that involvement in activities of such an Institute might become so popular that no one would want to teach undergraduates any more. If the Committee is right and it is desirable to bring in other disciplines, such an Institute would also be an appropriate place. Here, however, it would be wise to be cautious. The proper fear of the professions is that an institute in a university administered by academics in an academic environment would gather its own non-professional momentum. For this reason it might be right that it should be formally separate from the law faculty and develop its own independent relationship with it rather than begin life as a part of it. It should be a professional institute associated with the university and clearly different in its standing *vis-à-vis* the profession and its activities from that of the law school. And clear separation is equally important for the law school itself, for the danger that the law school course might be seen simply as a preparation for attendance at the Institute would clearly be increased if the Institute were on the door-step. It is a temptation which should be strongly resisted.

What might be suitable for Birmingham would probably also apply to Manchester. More difficult is the case of Surrey and London. The problem of Surrey is the problem of Braboeuf Manor. There is no local Bar. The Guildford Law Society probably has not the standing or experience of that at Birmingham. The case to be made for it is simply one of geographical accident. Odd though it may seem the establishment of professional training institutes in London and Surrey seems in some ways less propitious than elsewhere, even though the existing teaching institutions are in each case oriented to practice, or rather the passing of examinations which will qualify for practice. And this is in fact the important distinction. The existing programmes at places like Braboeuf Manor do not in themselves offer a suitable basis for the future which is

envisaged. If the staff there can conduct the new programme it will be largely fortuitous. Moreover, although it may seem at first sight attractive to link Braboeuf Manor with the University of Surrey there is at present no ongoing law school there to which it can be related. The task therefore is even greater than in a place like Birmingham. If the principles set out by the Committee are accepted, it will be necessary to establish almost from scratch two institutions with sharply differentiated functions at the same time, since the existing law teaching at Surrey is of a limited and special character. The danger here would seem to be that any law school established at Surrey would from the outset be seen as a training school for the profession and any Institute established for the professional stage would adopt a too pedestrian view of its functions. The present interesting experiment at the University would probably we swamped. This would be one reason why a place like Southampton, which name was mentioned in passing by *The Times*, might be a more suitable alternative.

London as ever is *sui generis*. There is probably no hope for an institution so near to the Law Society and the Benchers of the Inns of Court. It will clearly always be difficult for those involved in the national administration of the profession ever to see anything operating in London as simply a provincial institution situated in the metropolis because it is convenient of access for a large population and has a flourishing local Bar and Law Society. As a result any professional educational activities in London will always run the danger of being regarded as a very small part of metropolitan legal activities as a whole. In many ways it would be a good idea to abandon London as a centre of practical training. Those who work there see it as the home of the law. The Inns see themselves as part of a society of lawyers eating, drinking, talking and why not therefore educating?

And yet when one looks back over the last century it is not the professional bodies but the universities that have had the task of developing legal education to the point at which it now is, which makes it in some ways ironic to find the minority on the Committee arguing that the task of vocational training should not be delegated to others. The attempts of the Council of Legal Education to provide any education or training whatever have so far had limited success. They now run courses of practical training but on nothing like the scale that the Committee is envisaging. Of course the professional bodies must retain control of the professional stage. The real problem is what does that mean? At the moment it means in particular that they appoint those who are to do the work, and ask them to do it in isolation from other educational activities going on in London. In appointments they compete with the universities and though they are able in some cases to offer higher salaries, what they have not yet been able to offer is independence, and what they have not been able to win is the confidence of others working in

the educational field, or mutual respect for their activities. How much would they have really lost one is bound to ask if, say, either Lancaster Gate or the Council of Legal Education had for the last few years been operating in co-operation with say, to choose a college in London at random, University College? Would there be really so much lost from the profession's point of view if walking into the Council of Legal Education gave you the same feeling as walking into the Institute of Advanced Legal Studies? Both the Council and the Law Society have bought independence at the cost of isolation.

There are, though, two sides to a successful relationship. The minority on the Committee note that no university has shown any interest in joining in work of this kind. Here perhaps it would be sensible to distinguish between universities and their law schools. What has been said above suggests that it is universities which need to show interest since it is the universities which are being asked to house the institutes. And this itself may well be quite a problem. Law Schools themselves in some universities are already looked upon as too professional and they may find it an uphill task to persuade their colleagues in other faculties to accept some even more overtly professional activity. In some cases it would no doubt be an argument in their favour if they were able to say that their own activities would become less professional as a result, though not all of them would be able or willing to put this kind of argument forward. One could base one's case on Institutes of Education though this would not everywhere be regarded as an argument from strength. Perhaps the best hope is the analogy of the medical school, but we all know that doctors are necessary. Whatever the arguments they will have to reach the same level of imaginative presentation which the Committee's report has advanced. Hopefully something can be done with it before its bright colours fade to a pale shade of grey.

It is difficult to see the universities rejecting the recommendations of the Committee as a whole even though warnings have come from Scotland and the continent of the dangers of accepting complete responsibility for the academic stage of a lawyer's preparation for practice. What is more problematic is the attitude of the professions. The Ormrod Committee had two limbs in their terms of reference. The first was to consider and make recommendations on training for a legal professional qualification. This they have publicly done. The second was to advance legal education by furthering co-operation between the different bodies now actively engaged upon legal education. It is yet to be seen what progress they have made in this.

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