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Legal Comment

Legal Education in a Semi-literate Culture

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One of the central challenges that face those of us who are engaged in Legal Education¹⁰¹ is that the culture, from which most of our students come is increasingly, once again, a visual, oral and informal one - a “semi-literate” one¹⁰² - and we are trying to educate them in a literate discipline. I would like to open up a wider discussion about the particular challenges raised by this important issue, particularly in the newer universities, and the possible responses to it.¹⁰³

Over the years there have been several papers at the ALT¹⁰⁴ and UKCLE¹⁰⁵ conferences and articles in *The Law Teacher*¹⁰⁶ and elsewhere,

¹⁰¹ This is true also in other literate disciplines, such as Philosophy, Languages and Psychology.

¹⁰² “Literateness” is used here to refer to both the skills and the attitude. It means both the ability to read and write intelligently and carefully, and the appreciation of, and desire to develop, the use of language in a way that is more than merely demotically functional.

¹⁰³ The focus is on some of the practical issues relating to legal education currently, particularly in England and Wales, although it appears similar problems are encountered in other places and disciplines. This paper is derived in part from papers the author has presented at ALT conferences between 1988 and 2010; and he is grateful to the participants for their diverse feedback on the ideas expressed there.

¹⁰⁴ The Association of Law Teachers.

which have addressed different issues around the “first-year experience” on the LLB course, which indicates that many of us encounter these problems in our different Law Schools. The papers have focussed on the issues of engaging and motivating new Law students, adapting our teaching methods, widening participation, changing methods of assessment, and more; and they have offered many useful insights and practical suggestions. However, none of them has, as far as I know, directly addressed the issue of the culture of reducing literateness of our young entrants; and this is what I wish to discuss in this paper.

I shall deal with the issues in four sections. First, I shall identify some of the key elements in what I take to be the nature of legal education. Secondly, I shall examine the basic implications that flow from the truism that Law exists in and through words and that there can be no Law without language, which means that lawyers have to be experts in the understanding and use of language. The third section will look at the general challenges that are faced in higher education currently as a result

¹⁰⁵ UK Centre for Legal Education, based at Warwick University.

¹⁰⁶ Many recent issues of the *Law Teacher* include useful pieces touching on this theme, including Vols 34.1 (Brayne, “Sabre-Tooth Curriculum”; LeBrun, “Enhancing Student Learning”), 34.2 (Andoh: “Students’ Self-Assessment”; Bennett: “Assessment to Promote Learning”), 35.1 (Birmingham & Hodgson, “Desiderata”), 36.1 (Vernon, “Something Old, Something New”), 39.1 (Issue on “Legal Education & IT”), 40.1 (Findlay Jones & Ross, “Peer Mentoring”), 41.3 (Issue on Storytelling), 42.1 (Fitzgerald, “Rite of Passage”), 42.2 (Hermida, “Teaching Media Literacy”) and 43.1 (Deech, “Student Contract”; Pawlowski & Greer, “Film & Literature in Legal Education”). There have also been related papers at recent ALT conferences on “The First-Year Experience”, “Punctuation in Legal Education” (developed as an article in the 2008 MJLS), and “In Praise of Real Lectures”.

of what may be seen as the culture of semi-literateness. The fourth section will look at the special challenges that arise for those of us involved in legal education in university Law Schools, as we advance through the twenty first century, and at some of the responses that have been made or suggested.

The nature of “Legal Education”

At the heart of the concern is the very basic question: what do we mean by “legal education”? In particular, I want to look at what it is we should be trying to do in the university Law Schools and at the general and special problems we face in both the newer and the older universities and with young and mature students in the current and emerging real world.

There is no simple agreed definition of “legal education”. It may be suggested, however, that there are three essential elements in legal education¹⁰⁷. There is the need for the student to gain knowledge and understanding of the substance of the Law. Secondly, there is the need for the student to develop the legal discipline and skills, particularly those relating to higher-level reading and writing, and listening and speaking.

¹⁰⁷ For an elaboration of this analysis, see L. Mosesson in [1990] 20 Law Teacher 16.

Thirdly, in order to transform the experience from one of mere knowledge and training, it is essential that the students should be challenged and stimulated and transformed through developing a sense of the uncertainty, potential and dynamism of Law as a social process for avoiding and resolving conflicts, with all the doubts and evaluative choices that this involves, in academic, social and personal terms.

I would make the following assertions to clarify my approach to legal education in this context. Students on the LLB or GDL (Graduate Diploma in Law) course are not there to learn the Law. Any fool can learn the Law, as can a parrot: in itself, doing so is largely useless. The students are on their course to work towards becoming lawyers. A lawyer - of any kind - is not someone who knows the Law: a lawyer is someone who understands and can *use* the Law¹⁰⁸ in a particular range of ways. Hence “Law” is best seen in this context, not as a body of knowledge, but as a disciplined activity. In the same way that learning all the words in a French dictionary will not enable you to speak French, merely learning the Law will not make you a lawyer. Nor will it educate you.

Although the information and skills, potentially gained so easily by use of the new media, are personally and socially valuable, they do not fit

¹⁰⁸ Or any other materials, as the discipline is so transferable.

easily with Legal Education. Students choosing to do an academic Law course – such as an LLB or GDL – are entering a discipline, an activity which involves, in particular, developing their skills of literateness. They must be made aware that they will have to change and grow through the experience in specific ways: and we, as tutors, must help them in this. Law courses should be suitably challenging, otherwise there will be no growth through the experience; and essential to the challenge is to develop their literate skills for simply having these skills is fundamental to the culture and discipline of Law and to being a lawyer of any type. Legal discipline requires high-level competence in the skills of reading and writing (and of listening and speaking) beyond what is expected in most other subjects. This is one of the most valuable features of having succeeded on a Law course.¹⁰⁹

Without the discipline, all that our students would gain is some facts to learn, to trot out in assessments, and to forget. This would fail the students, the outside world and ourselves as academics and educators. There is truth in the adage that education is what is left over when you have forgotten the information you learned¹¹⁰: so, if there never was more

¹⁰⁹ Others include awareness of social realities, of the values and choices in the Law, and of practical problem-solving.

¹¹⁰ Also, much of the specific Law learned may be out of date by graduation, or will never be encountered again. This does not reduce in any significant way the education achieved through Law.

than learning some information to repeat in assessments, there will be nothing left over afterwards to have empowered the students. Law is inevitably about the use of words, and the literate skills are a crucial part of the education that is to be carried forward from Law into whatever field is chosen.

On the cover of the paperback edition of the book “Zen and the Art of Motorcycle Maintenance”, the publishers proclaimed: “This book will change the way you think and feel about your life.”¹¹¹ This extravagant claim is true both about that remarkable book and about any education. Unless the experience, through which the student goes, challenges their assumptions and their “comfort zone”, that experience will not be one of education. It may involve valuable learning: it may involve developing valuable skills; but, unless there is this stimulation to personal growth, the transformative and empowering quality at the heart of education will be lacking.

¹¹¹ Corgi, London, 1976.

2. Law as a literate discipline

Without language there can be no Law. Words are the tools of the trade of the lawyer. Legislators necessarily use words to communicate their messages. Practitioners, in particular, read and draft, and listen and speak, often to persuade others of a way of seeing or doing things, as well as to achieve things, to clarify issues or to prevent or resolve disputes. Thus, as language enables us through the Law to deal with these issues without resorting to force, it is an essential part of human civilisation.

Without language there can be no philosophising, no analysis, no reflection, no clarity of thought, little non-emotional communication, little society and little hope of civilization.¹¹² Language, however, may also bewitch our intelligence.¹¹³

Lawyers are, and have to be, experts in using language.¹¹⁴ We, as tutors, have to help our students to develop this expertise as part of their

¹¹² For better and for worse. See John Gray, *Straw Dogs* (Granta, 2002), chapter 2, in particular.

¹¹³ "Philosophy is the battle against the bewitchment of our intelligence by means of language": L Wittgenstein, *Philosophical Investigations* (1953).

¹¹⁴ The "no-true-Scotsman" move, as it is known informally in Philosophy (see A Flew, *Dictionary of Philosophy* (Penguin), shows its head repeatedly in this paper. "All Scotsmen have porridge for breakfast every morning." "But I know a Scotsman who has muesli instead." "Ah, but he is not a true Scotsman." This is a form of truth by definition: my initial assertion is necessarily true, because of the pre-emptive way in which I define my terms (e.g. "Scotsman"), expressly or otherwise. All definitions and classifications are pre-emptive, and they may well import assumptions into the argument, which skew it rather than illuminating the issues apparently being discussed. This why defining terms openly and clearly is so important in any analysis. My use of "Lawyer" here is partly normative. See also the assertion: "*omnis definitio periculosa est*"; and J Stone, *Legal Systems & Lawyers' Reasoning* (1964), p.185.

legal education.¹¹⁵ Lawyers need to understand how language was and is and can be and should be used; they also need to be able to use it effectively in a variety of ways, not simply in descriptive or analytical terms.

In their expression they need, in addition, to develop the qualities of clarity, simplicity, precision, persuasiveness and the use of authorities; and they need to understand these qualities in the writing of others, including the subtleties and nuances and overtones and undertones of meaning. They need also to understand what is expressed and what may be assumed, consciously or otherwise, in the wordage. This education may be broadened out into understanding the context of tone and body-language, and the effect of the medium on the message. These may be seen as particularly important for advocacy, negotiating and counselling.

These observations are aimed at Law degrees and the GDL, not all students of Law. Learning some Law as part of a non-Law course is like learning enough of a foreign language to survive on holiday: functionally useful, but fundamentally different from studying Law or a language in

¹¹⁵ Legal training requires this obviously, in relation to, e.g., the skills of drafting claims and wills and other documents.

themselves.¹¹⁶ It does not aim to develop the discipline and deep understanding of the user of the material; that is, to become a lawyer.

The nature and challenges of the “Semi-Literate Culture”

It is widely held that our 18-year-old students are growing up in a culture which is (again) increasingly dominated by semi-literate communication.¹¹⁷ Concerns of this sort were voiced loudly with the arrival of radio and then television in the twentieth century, but the last twenty years have seen an even greater shift in culture. One factor in this is that the era of computers – with the internet, email, Google, mobile telephones, texting, social networks, and the like – has enriched and empowered us in many new ways. It has produced a remarkable change in the ways by which we can access information and communicate, and the speed at which we can do such things.

¹¹⁶ Not all students or administrators appreciate this without clear (and repeated) explanation.

¹¹⁷ “A generation raised on channel-surfing has lost the capacity for linear thinking and analytical reasoning... This generation has been largely raised on images. That’s one reason why postmodern people find the narrative so attractive.” (See Chuck Colson on Brian McLaren: Chuck Colson’s Response (2004), <http://www.brianmclaren.net/archives/000160.html>; and Douglas R Groothuis, “How the Bombarding Images of TV Culture Undermine the Power of Words”, *In Writing*, Issue 110, December 2003.) In March 2010, the Vatican recommended that sermons should now be limited to eight minutes because of the limited attention span of congregations. (Reported in *The Guardian*, 13.3.10, p.19.)

It has, however, also changed the relationship we have with information, with other people and with the world. More information comes ready-processed for those with short attention-spans and limited critical skills; and skills of literateness are seldom seen in our culture as necessary or important beyond a functional level.¹¹⁸

The extraordinary range of resources available can be wonderfully useful and enriching; but using them is not a substitute for the processes of original and critical thinking, which it should serve and complement.¹¹⁹

Even A-level students are in practice allowed or expected to cut and paste from a relevant website for their coursework.¹²⁰ It is wonderful that access to such a wide range of resources is so easy; but it is lamentable that such practices, through which the student can find the ready-made answer, and which involve no necessary thought by the students about the substance of what they are using, are accepted. This dis-empowers the students by relieving them of the academic experience of thoughtful

¹¹⁸ An analogy may be offered from cooking. The skills and adventure and creativity and satisfaction of “proper” cooking from basic ingredients are not seen as relevant in a culture that makes food from packets or eats “ready meals” or simply buys takeaways, or eats out. New apartments in New York and Tokyo do not include kitchens for this reason, because the life-styles do not include this type of culture.

¹¹⁹ To use another analogy from food: this is rather like chocolate and other “treat” foods, particularly for those who can remember rationing. It is stated on the packaging of sugary and fatty sweets and snacks now that such foods should be eaten as merely a small part of a healthy diet, not as an alternative to it. The wonders of the internet should not be seen as a substitute for life, but as a part of it.

¹²⁰ The students also have the right to repeat elements to improve their grades.

analysis, and leads them to believe that this is what study and education are about – a belief that some of them bring to university.

It may be the case that school-leaving qualifications are getting easier or that teaching in schools and colleges is ever-more strategic or both or neither. Whatever the reality, it is a common experience that an increasing number of students are coming into universities with fewer skills of literateness and less interest in literateness. The policies of widening participation inevitably run the risk of this, as do the increases in numbers of students encouraged to go to a “university”; but, as was indicated earlier, there are many other factors that will need to be addressed, if the levels of literateness in our school-leavers are to be improved, for whatever they go on to do.

Non-literate culture is not a new phenomenon for youngsters – for example, widespread literacy in this country began only after 1870¹²¹, and sport has been around for many years!¹²² – but its impact is ever more marked. It may be seen in schools, not only in the practice of cutting and pasting from websites, instead of doing thoughtful research, but also in making posters, rather than writing text; a “post-modern” disregard of

¹²¹ The Elementary Education Act 1870 began the process of making primary schooling compulsory for all children.

¹²² Since at least the Tudors there have been regular complaints about students and apprentices neglecting their studies to engage in football and other barbarities. The Inns of Court (and monasteries and university colleges) were built as they were, to keep the students in, as well as to keep the rabble out.

punctuation and spelling even in English classes, where “ideas” and “expression” are all that are wanted, rather than communication; a lack of interest and competence in formal skills of expression and careful reading; the acceptance of shorter attention-spans, rather than encouraging students to lengthen theirs; and the encouragement (or allowing) of other forms of expression which ignore literate skills. These developments may arise from a swing of the pendulum away from formalised (and non-educational) rote-learning towards encouraging “creativity” (on an understandable, but misguided, assumption that it is possible to be creative beyond a primary level without discipline¹²³), and from a lack of intellectual discipline and literateness in the generation of teachers and other shapers, who themselves experienced this lack of discipline.

The special challenges for Legal Education

This brings us on to the question of how we should respond to these challenges in our Law Schools. A number of possible responses have been proposed.

¹²³ Again, the instant stardom provided by some popular television shows reinforces the impression that there is no need to work or stretch yourself to “succeed”.

If all we want to do in our Law Schools is to teach the students some laws and give them some skills, so be it; but we should not pretend that this is undergraduate-level education. This may be appropriate in primary, secondary and even further education but it is hard to see that this could be called “higher education”, as in a university degree. However, public funding is significantly greater for “degree” courses than for diplomas, so there is a pressure on institutions to call any course a degree. Those with academic integrity should speak up against this drift.

To compound this, one of the buzz-words which form part of the fashionable vocabulary of education-speak currently is “graduateness”. For some managers and administrators in supervisory bodies it is an article of faith that all those who complete a bachelor’s degree have developed the same or equivalent qualities. Hence it is not permissible in the presence of such people to question whether the practical training courses which are presented at some universities as degree courses have challenged and empowered the students in the same way as other subjects, where a degree of discipline and self-awareness and self-doubt is required. This presents a further problem for those involved in legal education, as lawyers may be seen as “always causing problems” by suggesting that their concerns and needs may be different from those involved in music

technology or sports studies or hairdressing degrees, so that the administrators' one-size-fits-all may not be academically appropriate for all.

It may be agreed that what matters above all else is what the student has achieved by the end of their LLB (or GDL). If we want graduates from our universities to be more than people who have learned (and, probably, forgotten) a number of rules of Law, we need to ensure that we provide the academic experience - the challenges, tools and inspiration - to enable them to grow personally, intellectually and socially. Essential to this is their development of the discipline of Law; and this includes the qualities of literateness. Hence, Law graduates should have developed this discipline to complement their other experiences and skills.

The practical challenge for tutors in Law Schools is how to enable all the students to achieve, by the end of the course, the standard of education suitable for a ("true") Law graduate. The failure rates on LLBs tend to be among the highest of all subjects. There are various reasons for this, and it may not be simply a case of sows' ears and silk purses. However much we may wish to blame the system of primary and secondary education for the failings we have to deal with, we have a responsibility for all the students that we accept on to our courses and for

all those who graduate from our own university. Unless we do not care about the quality of our graduates, we cannot say: “We do not have the time to remedy what was not done at school or sixth-form college.” We have the responsibility to do this, and not simply to protect our own reputation.

We must ask ourselves a number of questions in this context. Are we prepared to let students graduate from our Law Schools with our LLB, even though they cannot use language effectively? This may mean that they cannot read carefully and critically the texts and other sources of Law, cannot write clear and persuasive sentences and arguments, cannot use punctuation effectively for the reader, and cannot spell correctly. It is the name of our institution which goes with those students; and our credibility is the most important part of our brand as a Law School or university.

We need to consider also what we do in our writing as tutors. Are we satisfied if we produce notices for students, teaching materials, articles and books, even though they are written sloppily – in terms of both their substance and their expression? It is particularly distressing how many books are now published with poor analysis, errors, bad punctuation, and indifferent referencing - pot-boilers for teachers and publishers alike -

which may be attractive to students, because of their packaging¹²⁴, but which are positively harmful to them in academic terms. They set a shameful example to Law students and the wider world.

Another remedy proposed to improve the pass rates is that we should entertain our students as a means of teaching them, or, at least, of persuading them to attend classes. This is a good principle; but it is not a substitute for challenging them and inspiring them to grow through the academic discipline. Law degrees are difficult; and they should be. We are not in the business of providing “infotainment” in the students’ comfort zones, however popular this might be.

Another response has been to multiply the “quality” processes. In practice, however, this involves this requires more form-filling and reduces the academic discretion available to the tutors. External examiners are one visible means that is meant to ensure quality, but they are increasingly unable to assess the reality of what happens or to play any real part in the decision-making processes, through lack of time and lack of full knowledge and redefinition of their roles. However well-intentioned and conscientious they are, their roles are increasingly

¹²⁴ Legal publishers say that students now like books with colours and boxes and other visual features. It appears that marketing and sales are not seen as depending on the quality of the text.

ornamental and focussed on filling in further forms¹²⁵. Quality will always be something that these processes fail to identify or ensure, essentially because it cannot be quantified or put into boxes.

There is pressure to make our Law courses accessible to a wide range of students, as well as to improve the pass rates. These aims are entirely laudable - provided, of course, that they are compatible with the reality of what our students are willing and able to achieve, and with what is to be expected of Law graduates, including literateness. An “illiterate lawyer”, more so than an invalid “contract” or an off-side “goal”, is an absurdity – or worse¹²⁶. Hence, there is a growing distance between the skills and attitudes of literateness that many students come with on to our courses, and those they need to have by the end.

This growing challenge needs to be recognised by all – planners, funders, managers, tutors and students – and effective steps need to be taken to address the real practicalities. It appears that the issues of semi-literateness are not felt so keenly in some subjects as is the case in Law; but, it is submitted, the response to this is not to tell the lawyers that they

¹²⁵ The forms which will be made public are often designed to make it difficult for the external examiner to give the “wrong” answers. Increasing the number of subjects each external examiner is meant to oversee in very limited time and reducing the fees paid to them are other ways to prevent any significant interference by such independent academics, while maintaining the form.

¹²⁶ Note the “true Scotsman” again. Nonetheless, it may be agreed that an actor who cannot give life to a role or make themselves heard in the audience would not be a “true” actor (ignoring mime artists for these purposes) either.

are wrong because they are different, but to discuss the realities and the needs and the effective practical responses to them. We cannot do much about the dominant culture in our society, but we must remain true to the purpose and value of Legal Education, and identify and implement ways of ensuring that the students we accept onto our courses are given the opportunities and support in facing and rising to the proper challenges.

We each have our own experiences and ways of working as tutors, as individuals and in teams; and different Law Schools provide different types of experience, some of it very good. However, it is submitted that factors such as academic leadership and academic role-models, commitment to quality and to providing stimulating challenges in what we do as educational professionals, and a willingness to discuss positively and practically the real challenges and appropriate responses to them, will all be necessary if we are to provide Legal Education in our universities¹²⁷ with which we can be satisfied. Universities, which are unable or unwilling to provide such an experience, should consider dropping their LLBs (and other degrees), and, perhaps, apply positively and honestly for

¹²⁷ It is not long ago that the majority of solicitors had no degrees and were (at best) distrustful of Law graduates in particular: there were similar views in journalism. What a degree provides was not seen as a relevant or helpful for what a solicitor did or does. Now it is almost impossible to become a solicitor without a degree – the ILEX route being the main exception. The LPC aims to provide practical training, and makes no pretence of being educational. We may wonder about the effects of the enormous increase in universities and Law degrees since the 1960s in making solicitors more educated.

status as Colleges of Further Education, where they can provide useful diploma and training courses.

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