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LORD UPJOHN LECTURE, 2017

# Rethinking Legal Education<sup>1</sup>

William Twining\*

*"I have never let my schooling interfere with my education."* (Mark Twain) 'Look at Me \_\_\_ I had no legal education' (Lord D.....)

*"[T]here are certain tendencies in Law as an academic subject which justify cautious generalization. For typically it is (a) part of the humanities, not least because it covers so many phases of human relationships and (b) it is intellectually demanding and (c) it is directly related to the world of concrete practical problems and (d) it is concerned, as perhaps no other subject is concerned, with process and procedure from the point of view of participants, and (e) it has a long heritage of literature and resources. While none of these elements is on its own peculiar to Law, perhaps no other discipline combines them in the same way and to the same degree: thus Law can be as intellectually exacting as Philosophy, but more down-to-earth; as concerned with contemporary real life problems as Medicine or Engineering, but with closer links to the humanities; as concerned with power and decision-making as Political Science, but more concerned with the how of handling process.... This being so, it is important that it should be done well."*(International Legal Center Report, 1975) <sup>2</sup>

*Tomorrow's world, as predicted and described here, bears little resemblance to that of the past. Legal institutions and lawyers are at a crossroads, I claim, and are poised to change more radically over the next two decades than they have over the last two centuries. If you are a young lawyer, this revolution will happen on your watch.'* (Richard Susskind) <sup>3</sup>

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<sup>1</sup> This is the text of the Lord Upjohn lecture for 2017, delivered on 25<sup>th</sup> May, 2018 at the City University Law School at Gray's Inn.

<sup>2</sup> *Legal Education in A Changing World* (ILC. 1975).

<sup>3</sup> Richard Susskind, *Tomorrow's Lawyers* (OUP, 2013). In the second edition the author was able to say 'Three years on, I believe we are on course.' (2<sup>nd</sup> edn., 2017)

*'Life in America, and in the West in general, is a vast, diffuse school of law.'* (Lawrence Friedman)<sup>4</sup>

The purpose of this lecture is to give an account of my sense of dissatisfaction with the way we have thought, written and squabbled about legal education in England and Wales since the 1960s; tell the story of my attempts to diagnose the grounds for dissatisfaction; and to suggest a broader perspective that may help to provide a framework for coping with this complex field in dealing with a rapidly changing and uncertain future. It is directed mainly to my colleagues in academic law, but I hope that it will be of interest to other members of our legal community and beyond. It has little to say directly about the current efforts to deal with issues in the aftermath of the Legal Education and Training Review (LETR)<sup>5</sup>, but it ends with some practical suggestions for initiatives that might be taken by the academic legal community.

In preparing for this event I reread several previous Upjohn lectures. This proved daunting not only because each had an important message but also because my argument here might be thought to be challenging all of them by presenting a radically different perspective on Legal Education as a field. I start by indicating some common ground. First, all four begin by saying what an honour it is to be invited to give the Upjohn Lecture. I concur with that. I also agree with much of the thrust of each lecture. In 2012 Lord Neuberger was surely right in countering the view that our inherited system of primary legal education and training is not

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<sup>4</sup> (1989) Yale L. Jo. 1579, at 1588.

<sup>5</sup> The full report is available at <http://www.lettr.org.uk/index.html>

‘fit for purpose’.<sup>6</sup> I agree with the proposition that even in a radically changing situation there is much to be proud of.<sup>7</sup> Nearly thirty years ago, at the 1990 Commonwealth Law Conference I was rash enough to say that ‘during the past thirty years, the discipline of law ...has been transformed from a small-scale, cheap, low prestige subject into an unrecognizably more sophisticated, pluralist and ambitious enterprise .’<sup>8</sup> That was part of a pontifical speech suitable for the Chair of a legal education association on such an occasion. But looking back to the scene in Oxford in the mid-1950s, the culture of Gibson and Weldon, unregulated apprenticeship, and practitioners’ attitudes towards academics, we can probably all agree that we have indeed come a long way.

In 2015 Paul Maharg and three other key participants in the LETR story reflected, not uncritically, on the exercise up to that moment in time.<sup>9</sup> I agree with them that in many respects their review was a significant improvement on prior reports in the genre, I sympathise with their frustrations and constraints, and I suspect that they have been disappointed with the next stages of that process. This is evidenced by the statement by members of the LETR team quoted at the start .

‘[T]he model of a self-contained time-limited, profession-centric review typified by Ormrod et al., and by LETR itself, needs to become a thing of the past.’<sup>10</sup>

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<sup>6</sup> Lord Neuberger of Abbotsbury, Lord Upjohn Lecture 2012: Reforming legal education, (2013) 47:1 *The Law Teacher* 4-17, DOI: [10.1080/03069400.2013.764746](https://doi.org/10.1080/03069400.2013.764746)

<sup>7</sup> I also agree that under present funding arrangements there is little prospect of substantial reform, but I think that we should prepare for a shake-up of the funding of tertiary education during the next ten years.

<sup>8</sup> ‘Preparing Lawyers for the Twenty-first Century’ , Ninth Commonwealth Law Conference Proceedings in Auckland, New Zealand in 1990, reprinted in W; Twining, *Law In Context: Enlarging a Discipline* (1997) Ch. 14, at 281.

<sup>9</sup> Jane Ching, Paul Maharg, Avrom Sherr and Julian Webb, ‘An overture for well-tempered regulators; four variations on a LETR theme’ , 49 (2) *The Law Teacher* 143 (Lord Upjohn Lecture 2014).

<sup>10</sup> *Ibid*, at p. 163.

Thus four of the brave Professors of Legal Education who did most of the work on LETR, have openly said: 'NEVER AGAIN'.<sup>11</sup>

In the 2016 Lecture Dame Linda Dobbs emphasised the many changes and challenges facing legal services of different kinds, and academia, now and in the immediate future. Our changing situation is a major plank in my criticism and self-criticism about our ways of thinking and talking about legal education since World War II.<sup>12</sup>

In 2015 Rebecca Huxley-Binns, in a typical barn-storming and scintillating performance anticipated two themes in today's lecture: that we should be taking student learning seriously in all its diversity and that we should dump the simplistic idea of 'thinking like a lawyer' as it probably does more harm than good.<sup>13</sup> I would add that the overworked phrase suggests that all lawyers think or need to think; it assumes that all lawyers do and should think in the same ways about the same things; and it assumes a model of 'legal reasoning' confined to reasoning about questions of law, ignoring all the other kinds of decisions and problem-solving activities in legal contexts that involve thinking.<sup>14</sup> Furthermore it omits other reasonings involved within the complex enterprise

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<sup>11</sup> I made some succinct criticisms about the LETR review in 48 (1) *The Law Teacher* 94-113 (2014). This lecture is concerned more with a longer term view and a much broader perspective than with the details of the exercise which is still continuing.

<sup>12</sup> Dame Linda also put in a powerful plea for supporting efforts to meet the greater challenges to legal education in Anglophone countries in Africa (including South Africa, and through a twist of history, Rwanda), a cause dear to my heart. See Hon. Dame Linda Dobbs DBE (2017) Is the legal landscape changing? Reflections from the UK and South Africa, 51 (2) *The Law Teacher*, 112-122, DOI: [10.1080/03069400.2017.1298759](https://doi.org/10.1080/03069400.2017.1298759)

<sup>13</sup> Rebecca Huxley-Binns Tripping over thresholds: a reflection on legal andragogy, 50 (1) *The Law Teacher* 1-14, DOI: [10.1080/03069400.2016.1147310](https://doi.org/10.1080/03069400.2016.1147310)

<sup>14</sup> JIC Ch.10.

of understanding law that might be lumped together under the rough term ‘theoretical reasoning’. However, the phrase gets one thing right: thinking should be a central concern of nearly all kinds of legal education.<sup>15</sup>

We can take these points of agreement as read, despite the fact that I plan to take a significantly different perspective. However, after I had prepared a first draft of this lecture I re-read the excellent Special Issue of the *Law Teacher* in 2014 which went far beyond LETR and I began to feel that there is not much new to say.<sup>16</sup> I agreed with the thrust of almost all of the pieces and I especially liked the point made by Jessica Guth and Chris Ashford that, with the more flexible system recommended by LETR focusing on day-one competence, what matters for university law schools is not what the regulators prescribe for initial admission to professional practice, but how the law schools interpret their mission in relation to a new framework of regulation of professional competence.<sup>17</sup> Will they seize this opportunity for freedom?

## **Standpoint**

My standpoint is that of a legal theorist (I prefer the term jurist) who happens to have been interested and active in the practices and politics of legal education for the first half of his career. However, in the late 1990s, having completed two books and too many pronouncements, I decided to concentrate on other interests.<sup>18</sup> The main reason for giving up was that I was very dissatisfied with

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<sup>15</sup> On the fallacy of confining reasoning in legal contexts to reasoning about questions of law or doctrine, see LIC Ch. 10.

<sup>16</sup> See Volume 48 (1) *The Law Teacher*

<sup>17</sup> Jessica Guth & Chris Ashford, *The Legal Education and Training Review: regulating socio-legal and liberal legal education?* 48 (1) *The Law Teacher* 5-19, DOI: [10.1080/03069400.2013.875304](https://doi.org/10.1080/03069400.2013.875304)

<sup>18</sup> For about twenty years I set the subject aside as a scholar and theorist, although I responded to invitations to perform because I had been labelled an ‘expert’ in the area.

the way 'Legal Education' as a field was theorised, debated, reformed and even researched, but I could not put my finger on what was wrong. Then late in 2013 the LETR Report attracted my attention and I had a series of what Becky Huxley-Binns calls 'lightbulb moments' and so I stuck my oar into the debate while engaging in some muted self-criticism.<sup>19</sup> Since re-engaging, I have delivered a number of papers that I shall use as the launching-pad for today's lecture. Each of them is a building brick for my argument; but as we shall see, I now think that none of these went far enough. First, in a SLS centenary lecture I made the case for the importance of public understanding of law and suggested that establishing one or more Chairs on this subject would be a good place to start. This is something that any University could try to do, preferably involving both the Law School and a Faculty or Department of Education.<sup>20</sup>

Next, In a response to LETR in 2014, in addition to making some comments on the Report and launching a polemic against the very idea of Foundation Subjects, I argued that academic lawyers should take their role as professional educators and educationists seriously; and that collectively we should apply our expertise to the whole of our national system of legal education and training rather than concentrating on fighting our corner in respect of undergraduate legal education.<sup>21</sup> The four brave Professors of Legal Education who conducted the

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<sup>19</sup> 'LETR: The role of academics in legal education and training: Ten theses', 48 *The Law Teacher* (2014) 94-103 (2011 Proof). I also criticised confusions between intellectual skills and basic professional skills and between ethics and values on the one hand and professional responsibility on the other, suggesting that the answer to the question what makes an upright lawyer depends on answers to the question: what makes a good person?, a philosophical question.

<sup>20</sup> 'Punching our weight? Legal Scholarship and Public Understanding of Law' (SLS Centennial Lecture 29 *Legal Studies* (2009) 519-33 ck. See also JIC Ch.17, to which this lecture is a sequel.

<sup>21</sup> William Twining, LETR: the role of academics in legal education and training: 10 theses<sup>1</sup>, 48 (1) *The Law Teacher* 94-103, DOI: [10.1080/03069400.2013.875309](https://doi.org/10.1080/03069400.2013.875309)

LETR exercise set a very good example. Thirdly, at the ALT Annual Conference at Cardiff in 2015 I suggested that we should both broaden, tighten up and reframe the discourse in this field, starting with the highly ambiguous term 'legal education' itself which conceals some severe distortions and imbalances in our ways of thinking about the field as a whole.

These points were worth making, but I would now modify each of them in response to four more 'lightbulb' moments. This lecture builds on these earlier papers but shifts the focus to a more fundamental critique of the ways in which we think and talk about the field in our present context.

### *The Context*

I hardly need to repeat the reasons for thinking we are in a period of radical possibly revolutionary change. Excited globalisers pound us daily with conflicting messages about the nature and implications of globalisation or what is awkwardly, but more precisely, described as accelerated transnational interdependence (ATI).<sup>22</sup> You are no doubt all familiar with Richard Susskind's Cassandra-like predictions about legal services.<sup>23</sup> I am told by educationists that it is foolish to try to guess what primary education will be like in ten years' time and even whether there will be such institutions as primary schools. Add in climate change, security (war), unpredictable economics, robots, Brexit, Trump or whatever and we can probably all agree that we are in a situation of uncertainty.

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<sup>22</sup> JIC Ch. 18 and 19.

<sup>23</sup> R. Susskind, *Tomorrow's Lawyers: An Introduction to Your Future* (OUP, 2<sup>nd</sup> edn. 2017) see also R. and D. Susskind, *The Future of the Professions: How technology will transform the work of human experts* (OUP 2017). {I think that he is probably right about the pace and extent of change, but I think that the overall future even more unpredictable than he does}.

## Diagnosis

As I have said, by the late 1990s I was so dissatisfied with the discourse of legal education that I virtually deserted the field for about fifteen years. By then I had identified some aspects of this unease but felt that I had not put my finger on the nub. By then there had been several points of realisation. Some of these occurred in lightbulb moments, others dawned on me slowly. Today all of them should be recognized as commonplace, so I do not need to dwell on them in detail. I can summarise them under eight heads:

1. Modern law is much more complex than it was in 1975 (EU) or even 30 years ago (the Courts and Legal Services Act 1990). Law as a discipline is no longer a very cheap subject if it is done properly.
2. *Sisyphus*. Since the 1960s the focal point of most public attention on Legal Education in England and Wales has been on a continuous series of official reports on or directly affecting legal education. The litany is familiar.<sup>24</sup> It took me some time to realise that it is a mistake to see these reviews as one-off reports which happened spasmodically rather than as exercises that lasted from 2 to 10 years, generally to be succeeded by a further review. Names are attached to documents which were typically published about the middle of each process.<sup>25</sup>

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<sup>24</sup>: Robbins (1963), Heywood (1965), Ormrod (1970), Armitage (1972), Hoffman (1986), Benson (1979), Marre (1988), ACLEC (the late 1990s), Clementi (2004/5), and now LETR (2013). After returning to the UK in 1966 I was involved in various capacities with all of these except Clementi and also took an interest in similar reports in the common law world, Denning (1961) *Report of the Committee on Legal Education for Students from Africa*, Cmnd. 1255 (Lord Denning Chair) (on which see J. Harrington and A. Manji, 'Mind with mind and spirit with spirit': Lord Denning and African legal education'. *Journal of Law and Society* 30(3), pp. 376-399 (2003).

<sup>25</sup> For instance, what became the Ormrod process was mooted in 1963 by Gerald Gardiner and Andrew Martin's *Law Reform Now*. In 1967, Gardiner as Lord Chancellor instituted the Ormrod Committee, which reported in 1970 and then was debated until the establishment of the Benson Royal Commission (set up by Harold Wilson in 1976). Benson's remit included Legal Education which was dealt with by a Committee chaired by Ralph Dahrendorf. This recommended the establishment of a 'permanent' Lord Chancellor's Advisory Committee (ACLEC) which was established in 1990 but disbanded in 1999.



3. These reports all belong to the same genre; they are policy documents with narrow terms of reference, largely oriented to initial professional formation.<sup>26</sup>

4. We have been lured into making these reports by far the main focus of attention to the neglect of vast swathes of other aspects of formal and informal learning about law.

5. The reviews have generated repetitious and generally low-quality debates. These have been largely unnecessary because there has been a high degree of consensus about our system of formal provision of initial legal education and training, for example:

- That the normal route to the Bar and solicitors' practice should involve graduate entry or its equivalent;
- That ability to read, write, analyse, listen, speak, argue (and possibly count) are key elements of graduateness;<sup>27</sup>
- That the introduction of some direct training in technical skills represents a distinct improvement on the old professional cramming examinations.
- That apprenticeship has rightly been retained and improved;
- that our graduates and newly qualified barristers and solicitors have been among the youngest in the world, and that they have been generally less mature than the previous generation who, because they were nearly all male, had either been involved in World War II or done national service.<sup>28</sup>

6. The main arena for persistent disagreement has been the three year LLB for 18-21 year olds, the key weakness of which has been the heavily overloaded curriculum. There has been pressure from several directions: the nature and complexity of the subject today; unreal expectations and buck-passing by stakeholders, leading not only to the disastrous creeping core of knowledge-based 'Foundation Subjects',<sup>29</sup> but also

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<sup>26</sup> See the quotation cited above (text to n. 000).

<sup>27</sup> Although 'graduateness' is an ungainly and contested term, viewed rather differently by educators and employers, it is a useful one in the legal education context.

<sup>28</sup> This point, I think, needs more emphasis especially in relation to intellectual and personal maturity and to sensible choices of options and career decisions, two matters that troubled me when I taught undergraduates. When I was in Chicago as a student in the Law School we used to call the students in the excellent undergraduate program 'weenies'. This was not so much insulting as reinforcing our self-identity, that we were grown-ups and that Law is a subject for grown-ups with some knowledge of the world. It was certainly more grown-up than what I had been used to Oxford. The average age of first year was 22-24... When I taught our induction course at UCL I contrasted our first years (average age 19) to the entering class in Miami which was 23/4 (or with the evening programme 25+)

<sup>29</sup> On some estimates 'the creeping core' has slunk, often unannounced, from Ormrod's five to 11 or 12 subjects, depending on what counts as a subject, for example, Constitutional Law became Constitutional and Administrative Law, and English Legal System slipped in silently under various names.. I have fulminated against this before (e.g. op. cit. n.8) and will only underline one point here: with an already overloaded curriculum every suggested addition, whether of subjects or desirable employability attributes, substitutes coverage for depth, stultifies innovation, virtually suppresses interdisciplinary work, and

to constant inflation of the concept of 'graduateness', now going beyond intellectual skills to include such concerns as employability, teamwork, elementary technical skills, IT literacy and so on.<sup>30</sup> All of these may be desirable, but they cannot be learned adequately within the existing time-frames. Those responsible for the pressures just have not faced up to questions of priorities between know-what (knowledge), know why (understanding) and know-how (intellectual and other skills).

7. Within academic law there has been a constant tension between positivist and normative perspectives and between doctrinal and empirical approaches, but there is a quite accommodating mainstream committed to the values of liberal education.<sup>31</sup>

8. That the funding of higher education generally and of the vocational stage in Law in particular needs a radical rethink and that the Bar and Solicitors in England and Wales on Ormrod, but not Scotland and Northern Ireland, made a disastrous mistake by losing the opportunity for public funding by insisting on control of the vocational stage outside the public higher education system. This is the main reason for the injustice and mess surrounding that stage. This particular matter may be irreversible in the medium term in England and Wales. The moral is: pay attention to the economics of legal education and training.<sup>32</sup>

### *Two immediate measures*

Within the existing framework of thinking about legal education and training a number of specific measures could mitigate the pressures and help to solve some of the obvious problems. In my view, there are two substantial changes that could make a huge difference. (a) to mitigate the problem of overloaded curriculum for first degrees by making four years the norm, or at least more common, for

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undermines classical liberal values, especially the development of independent critical thinking, and basic intellectual skills.

<sup>30</sup> See above n.000 <20>

<sup>31</sup> in England few blackletter lawyers are as scientific as some in the civilian tradition and few realists deny any place for doctrine, rather most want to put it 'in context'. JIC Ch.13

<sup>32</sup> On the Ormrod error see further op. cit n.000 above.

undergraduate honours degrees, especially for 18+ students;<sup>33</sup> and (b) to meet the Sisyphus problem of spasmodic one-off reports by setting up a national (preferably UK-wide) Institute for Legal Education and Training (or Learning about Law), with sustainable funding.

Here I shall only comment briefly on these two proposals. In respect of four year degrees the issues are quite complex, but the case for it is overwhelming; it needs to be made at the right time and with the support of the main stakeholders in whose interests it would be: students, regulators, academics, the legal professions and their clients. This change would take much of the sting out of disagreements surrounding core subjects, the overloaded curriculum, balancing know what, know why, and know how, and sacrificing coverage for depth; it would contribute a bit to personal and intellectual maturation; it could help better decisions about options, careers, and life choices; and it would align undergraduate legal education with the mission of universities (see below), while accommodating at least some of some of the outside pressures.

The main argument against it is that it is not feasible. That is false for two main reasons: first, it happens already \_\_\_\_\_ in Scotland, in

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<sup>33</sup> The old Pass/ Honours distinction still survives in some places. In Scotland I understand the practice to be that students are able to graduate after three years but are discouraged from doing so because a three year degree is perceived as an inferior qualification. A similar pattern exists in some EU countries under the Bologna arrangements. Careful study of these patterns, and of the less happy Northern Ireland experience (where Queen's lamentably downgraded the LLB from four to three years) would be useful in making the case for this change in England and Wales.

Continental Europe (4 or 5 years under the Bologna scheme)<sup>34</sup> *and* in England and Wales, not only in respect of joint degrees<sup>35</sup> but also on a small scale by opting in provisions, which any university can prescribe.<sup>36</sup> The second reason why it is feasible is just because when the whole issue of student finance is reviewed \_\_ as it must be \_\_ this should provide an opportunity to make the overwhelming case for four years being the norm for undergraduate honours degrees in Law. Three years is just too short.

It is open to academics to take the lead by focusing on the issues, doing background research, and winning and co-ordinating support.<sup>37</sup> Immediate preparatory steps can be taken by collating and collecting evidence to back up the case; by individual institutions providing for opportunities to opt to take the LLB in four years,<sup>38</sup> by adding incentives for this (for example, offering competitive scholarships for opting in); and for changing attitudes, starting with academics and students themselves. There are negative attitudes even within academia, exemplified by one colleague who asked me: ‘Why would anyone

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<sup>34</sup> On the Continental ‘Ba-Ma’ system see Carel Stolker, *Rethinking the Law School* Cambridge: Cambridge University Press (2014) pp.19-24.

<sup>35</sup> The main ones are joint Honours degrees (‘Law and .... ‘ degrees, English and foreign Law and those which combine the vocational year with the ‘academic stage’.

<sup>36</sup> E.g. Warwick University Law Prospectus: ‘M 101 Law (four years).... Our four-year programme has a similar structure to our three-year course, but enables you to take a larger number of modules and diversify your studies.’ [This is not restricted to Law and.....]

<sup>37</sup> All institutions offering undergraduate programmes need continually to address the question: how can we mitigate curriculum overload? In the short-term Individual law schools can, if they persuade their universities, introduce modest imaginative devices such as optional add-ons, opt-ins and niche programmes, some of which are touched on in the Appendix. But, in my view, this would be stickingplaster.

<sup>38</sup> See4 n <32> above.:

want to spend four years getting through when they can do it in three?’ I do not need to answer that.<sup>39</sup>

As for the idea of a ‘permanent’ national centre for LET, this has been mooted since 1934 (the Atkin Report)<sup>40</sup> and repeated from time to time ever since. For a period (1996-2004) something approaching this was achieved on a modest scale by the National Centre for Legal Education (later UKNCLE) at Warwick, which sadly was gobbled up by the generic Higher Education Academy in 2004 for cost cutting reasons and maybe because of a view that there is nothing special about Law.<sup>41</sup> There is nothing to stop any of the professional associations or even individuals from starting immediately to develop plans for such a centre nor for a suitable institution to offer to host it if sustainable funding can be achieved. My personal view is that such an institution should probably embrace all significant stakeholders, be interdisciplinary (with representation from Education, Psychology, Neuroscience and other relevant professions and occupations) and that it should give high priority to sustained research and to developing a community of interested professionals as well as keeping policy under continuous review. But the planning and priorities need to

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<sup>39</sup> The counterpoint to that kind of absurdity is the unfair gibe: ‘Anyone who opts for a Pass degree is stupid’. I am well aware that there is also support for two year programmes, even at 18+. Such programmes might suit some students, indeed, universities do not suit everyone; but whether or how many of the 18+ cohorts can achieve ‘graduateness’ in that time to satisfy employers and regulators is open to question. See above n.000.

<sup>40</sup> *Report of the Legal Education Committee* (Atkin Report, 1934) cmd. 4663. A.H. Manchester, *Modern Legal History* (London: Butterworth, 1980) at pp. 62-3 aptly criticises this for lack of ambition and for hardly taking LET seriously. The report recommended the establishment of an Institute of Advanced Legal Studies, which was set up in 1948, but without much emphasis on legal education.

<sup>41</sup> This damaged not only legal education research but a thriving networking community of interested individuals, thanks largely to the LiLi conferences which transcended institutional professional, and academic snob divides (older universities tended to be under-represented). However, it is open to the relevant academic associations (including HULSC, SLS, ALT, SRA, LERN, and ILEX) to combine together to revive such an event as well as pressing for a new institute. The HEA has in turn been gobbled up by another organisation and its website talks of it in the past tense.

be worked out by the interested groups. If the LETR team are right, there would never again be a repeat of the Sisyphean exercises.

Neither of these ideas is new. Immediate steps could be taken to start to pave the way for their implementation. For seven years at Queen's Belfast I enjoyed the privilege of a four year degree with a well-designed curriculum. As soon as I moved to Warwick, which had settled for three years for the ordinary LLB, I realised what I was missing and concluded that the three year undergraduate law degree has been the Achilles Heel of university legal education. In the 1970s under the auspices of the SPTL I instigated and chaired a committee on four-year degrees, which stimulated a few, mainly Law and...' options. In those days it was relatively simple to make the case because of the system of maintenance grants and means-tested scholarships and we had some modest successes. We disbanded the committee without a formal report in order to avoid the possibility of stimulating the Government to say No. Of course, in the post-Dearing years the fees debacle meant that making this change has been much more difficult. But it is not impossible and it is worth fighting for.

### *A first step towards a global perspective*

During the 1990s, as I thought about 'globalisation', I used a device of a mythical report on 'Legal Education in Xanadu' in several papers to challenge some conventional ways of thinking about the field. Building on the ILC Report,

I used the following working assumptions and hypotheses as a starting-point for looking at the field from a global perspective:

‘In (almost) all societies:

Almost everyone receives some legal education;

That process lasts from cradle to grave;

The amount of informal legal education (i.e. outside educational programmes) greatly exceeds the amount of formal legal education, even for career lawyers;

The actual and potential demand for formal legal education almost invariably exceeds the supply;

Most formal legal education is delivered in institutions other than university law schools

Within most countries, specialised institutions called ‘law schools’ can be quite varied.’<sup>42</sup>

In the 1990s I used these propositions in papers with titles such as ‘What are Law Schools For?’ or ‘Recent Trends in Legal Education in the Commonwealth’ and I followed the ILC Report in urging readers to think in terms of ‘national systems of legal education’. This was a step in the right direction. I would stand by most of my detailed arguments today, except for one thing. The focus was exclusively on law schools and other legal education providers rather than on students and what, how and when they learned.

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<sup>42</sup> I also developed a list of common fallacies in legal education talk, see LIC pp. 300-301, e.g. Cheap subject, Dim Student, Dull Subject, Football League model, numbers game, primary school image, professional snob syndrome (LIC 300-301).

### *Four more lightbulb moments*

The twin ideas of four year degrees and a national institute are not new, but they need to be backed by arguments that are based on a coherent view of legal education. I believe that those earlier realisations are still valid, but on their own they do not fully pinpoint what is wrong with our current ways of thinking about legal education, including my own. When in 2013 I returned to looking at the situation with fresh eyes I had four more lightbulb moments that suggested a new perspective. Let me put this in terms of self-criticism:

1. I had paid lip service to the mantra that we should focus on learning as much as or even rather than teaching; yet my writing had been almost entirely about formal provision and institutional aspects of teaching and assessment.<sup>43</sup> even the word 'education' suggests that *we provide it for them*;
2. I had paid lip service to the mantra that we should take lifelong learning seriously; but nearly all such learning is informal even for practitioners. But what do we understand of learning about law? What does the academic legal

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<sup>43</sup> Any distinction between formal and informal in education is inevitably crude. Not only is there a large grey area, but they can be mixed together simultaneously in endless ways. In this context 'formal' is restricted to taught courses and assessments for which students are registered; 'Informal' includes all other kinds of learning, including semi-formal ones, e.g. self-study, supervised and mentored work, apprenticeship and the rest of the grey area.



community really know about learning on the job, learning by experience, re-education, implicit learning, reactive learning, episodic memory and so on?<sup>44</sup>

3. I had underestimated the acceleration of the pace of change in education, legal services, information technology, globalisation and so on. Nor had I seen as clearly as I should that in a situation of rapid change, *adaptability* is probably the most important thing that we can hope for from formal education. Nor had I seen as clearly as I should, the close link between change, adaptability and transferable skills. For law, that means the classical mantras of ‘learning how to learn’ and developing ‘transferable’ intellectual skills, which is what classical liberal education and liberal education in law are all about. ‘We are in the skills business too.’<sup>45</sup>
4. I had been interested in Public Understanding of Law for many years, but in a dilettanteish way, and I had followed convention by treating this as quite a separate field from

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<sup>44</sup> The mistake in the ILC report and ‘What are law schools for?’, was to shift attention from learning to teaching. Today I would place more emphasis on stimulating interest in law among educational psychologists and other specialists in education, and promoting collaboration, especially in relation to such matters as life-long learning and the elusive idea of learning by experience. So far nearly all research and theorising about legal education has been done by academic lawyers, exemplified by the brave quartet who undertook the LETR exercise. A next step might be symbolised by closer interaction between two neighbours, the Institute of Advanced Legal Studies (IALS) and the Institute of Education (IOE, now part of UCL), who so far hardly seem to have been on speaking terms.

<sup>45</sup> LIC Ch. 9.

‘mainstream legal education’. This links up with the ideas of lifelong learning, the great bulk of which is informal and with the diversification of legal services, the effects of new technology (e.g. DIY, automated advice) and the needs for some legal knowledge and understanding in most fields of work and in most other fields of ordinary social life. To take a simple example: given social media, how much do our teenagers learn or mislearn about the law of copyright, defamation and sexual offences?

*Mea culpa, mea maxima culpa....* or eschewing Latin – I confess: and I suspect that most of you should probably plead guilty to most of these charges. That does not mean that we should reject all of our previous practices and efforts, but it does suggest that we should frame our own thinking about learning about law differently. I would exonerate some contributors to and readers of *The Law Teacher* from some of these lapses. For example, some of you have broken away from the obsession with undergraduate degrees or initial professional formation; some have taken student learning seriously; and others have refused to allow narrowly focused official reports to distort their vision.

Back to my role as theorist. One of the main functions of theorising is to articulate one’s own or others’ working assumptions or

presuppositions and examine them critically. A nagging sense of dissatisfaction suggests that maybe one’s vision has been skewed by a distorting lens. To check on this it is useful to ask whether one’s thinking has been unduly influenced by a particular set of assumptions or model or ideal type. In this context let us consider three contrasting ideal types for thinking about our field and examine how far our thinking has approximated to one or other of them. These can be depicted in a quite simple table as follows:

**Table: Three ideal types: <sup>46</sup>**

	<b>A. Primary School Model</b>	<b>B. The Reflective practitioner model</b>	<b>C. Friedman model</b>
<b>Who learns?</b>	‘Law students’	Professionals (for whom law is part of work)	Everyone
<b>When do they learn?</b>	Age 18-25	18-	Cradle to grave (lifelong learning’)

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<sup>46</sup> On the use of formal/ informal in this context, see above n.000 <40> . This table is quite crude and leaves out a fourth ideal type: a global perspective. From a Western vantage-point a map or total picture about all learning about law in the world as a whole would be largely blank, except for a few anthropological, developmental and cultural studies. On the whole we lack concepts, questions, hypotheses and data to get very far.

<b>Where do they learn?</b>	(university and/or professional Law schools)	University +, work, self-study, CPD	Most places. <sup>47</sup>
<b>What do they learn?</b>	<ul style="list-style-type: none"> <li>• Know what: ‘core subjects’ + limited extras</li> <li>• Know how: (intellectual skills; ([some] basic professional techniques)</li> <li>• Know why (some liberal legal education)</li> </ul>	Application of law, informed by theory, etc.	Practically relevant (e.g. driving rules; consumer law; divorce law) or interest or serendipitous matters
<b>How do they learn?</b>	Mainly formal study	Formal + informal	informal (plus limited formal) <sup>48</sup>

This table is obviously very simple, but it serves the present purpose

A. The ‘primary school model’ focuses on initial professional formation, equivalent to the first three stages of the Ormrod structure: academic, vocational; apprenticeship; it assumes that each stage is part of preparation for practice; it excludes consideration of postgraduate study and specialization; it assumes a single reductionist conception of ‘the lawyer’; it is concerned with formal provision rather than learning; it is not particularly concerned with lifelong learning.<sup>49</sup>

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<sup>47</sup> Santos usefully classifies ‘structural places’ for legal relations as follows: Householdplace, workplace, marketplace, community place, citizenplace, worldplace. B. de Sousa Santos, *Toward a New Common Sense* (1995) 417. More elaborate ones can be found in the sociological literature.

<sup>48</sup> Informally by direct experience (regular/ episodic); indirect/vicarious experience; foreground observation; ‘general culture’ (e.g. TV, other media; oral tradition).

<sup>49</sup> On the primary school model, see *Blackstone’s Tower* (1994) 54-55, 83-85, 198 and LIC Ch. 15.

- B. 'the reflective practitioner' model is of a professionally qualified person who learns from 'experience' (and perhaps bits of CPD) by many informal processes in very many different contexts.<sup>50</sup> much of what she learns 'cannot be taught'; 'it includes professional competence and professional artistry; learning comes from reflecting on experience; it accepts uncertainty and individual ways of knowing'; a key concept is 'reflection in action'; it is intimately connected to actual practice \_\_ what lawyers (or engineers) do in fact; it is not confined to any specific profession nor any particular stage in a career.<sup>51</sup>
- C. The Lawrence Friedman model of Western societies as one vast school of law, involves all human beings (and other legal persons) learning about law from cradle to grave or, if you are a Freudian even in the womb.<sup>52</sup> It invites one to try to imagine a total picture of learning about law in a given society. Thinking about a demographic total picture of learning about law in our society raises such questions as: Who learns what (know what, know why, know how), when, where, in what contexts, for what purposes, by what

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<sup>50</sup> This model is based on Donald Schon's classic *The Reflective Practitioner: How professionals think in action*. London: Temple Smith, (1983 with many later editions). The details of Schon's thesis and points made by critics are not relevant here. I have included it because some colleagues in legal education have been influenced by Schon and this takes them beyond the 'primary school model' and does indeed focus on learning. A recent link to the English context is David Howarth's stimulating *Law as Engineering: Thinking about What Lawyers Do* (Cheltenham: Edward Elgar, 2013). Howarth suggests (at 149) that Engineering is the most obvious example of an occupation with a structural analogy to legal practice in both theory and practice. Interestingly, the index and bibliography do not mention Schon, but he does cite Walter Vincenti's excellent *What do Engineers Know and How do they know it?* (Baltimore, MD Johns Hopkins U.P., 1990). which is in similar vein but much more detailed. There is a clear link between Jurisprudence and technology (but not social engineering) in the thought of Karl Llewellyn, but I cannot pursue that here.

<sup>51</sup> This characterisation is based in part on Ian Alexander, 'Action Balanced by Reflection', a review of Schon's classic text. **For Schon's influence on the discourse (but not the practice) of legal education in the US in the 1990s**, see Richard K. Neumann Jr., 'Donald Schön, The Reflective Practitioner, and The Comparative Failures of Legal Education', 6 *Clinical L. Rev.* 401 (2000) Available at: [http://scholarlycommons.law.hofstra.edu/faculty\\_scholarship/519](http://scholarlycommons.law.hofstra.edu/faculty_scholarship/519)

<sup>52</sup> L. Friedman, 'Law, Lawyers and Popular Culture', 98 *Yale L. Jo.* 1579, at 1598 (1989). I am grateful for Peter Twining for help with framing these ideal types, but the responsibility is mine alone.

means, with what resources? And who lacks opportunity to learn what they need? It encompasses both formal legal education and formal learning and the complex relations between them. Even to reflect impressionistically on such questions in common sense terms provides a radically different perspective on 'legal education' from that to be found in the other two models.

Before elaborating on the use of these models it is worth underlining two points. First, this table represents a steadily expanding series of perspectives. The reflective practitioner model incorporates and extends the primary school model; similarly the Friedman model incorporates the first two perspectives. This model encompasses all institutionalised instances of law teaching, the ideas of learning and lifelong learning, public understanding of law, and much else besides. It would be possible to add a fourth model framing a global perspective in order to construct a demographic total picture of learning about law in the world as a whole; but here I want to concentrate parochially on England and Wales.<sup>53</sup>

Second, these are ideal types, thinking tools, to which various kinds of approach to our subject approximate. They are not descriptions nor are they intended as the basis for recommendations for policy or reform. I suggest that

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<sup>53</sup> If one adopts a global perspective and tries to construct an overview or total picture of learning about law in the world as a whole, I suspect that it would mainly reveal the extent of our (e.g. Western legal educators') collective ignorance. In respect of formal legal education there is a specific historical reason for this: within Western traditions of academic law, the great bulk of attention has been directed to the municipal law of one country or jurisdiction and only recently have we moved regularly beyond this. I have suggested elsewhere that, in addition to this, national 'systems' of LET tend to be quite context-specific in relation to the structures of higher education, the histories, politics and economics of LET, and cultural differences between legal professions, academic tribes and territories, and other such factors.(see "Legal Education" and "Globalization" as Framing Concepts', in Simon Archer, Daniel Drache, and Peer Zumbansen (eds.) *The Daunting Enterprise of the Law* (fest for Harry Arthurs, Georgetown, Ont, McGill Queens University Press,2017)) Diffusion of legal education ideas and practices and student works is commonplace, but the extent to which diffused ideas and practices are transformed or resisted after arrival probably varies considerably.

nearly all of our official reports on 'legal education' approximate to the first model in that they focus almost entirely on institutional provision and assessment (i.e. 'formal, education as it is used here) and it takes neither learning nor lifelong learning seriously as concepts. Insofar as our thinking has been influenced by this model, we have been concentrating on a very small part of a vast and complex whole.

The reflective practitioner model marks a step in the right direction (she has learned how to learn). The third more expansive model can accommodate our two mantras and all my earlier lightbulbs comfortably; it is more appropriately called 'learning about law'; it can accommodate a great diversity of formal provision; it can be the basis of trying to imagine a demographic total picture of learning about law in our society, which could be helpful in setting a context for more specific enquiries. However, it does not involve any commitment to trying to cover the whole terrain in detail.

Of course, law schools, courses, teachers, training programmes, professional certification are important and studying informal learning about law is a huge, largely untilled, field, but there are powerful reasons why failing to place formal legal education in the context of informal learning about law can lead to distortions and misperceptions about the former as well as neglect of the latter.

Even a very rough demographic landscape or overview of learning about law in our society would have several uses. Obviously it opens up great vistas of new or underdeveloped research; it suggests that it needs educationists and educators, educational psychologists, neuroscientists and those involved in other kinds of occupational training to be stimulated to pay attention to our patch ; it would provide a context for setting priorities and for viewing initial

professional formation and CPD in relation to a much larger picture in a situation of increased mobility and restructuring of occupations; it would help regulators to pinpoint areas of high risk for clients of unregulated or other providers of legal services, such as will writers, or unregulated givers of advice involving a significant legal component (e.g. family counsellors and mediators); and it would provide a better balanced vision than lenses that have focused on very small parts of a bigger picture and which have dominated nearly all discourse, research and debate in this area until recently/ now.<sup>54</sup>

Constructing such total demographic pictures for the limited purpose of sketching a general landscape of learning about law in a given society may not be as difficult as it sounds: with regard to formal provision, it would not be difficult to identify all of the main types of institutions that provide a substantial amount of teaching about law, such as business schools, police training institutions, in-house training in law firms and the public service, and for occupations and professions (such as accountancy) for whom some law is explicitly a requirement, the Judicial Studies Board, magistrates' training, providers of courses and examinations for A level law, and even institutionalised street law programmes. Most of the basic data exists, but needs to be synthesised, insofar as that has not already been done systematically.

The much larger phenomenon of individuals, occupations and groups who informally learn or mislearn about law in their daily lives, as part of their work, or in social media is more challenging. However, this is not a blank slate. A lot of information exists in scattered literature about, for example, law in general culture, knowledge and opinion about law, empirical data about gaps in training

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<sup>54</sup> LIC Ch.15.



provision, sociology of work and so on. And researchers in these fields might be stimulated to try to fill in some of the gaps.

Contrasting (a) and (c) highlights how very narrow the primary school model is in fact and what a distorted picture it gives of the twin ideas of learning about law and lifelong learning. This model in practice excludes the vast majority of institutions providing formal instruction about law, leaving most under the radar of researchers and regulators. There are many types of institution involved and one wonders about the suitability of some because they may give a false picture of law or because of the trickle down effect.<sup>55</sup>

The Friedman model includes both formal and lifelong learning, that is nearly all extra-mural and informal learning including, perhaps especially, for those who follow law-related careers.<E>

Lifelong learning stretches from cradle to grave: It is a false assumption that law is a new subject for 18 year olds; good law teachers build on their students' knowledge and experience rather than pretend that they are inducting them into a mysterious new world that speaks in a foreign language. Even for career lawyers of different kinds the great bulk of formal professional formation probably takes up an average only 4 to 7 years between the ages of 18 and 25

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<sup>55</sup> There is a danger of paraprofessional training and law for other professions and occupations, such as accountancy or the police, being watered down imitations of academic or professional syllabuses. For example, I have in the past encountered in police training the conflation of Evidence in Legal Contexts with the Law of Evidence (a much narrower and more formalistic conception) on which see JIC Ch. 14 (training of detectives emphasising the Law of Evidence, without reference to the Logic of Proof ('too academic'.. Oh, where is Sherlock Holmes?). There is a further danger that narrowly focused legal subjects, such as Contract for Accountants, may give the students a distorted picture of Law as a field and the place of Contracts and contracting within it. When teaching a course on 'Law for non-lawyers' (an unsatisfactory term) which attracted many intending accountants, I insisted that the first part should be a general introduction to law, before they studied Contract for the second half.

There are other aspects of this distorting lens. A common assumption of the primary school model, sometimes explicit, more dangerously implicit, is that the main aim of undergraduate degrees in Law is to provide the academic stage of professional legal formation. Sometimes a useful but uneasy accommodation is achieved by saying that a liberal law degree is the most appropriate foundation for intending lawyers. I do not need to go over that familiar ground here. It is well-developed in Harry Arthurs' idea of humane professionalism.<sup>56</sup> Karl Llewellyn put the matter forcefully:

The truth is, therefore, that the best *practical* training a University can give to any lawyer who is not by choice or by unendowment doomed to be a hack or a shyster \_\_ the best *practical* training, along with the best human training, is the study of law, within the professional law school itself, as a liberal art.<sup>57</sup>

Many people accept this; some only pay lip service to it; in practice it is regularly negated by the overloaded curriculum, both the creeping core and the steady additions to the list of desired skills or competencies. Four year degrees as the norm would hardly mitigate that, unless the idea of a liberal law degree is implemented in practice and not conflated with other desirable, but different objectives.<sup>58</sup>

Relieving universities of such external pressures is unlikely to lead to great divergencies. Who is going to drop contract or the basic concepts and principles of Private and Public Law? Who is going to move away from the idea of transferable intellectual skills? What if a graduate has studied Law and the Family or Immigration Law rather than Trusts? Or Criminology instead of specific

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<sup>56</sup> See, for example, the festschrift for Arthurs op. cit supra, . at 000.

<sup>57</sup> K. Llewellyn, *Jurisprudence* (1962) 376 . Note that Llewellyn was talking about 'the professional law school'; in England law schools have had a much broader clientele with less than half of their graduates seeking to enter private practice and even fewer succeeding.

<sup>58</sup> Combining the vocational stage with undergraduate study is an increasingly popular option; that is quite different from the idea of a four year liberal undergraduate degree.

criminal offences? Established pedagogical devices such as moots, mock trials, splitting up a class into 'law firms' can incidentally contribute to both liberal education and such matters as teamwork, or first steps in advocacy. However, sometimes the central learning objectives of such devices are undermined by premature vocationalism, as when a major emphasis in mooting is placed on etiquette and correct forms of address rather than on careful preparation and arguing persuasively. Conversely, continuing competence for an intellectual profession is sometimes undermined by the attitude that one can give up theory and intellectual concerns at 21.

The essence of the matter is not mainly that the terms of reference of our perpetual committees are too narrow:<sup>59</sup> rather it is that nearly all participants in these perpetual reviews have been complicit in making the primary school model and its working assumptions the focal point of thinking, research and policy-making about legal education generally. The gravitational pull of the primary school model is illustrated by the passage on your handout about different missions. I drafted this some years ago: notice I was drawn into listing desirable subjects for practitioners in the context of discussing day one competence and so the point was subtly distorted]

One moral is that academic lawyers should persistently, confidently and loudly articulate what is the general mission of our academic discipline in the context of all learning about law in society, before narrowing our focus to some more specific or specialized type of enquiry.

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<sup>59</sup> For example, it was reasonable for LETR to be mainly concerned with what the regulators need to do under recent legislation, but the review team felt that their remit was too narrow, see above n. 00<7>.

Third, some may suggest that although the idea of lifelong learning is important, but ‘it just happens and we can’t control it’. Ask the educationists or the medics or management consultants. They might suggest that such a view is just not taking lifelong learning seriously.

Let me suggest one formulation of this mission, starting with research-led universities, while fully acknowledging that there are many kinds of institutions involved in primary legal education. The mission of such universities is the advancement and dissemination of knowledge (know what, know how) and understandings (know why) of the subject-matters of the various disciplines. The mission of Law as a discipline is to advance knowledge and understandings of the subject-matters of the discipline as they are perceived at various times and places. The potential of Law as one of the great humanistic disciplines, half way between the social sciences and humanities, is stated quite eloquently, but perhaps rather optimistically at the start of this lecture.<sup>60</sup> It contrasts sharply with what is assumed in the primary school model. Look at what is left out from our mission by that model: the advancement of learning; scholarship; excellence rather than basic competence; broad, imaginative and interesting skills and knowledge rather than what is thought necessary for some reductionist image of ‘the lawyer’;<sup>61</sup> the intimate connection between research and teaching (for students as well as teachers);<sup>62</sup> cross-disciplinarity; specialisation; with over 100 fields of law rather than an inflated core of 12 or so;<sup>63</sup> and above all innovation

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<sup>60</sup> p..1 supra (ILC Repot).

<sup>61</sup> Huxley-Binns, supra n. 000

<sup>62</sup> Many university mission statements emphasise the opportunities of students to interact with scholars ‘working at the frontiers of knowledge’.

<sup>63</sup> See the range and depth of the catalogues of law publishers such as Oxford University Press, Cambridge University Press or Hart Publishig.

and adjustment to changing circumstances. The missions of university disciplines and regulation of professional competence are fundamentally different. Each should support the other. But as academic lawyers our mistake has been to be sucked into the framework of the primary school model rather than confidently proclaiming our basic mission. This is not a vision just for a few elite law schools; any institution involved in teaching at graduate level needs to subscribe to these goals as far as feasible for the sake of the quality of their teaching and learning. Not all law teachers are required to be researchers, but they do need to be scholars and, in order to maintain their self-respect, to take their own discipline seriously.

This view contrasts sharply with the view that sees Law schools as service industries to the legal profession and the role of undergraduate legal education as mainly providing an elementary constrained first step for admission to practice.

One can anticipate some objections to the suggestion that we should take the two mantras and the Friedman ideal type seriously. First, the Friedman model makes the field *unmanageable*. A brief answer is that it is relatively easy to paint a total picture or an overview of learning about law in our society as a form of demographic realism. A rough overview despite some gaps, will suffice to set a broad context and to focus on learning.<sup>64</sup> Setting up an ideal type is not the same as specifying a programme of research or learning.

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<sup>64</sup> As suggested above it should not be difficult to outline a census of institutions delivering legal education. It is also possible to imagine the main categories of places in which 'non-lawyers' learn about law (see note 000 above), the learning and information needs of various occupations and activities, the contexts in which there is high risk of mislearning or absence of needed advice and help, and the gaps in provision to meet unmet needs. This would require both an extensive literature review and collation as well as some original research. It would make an interesting project.

Second, it might be argued that surely professional formation and continuing competence are the most important kind of domain within the vast diffuse kinds of learning about law and *should take priority*. Common sense suggests this is probably right for regulators and others, but in a very crude way.<sup>65</sup> But how can we set priorities systematically outside a broader picture? What about all the other institutions, activities and learnings that currently take place under the radar? Surely some of them may be socially important, interesting or in need of attention. For example, the role of universities in helping our understandings keep pace with change locally and transnationally — academic law has an important role to play in acting on Susskind’s insights, as do other disciplines such as neuroscience and other spheres of professional formation.<sup>66</sup>

Third, some may suggest that although the idea of lifelong learning is important, but ‘it just happens and we can’t control it’. Ask the educationists or the medics or management consultants. They might that such a view is just not taking lifelong learning seriously.

Finally, it may be objected that this is ‘academic’ in the worst sense and politically naïve. Well, I am proud of being an academic and I believe that academia should not be diverted too far from its mission which is quite different from and much broader than that of regulators and providers of legal services. Of course, Law Schools have to make the case for taking that mission seriously,

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<sup>65</sup> On the relationship between formal legal education and training see supra at 000. In some contexts it may be sensible to treat these as quite separate topics, but in Susskind’s world this soon may no longer be the case.

both in relation to the practicing professions and other disciplines in the humanities and social sciences and to Government and the public at large.<sup>67</sup>

Recently the learned societies of the UK have been making the case to Government why sustained financial and political support for Humanities and Social Sciences (including Law) is important for our society, individuals and the wider world.<sup>68</sup> The case is made in quite different terms from that of regulators or professional trainers: it is made in terms of advancing the frontiers of knowledge, innovation, depth of understanding, intellectual skills advanced study, specialisation and evidence-based policy making.<sup>69</sup>

As the passage from the ILC report quoted at the start of this lecture suggested some of the great strengths of law as a discipline are precisely that it has to confront real life practical problems as well as hypothetical ones, that it has proved quite responsive to what are perceived as great or at least important

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<sup>67</sup> In the Appendix I have made a few practical suggestions addressed mainly to academic lawyers.

<sup>68</sup> Good examples include *The Full Complement of Riches, the contributions of the arts, humanities and social sciences to the nation's wealth* (British Academy, 2004), the Academy of Social Sciences series of booklets *Making the Case for the Social Sciences*, similar reports from the Royal Society, and the American Academy of Arts and Sciences. See also recent writings of Martha Nussbaum, Professor of Law and Ethics at the University of Chicago Law School, for example *Not for Profit: Why Democracy Needs the Humanities* (Princeton: Princeton University Press, 2010)

<sup>69</sup> In a different context I contrasted what a good liberal legal education can offer to intending practitioners beyond the remit of regulators: 'Regulation of professional formation is rightly concerned with basic day one competence rather than excellence and perceived necessary requirements of competence rather than desirable characteristics of many practitioners and others such as numeracy, social science awareness, fact skills, command of languages, acquaintance with foreign legal traditions, implications of transnationalisation of law, and specialisms. That is natural for regulation, but narrow for the total system of LET. The mission of university law schools is much broader than provision of primary legal education (to intending practitioners and others), especially in relation to scholarship, specialisation, advanced study, inter-disciplinary work. Regulation of professional competence should encourage rather than undermine that mission.' (Twining (2014) supra n.000 at pp.97-98. Was I succumbing to the lure of the Primary School model?

contemporary problems, and that it is in a much healthier relationship with a powerful, vibrant and important public profession than it was in the days of ‘Look at me, I had no legal education’.

## APPENDIX

### **Some suggested action points for the academic legal community**

- Establish posts, including chair(s), for Public Understanding of Law
- Mitigate the over-loaded undergraduate curriculum for example by introducing optional Add-ons, floating modules, more imaginative use of the calendar year, and reversing the creeping core.<sup>70</sup>
- Introduce general and specialised opt-in provisions for four-year LLBs and prepare the case for FYDs for the next HE funding review (cf . Warwick,<sup>71</sup> UCL, Edinburgh, Glasgow).
- Introduce a course (first year or optional) on the history, sociology, financing, careers, and futures of legal services (including LET in UK or more broadly).
- Design modules and course materials on Legal Ethics that do not conflate notions of personal integrity and basic legal values with disciplinary regulation of practitioners.
- Strengthen research and theory about Learning about Law and Legal Education as a field, including forging closer relations with Education Faculties/ Depts. Fight for increased funding for this.
- Set up reviews of particular sectors, especially those that have fallen under the radar, including postgraduate programmes, access courses, career choice processes.
- Initiate a campaign for an inclusive National Institute of Legal Education and Training to replace the defunct Warwick Centre.

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<sup>70</sup> ‘Add-ons’ which can take many forms, are modules separate from the degree, but available to students (and could be taken into account in the final degree); they may be particularly useful in giving students opportunities to choose more options. The original idea was to make one or two certified add-ons for foundation or core subjects not included in the official syllabus, but this need to be the case. Floating modules is a broader term and does not necessarily require assessment. For example, postgraduates taking the optional Law Teachers’ Programme can earn a certificate of attendance, quite separate from their degree.

<sup>71</sup> Warwick University Law Prospectus: ‘M 101 Law (four years).... Our four-year programme has a similar structure to our three-year course, but enables you to take a larger number of modules and diversify your studies.’ {not restricted to Law and.....}



