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Changes to the training of English and Welsh lawyers – implications for the future of university law schools.

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Key words

BSB; SRA; Law Schools; Qualifying Law Degree; Solicitors Regulation Authority; Solicitors Qualifying Examination; SQE

Abstract

The focus of this article is upon the plans by the Bar Standards Board and, in particular, the Solicitors Regulation Authority to remodel the education and training processes for barristers and solicitors. Presenting the possibility of the most radical changes to legal education in recent decades, the proposals present Anglo-Welsh law schools with dilemmas in terms of their future educational models, student recruitment and issues of equal opportunities and accessibility. However, opportunities are also present, should some law schools wish to utilise the momentum for change to move away from constraints necessitated by following an, in part, professionally determined syllabus. Research Excellence Framework, professorial expertise and doctoral degree data are used to demonstrate the possibility that some law schools have already moved away from focusing on areas most relevant to professional practice, but may have retained a dependence on qualifying law degree status to recruit students in comparatively large numbers.

Introduction

Writing in 1950, Gower observed that the topic of legal training aroused singularly little interest in England. This contrasted with the position in some other jurisdictions, notably the USA, where the education of lawyers was a regular feature of academic discussion. Gower went on to consider the desirability for and nature of the law degree as a requisite part of education for legal practice.¹ In the subsequent decades, legal education and training has become a more regular feature for discussion among the English and Welsh academic legal communities and, during that time period, the qualifying law degree (QLD) has become entrenched as a mainstay of Anglo-Welsh university law school provision.² However, 2017 onwards sees Anglo-Welsh legal education facing the potential for the most radical shake-up in decades.

The 2013 Legal Education and Training Review (LETR) report³ set the scene and this was followed by separate consultation exercises by the Bar Standards Board (BSB)⁴ and the

¹ L.C.B. Gower, 'English Legal Training' (1950) 13 *Modern Law Review* 137, 137

² For ease of reference, the term 'law school' will be used throughout as shorthand for law school, law department, faculty of law etc.

³ Jane Ching, Paul Maharg, Avrom Sherr, Julian Webb (Lead Researchers) *Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales* (2013) <http://www.lettr.org.uk/the-report/index.html>

⁴ Bar Standards Board, *Future Bar Training Consultation on the Future of Training for the Bar: Future Routes to Authorisation*, October 2016

<https://www.barstandardsboard.org.uk/media-centre/press-releases-and-news/bsb-extends-future-bar-training-consultation-to-include-a-new-proposal-from-coic-and-the-bar-council/>

Solicitors Regulation Authority (SRA).⁵ The final proposals from the BSB in March 2017 introduced modest changes to routes to entry to the profession, with the academic stage of training unchanged in general structural terms.⁶ In contrast, the SRA announced in April 2017 its commitment to a far more radical move, the replacement of qualifying law degrees (QLDs), Common Professional Examination/graduate diploma in law conversion courses (CPE/GDL) and Legal Practice Courses (LPCs) with an externally set and marked Solicitors Qualifying Examination (SQE). With regard to the demise of QLDs and GDLs, for law schools which choose to continue to offer degree courses or similar which prepare students for the SQE, this will be the first time for most that they have faced an externally devised syllabus and externally set and marked assessments with regard to this aspect of their activity. For those institutions which choose to opt out⁷ and, perhaps, use the introduction of the SQE as an opportunity to move their law degrees away from their current professional accreditation focus, this will be the first time in decades that they have faced on a significant market test to determine how many students will choose to study law without a professional

⁵ SRA, *A new route to qualification: the Solicitors Qualifying Examination*

<https://www.sra.org.uk/sra/consultations/solicitors-qualifying-examination.page>

⁶ BSB *Policy Statement on Bar Training*, 23 March 2017

https://www.barstandardsboard.org.uk/media/1825162/032317_ftb_-_policy_statement_version_for_publication.pdf

⁷ I am conscious of language sensitivity here. Technically, opt-in is a more appropriate term for a brand new educational and training approach. However, as the vast majority of current law degree provision does or can lead to a qualifying law degree which, in turn, takes a student half way down the current solicitor training road, not providing a degree which includes SQE training is opting out of this longstanding relationship with solicitor education. In the absence of a term which is likely to satisfy the whole readership of this piece, 'opt-out of SQE preparation' or similar is the term I tend to adopt, but in most instances it could readily be replaced with a term such as 'decision not to opt-into SQE preparation'.

accreditation attractor. Around 17,000-18,000 law students are admitted annually to degree courses which, even when dropout rates are factored in, equates to up to 50,000 law students at any one time spread across the three years of typical degree.⁸ At 2017 levels, tuition fees from these students will contribute annually over £300 million to higher education providers. While actual figures will differ between universities and between subject groupings, Universities UK data shows that on average across the sector teaching funds accounts for around 70 per cent of income.⁹ It is problematic to predict what future proportion of these student numbers would continue to be attracted to law as a pure academic discipline alone, as the position has remained largely untested since the 1970s. At the time of the 1971 Ormrod Report, which recommended that a law degree become the usual first stage on the path to legal practice, the number of law degree students was stated as around 5,000 distributed across 22 English and Welsh universities.¹⁰ There has, therefore, been a very significant increase in law student numbers since the QLD was introduced, a significant increase in the number of law degree providers and a significant increase in total teaching faculty numbers. This must be placed in the context of the broader picture of increases in the student population generally since the 1970s, although indications are that increased numbers of

⁸ See, for example, Law Society/SRA data <https://www.lawsociety.org.uk/Law-careers/Becoming-a-solicitor/Entry-trends/>

⁹ <http://www.universitiesuk.ac.uk/policy-and-analysis/reports/Documents/2016/university-funding-explained.pdf> . While there is significant focus in some law schools on research activity, student numbers and the income these generate will often play an important role in providing the economic climate within a law school which allows for much of this research activity to be undertaken.

¹⁰ Plus others studying at 17 polytechnics or other colleges. Ormrod Report (1971). *Report of the Committee on Legal Education*. Cmnd. No.4595. London: HMSO.

students attracted to law are notably higher than the overall increase across all degree subjects.¹¹

Current QLD providers therefore face the prospect of balancing their future academic preferences with market predictions. This will likely be of interest not only within law schools themselves, where future job/redundancy prospects will be a factor under consideration, but also at wider university level given the part that contribution that law student numbers make to institutional finances. To compound the decision-making challenges, law degree providers which might be minded not to opt into SQE preparation but to continue to offer a QLD for BSB purposes will be subjecting themselves to continued professional body direction of a proportion of their syllabus, for potentially limited fee income reward directly associated with this – the Bar accounting for around ten per cent of the combined barrister and solicitor practising professions.

This article makes only passing reference to the recent historical detail of the BSB and SRA consultations, as commentary and analysis about those can be found elsewhere – not least in the many academic and practitioner responses to the consultations themselves. Rather, the article begins from the position that, in particular, the SRA proposals present possibly the most significant shake-up of legal education in England and Wales since the early 1970s. From this perspective, consideration is given to the choices currently facing academic law degree providers, in the context of historical debates regarding the nature of legal education and future opportunities and threats.

¹¹ For general statistical data see Paul Bolton, *Social & General Statistics Education: Historical statistics Standard Note: SN/SG/4252*, 27 November 2012, House of Commons Library.

The article engages with leading academic scholarship to the extent necessary to facilitate the discussion of recent developments, but restrictions on length and the desire to focus upon the current challenges means that this is not intended to present an all-encompassing literature review. The aim of the article is to promote and lead debate regarding about a potentially fundamental, once in a generation, change to Anglo-Welsh legal education. It is intend that in this respect other commentators will see this contribution as an essential one to engage with as discussion and debate continue to unfold.

In terms of approach, the article opens by reviewing the proposed professional body changes to qualifying provisions, in particular the more radical ones from the Solicitors Regulation Authority. It then engages with economic factors which may influence future law school choices, and critique and analysis of historical and current pedagogic considerations. As part of the latter exercise consideration is given to, through selected evidence of research activity, the extent of deeper law school engagement with the current qualifying law degree provision and associated professionally relevant education. The article concludes by looking at future possible approaches by law schools to the changing professional qualification climate, including the relevance of such choices to issues of equality of opportunity on the part of students.

Changes to qualifying provisions

In March 2017 the BSB has announced that, following its consultation exercise, it was to make no significant changes to the existing QLD and GDL aspects of the academic stage of

training.¹² More substantive changes are proposed for the vocational stages of barrister training, but consideration of these fall outside of the focus of this article.

In April 2017 the SRA announced far more significant changes to both academic and professional stages of solicitor training, with the introduction of a two part centrally set assessment - the SQE. Graduate status will be required before the SQE can be attempted, but this need not be a law degree. A law degree will provide no SQE exemptions and, therefore, no qualification-time-frame advantage to prospective solicitors unless it provides partial or full student preparation for the SQE assessments. The finer detail of such assessments is still under consideration by the SRA. At the time of writing the SRA had begun the process to select an organisation to be responsible for setting and administering the SQE and was reviewing consultation responses about the regulatory framework for the SQE. 2020 will be the earliest date for the introduction of the SQE, to allow the SRA time for development. The SRA has outlined, in broad terms, the intended content of the SQE:

Stage 1	Stage 2
<p>6 x Functioning Legal Knowledge Assessments:</p> <ul style="list-style-type: none"> • Principles of Professional Conduct, Public and Administrative law, and the Legal Systems of England and Wales • Dispute Resolution in Contract or Tort • Property Law and Practice • Commercial and Corporate Law and Practice • Wills and the Administration of Estates and Trusts • Criminal Law and Practice. 	<p>2 x 5 Practical Legal Skills Assessments:</p> <ul style="list-style-type: none"> • Client Interviewing • Advocacy/Persuasive Oral Communication • Case and Matter Analysis • Legal Research and Written Advice • Legal Drafting. <p>All five assessments must be taken and passed in the same two practice contexts of the candidate's choice, making a total of ten assessments.</p> <p>The practice contexts are: Criminal Practice; Dispute Resolution; Property; Wills and the Administration of Estates and Trusts; Commercial and Corporate Practice.</p>

¹² Bar Standards Board, *BSB Policy Statement on Bar Training*, 23 March 2017

**1 x Practical Legal Skills Assessment: Legal
Research and Writing**

The focus of this article relates to law schools which currently provide the academic stage of training, and therefore are likely to consider whether or not to become involved in SQE stage 1 (SQE 1) preparation as the replacement assessment point for this. As currently drafted SQE 1 sees the removal of European Union law and the introduction of Professional Conduct, Commercial and Corporate Law. Terms such as ‘and practice’ and ‘dispute resolution’ are also notable additions to some subject areas, indicating that the SQE 1 will be more practice orientated than the current QLD academic stage. This expectation is reinforced by indications by the SRA that appropriate elements of the SQE will closely adhere to April 2015 Statement of Solicitor Competence (SoSC).¹³ During the consultation stages the SRA proposed a significant element of multiple choice examinations in SQE 1.

A prospective move to SQE 1 preparation is likely to present significant challenges for some university law schools. For the first time, many such law schools will face the prospect of losing significant autonomy if they set about preparing their students for an externally set syllabus, leading to externally set and marked assessments and being measured in league table terms on the basis of student performance in these.¹⁴ Aspects of the challenges likely to

¹³ See Solicitors Regulation Authority, *Solicitors Qualifying Examination: Draft Assessment Specification*, October 2016. Statement of Solicitor Competence annexed to this document.

<https://www.sra.org.uk/sra/consultations/solicitors-qualifying-examination.page>

¹⁴ Prior to its abolition by the Further and Higher Education Act 1992, the Council for National Academic Awards (CNAA) was the UK degree-awarding body for polytechnics, institutions of higher education and some other academic institutions. Some academics will have experience of this external regime. A small number of

be faced are neatly summed up in the following anonymized consultation response from ‘A Russell Group University’ to one of the SQE consultation exercises:

‘We expect that the great majority of universities will be compelled to adapt their law curriculum to incorporate some or all of the SQE1 preparation. A small number of elite institutions may well be able to ignore the changes. But for other research intensive universities, like us, who do not currently offer vocational teaching, the SQE could dramatically affect everything we do – which could also mean radically changing our staff base...’¹⁵

The external nature of the SQE may also present challenges in terms of The Frameworks for Higher Education Qualifications of UK Degree-Awarding Bodies (FHEQ) and European Qualifications Framework (EQF) levels.¹⁶ Under the current QLD regime law schools are free to place and level the professionally required foundation modules as they please, as long as they comply with general Quality Assurance Agency for Higher Education (QAA) requirements. For example, tort or criminal law might be first year undergraduate, FHEQ

university law schools may also currently offer teaching towards externally set assessments, for example those for the Chartered Institute of Legal Executives. The position for longstanding LPC providers is also different in that the immediate predecessor to the LPC, the Law Society Finals (LSF), was also externally assessed. However, the LSF was replaced by the LPC in 1993 so, as with the CNAAs, staff numbers with direct experience of this are likely to be relatively small.

¹⁵ Solicitors Regulation Authority, *A new route to qualification: The Solicitors Qualifying Examination (SQE) Summary of responses and our decision on next steps*, April 2017, 16

¹⁶ See, QAA, *UK Quality Code for Higher Education Part A: Setting and Maintaining Academic Standards*, 2014. <http://www.qaa.ac.uk/assuring-standards-and-quality/the-quality-code>

level 4, modules in some institutions but second or even final year undergraduate, FHEQ level 5 or level 6 subjects, in others. Law schools adopting the SQE preparatory route will need to consider appropriate levelling and assessment for internal qualification award purposes, while also preparing students for an entirely externally controlled syllabus and SQE assessments. Similarly, SQE preparatory law schools will need to be mindful on the SRA intention to require all SQE assessments to be attempted post-graduation. The current approach by a number of QLD providers to set many, sometimes all, foundation professionally required subjects in years one and two, leaving final stages of the course free for specialist option choices, may need to be revisited for SQE subjects if students are to have the maximum chance of engaging with these subjects later in SQE assessments. Research produced during the SQE consultation process indicated that SQE 1 assessments can be placed at final year undergraduate, level 6 and Stage 2 assessments at postgraduate, level 7.¹⁷ Until the SRA produces comprehensive examples of SQE assessments and full details of syllabus content, it remains uncertain to what, if any, extent the university law school sector will concur with such analysis. Therefore, while SQE preparation included within degree courses need not necessarily reduce significantly the space available for options study, the temporal location of this space may have move. Such movement may impact on some optional subjects which have prerequisites and, more broadly, on the expectations which can be placed on students if options move to earlier stages of the degree. For example, in current FHEQ terms, options in final year, at level 6, can expect students to acquire detailed knowledge 'at least some of which is at, or informed by, the forefront of defined aspects of a discipline'. Similarly, students should demonstrate levels of conceptual understanding such that they can 'devise and sustain arguments, and/or to solve problems, using ideas and

¹⁷ See Sarah Maughan, *Reviewing Levels and the Proposed Content Demands in the Solicitors Qualifying Examination*, October 2016.

techniques, some of which are at the forefront of a discipline’ and be able to ‘describe and comment upon particular aspects of current research, or equivalent advanced scholarship, in the discipline’. Students are also expected to demonstrate the ability ‘to manage their own learning’. These highest level undergraduate requirements are absent or toned down in level 5 descriptors and below, necessitating any downward levelling of current option subjects to lower expectations accordingly.¹⁸

For those law schools which choose to opt out of SQE preparation, opportunities arise to develop law degree content unconstrained by professional requirements. This presents economic challenges and both pedagogic opportunities and pedagogic challenges. The pedagogic debates, largely predating SQE considerations but still of relevance in that context, are well developed elsewhere and as such, in the interests of space and focus, these will be rehearsed only briefly in this article. The potential economic challenges have been less well explored, perhaps indicating that in recent decades law schools have largely tended to assume a continuing level of financial stability and security. For some law schools the decision not to pursue an SQE preparatory path will be accompanied by the prospect of significantly tougher market conditions for student recruitment not bolstered by the attractor of the ‘qualifying’ element associated with the current QLD. As noted in the introduction, an implication of the separation of barrister and solicitor academic legal education is that a law school which opts out of SQE preparation but retains QLD status for BSB purposes may find itself complying with profession imposed requirements for relatively little financial benefit, given the small size of the Bar, and associated student recruitment, compared with the solicitors’ profession.

¹⁸ For further detail of level requirements, see QAA, *UK Quality Code for Higher Education Part A: Setting and Maintaining Academic Standards*, 2014. <http://www.qaa.ac.uk/assuring-standards-and-quality/the-quality-code>

A potential tangential consequence of the BSB and SRA going their separate ways in terms of the academic stage of training is that the BSB could find the number of QLD providers shrinking and with it a reduction in the diversity of the QLD graduate pool from which the Bar can draw.

Economic background considerations

“Without students, law schools as we know them would cease. Virtually no law school anywhere in the world operates purely as a research institution. The seemingly insatiable demand for legal education however has sometimes caused faculties to underestimate their dependence on students.”¹⁹

It is a trite observations that rising or even stable law student numbers are far from inevitable. For example, American Bar Association (ABA) data shows an almost 30 per cent fall in enrolments to accredited law schools during the first half of the current decade. As one report noted “Since 2010, United States law schools have experienced a drop in student admissions to a level not seen since 1973, when there were 53 fewer schools than today...”.²⁰ A number of trigger events, for example, the broader economic climate and threats to some traditional lawyer roles posed by technological developments, have been identified in the US. Drawing

¹⁹ Benjamin J Richardson, ‘Students as Stakeholders in Legal Education: Gaining Admission to Law School’, in Fiona Cownie (ed), *Stakeholders in the Law School* (Oxford: Hart, 2010) Ch5, 127-155, 127

²⁰ Jane Croft, ‘Law Schools Admissions Collapse Continues’, *Financial Times*, November 20 2016

<https://www.ft.com/content/4ddb437e-9ace-11e6-8f9b-70e3cabccfae> . For more detailed, comparative academic analysis see Richard L. Abel, “‘You never want a serious crisis to go to waste.’ Reflections on the reform of legal education in the US, UK, and Australia’ (2015) 22 *International Journal of the Legal Profession* 1, 3-25

parallels with the Anglo-Welsh position must be undertaken with caution,²¹ although Anglo-Welsh law schools seem no less vulnerable to risks of the type faced by their US counterparts, with the professional education and training regime changes adding an extra element to the mix.

England and Wales have seen significant increases in law student numbers in recent decades, accompanied by significant expansion in the size of some schools and as well as the creation of new ones. This growth has accompanied significant increases in numbers of legal practitioners in England and Wales, particularly those qualified as solicitors. The largest, by a very significant margin, legal profession in England and Wales, solicitors have almost quadrupled in number since the 1970s, to over 130,000 practitioners in 2017. In contrast, practising barrister numbers are less than an eighth of solicitor numbers, at around 16,000. In recent years there have been opportunities, in terms of available workplace training places, for around 6,000-7,000 newly qualified solicitors to be admitted annually.²² The status of the QLD, as constituting half of the current usual²³ six year education and training period required to qualify as a solicitor, has made it an educational ‘commodity’ which is attractive for more than its academic nature and content.

²¹ For a fuller discussion of the US environment, see Brian Z. Tamanaha, *Failing Law Schools* (Chicago: University of Chicago Press, 2012)

²² See SRA, Law Society and BSB published data: <https://www.lawsociety.org.uk/Law-careers/Becoming-a-solicitor/Entry-trends/>; https://www.sra.org.uk/sra/how-we-work/reports/data/population_solicitors.page; <https://www.barstandardsboard.org.uk/media-centre/research-and-statistics/statistics/practising-barrister-statistics/>

²³ Other routes to qualification exist, but the QLD route accounts for by far the greatest proportion of qualifiers.

While on average half or fewer current QLD graduates ultimately proceed to qualify as practitioners, a significantly higher proportion, in the region of two-thirds to three quarters, of applicants to QLDs and students early in their studies indicate that they place significant importance on the possibility of progressing to qualification.²⁴ In numerical terms these proportions equate to between 11,000-13,000 from the 17,000-18,000 total annual intake of law students. Choosing a QLD over another subject, perhaps a favourite but non-vocational subject at 'A' level, is a form of potential future career insurance for some students. This is reflected more widely in data which indicates that degree subjects with a vocational relevance have tended to increase disproportionately in popularity in recent years, especially as students have become more concerned about tuition fee debt and employability after graduation.²⁵ Under the current qualifying law degree regime, HESA data from the last decade shows that rates of employment for law graduates compares well with many other degree subjects. However, in terms of the quality of financial attractiveness of such employment, recent statistical analysis drawn from tax record data places law degree holders in the lower half of degree subjects listed in terms of earnings.²⁶ What is not revealed from these data sources is, for example, what impact the 30-40 per cent annually of law graduates who proceed to qualification as a solicitor have on both total percentage employed figures and level of earnings data. The latter may skew the figures downwards for law graduates in the early years

²⁴ See, for example, Melissa Hardee, *Career Expectations of Students on Qualifying Law Degrees in England and Wales*, 2014, Higher Education Academy

https://www.heacademy.ac.uk/system/files/resources/hardee_interimreport_2014final.pdf

²⁵ For further discussion, see, Andrew Boon and Avis Whyte, 'Will there be Blood? Students as Stakeholders in the Legal Academy', in Fiona Cownie (ed), *Stakeholders in the Law School* (Oxford: Hart, 2010) Ch7, 185-224, 207-8

²⁶ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/619512/SFR_18_2017_LEO_mainText.pdf

post-graduation while they complete their training, but then rebalance when these qualified practitioners begin to build generally well paid careers. What the tax record data does suggest is that the anecdotal assumptions which can be heard expressed by some within the academic legal community about high levels of employability and earnings for law graduates who do not progress to practitioner should be seen, in some instances at least, as just that – assumptions. Each individual law school is likely to have its own student employability profile and may wish to undertake its own research to determine how this profile might be affected if ties are cut from the solicitor education and training regime.

It would be highly pessimistic to speculate that law schools collectively equipped and staffed for 18,000 new students annually could find themselves competing for significantly fewer than 10,000 students if SQE preparation was rejected by a significant proportion of the sector. However, as illustrated by the US experience, large percentage falls are possible as are notable shifts in the attractiveness of different institutions. In the Anglo-Welsh context, GDL providers collectively have experience of significant reductions in applicant numbers for a period following the 2007 global economic downturn – applications falling by over 35 per cent between 2008 and 2015 – with some providers withdrawing from this market and others teaching significantly reduced student numbers. The GDL decline provides useful experience about the realities of competing in a declining market. However, because there are a relatively small number of GDL providers and in most cases the GDL is not a mainstay of activity, the extent and impact of such experience is limited. Even those providers which closed their GDL as uneconomic were likely to have reasonably readily absorbed the fee loss or compensated for it by, for example, boosting QLD numbers. It is difficult to envisage how the sector would absorb similar percentage declines in law degree student numbers.

Pedagogic background considerations

Debates within the academic legal community have more general parallels within the wider academic world. The nineteenth and twentieth centuries saw ongoing debate about ideas of collegiality and the pursuit of knowledge and truth as an end in itself,²⁷ through the post-1945 higher education expansion agenda and moves towards universities as engines of economic growth and social reshaping. The latter period also included the creation of the more managerial, teaching focused polytechnics. The polytechnics were intended to be distinct from the university sector in having as part of their creation remit the aim of closer links with business and professional sectors and, for most of their history, in being under the control of local government. The polytechnics were re-designated as universities in the early 1990s.²⁸

It has been argued that in parts of continental Europe university law faculties occupied an important role in the creation of the modern law of their states. In contrast, in the common law jurisdictions of England and Wales the law is largely a creation of the judiciary and the legal professions.²⁹ As Sugarman notes, this also resulted in a near monopoly influence over

²⁷ Notably the ideas of John Henry Newman, *The Idea of a University* (London: Aeterna Press, 2015) [original publication 1852]

²⁸ Department of Education and Science (DES), *A Plan for Polytechnics and Other Colleges* (1966; Cmnd. 3006); DES Memorandum 8/67, *Polytechnics: A Parliamentary Statement* (1967), for further discussion see P. Leighton, 'New Wine in Old Bottles or New Wine in New Bottles?' (1988) 25 *Journal of Law and Society* 85–101, 89; Andrew Boon and Avis Whyte, 'Will there be Blood? Students as Stakeholders in the Legal Academy', in Fiona Cownie (ed), *Stakeholders in the Law School* (Oxford: Hart, 2010) Ch7, 185-224, 193-98

²⁹ For further discussion of these historical developments, see, Andrew Boon and Julian Webb, 'The Legal Professions as Stakeholders in the Academy in England and Wales', in Fiona Cownie (ed), *Stakeholders in the*

legal education and a barrier to the development of a liberal legal education model.³⁰

Development of academic law schools in this environment, it has been suggested, tended towards an academy ‘cemented in a conservative and static role’ engaging with a canon not created by them.³¹ Acceptance of this position fell out of favour with many academic lawyers from the 1960s, resulting in the growth of socio-legal and other theoretical elements of legal scholarship. Although, defence of a private-law, case centric approach continued in some quarters against a perceived threat from the social sciences to law’s objectivity.³²

Significant university law school involvement in the education of legal practitioners is a relatively modern phenomenon. Gower describes a position of little or no organised legal education for lawyers until the middle of the nineteenth century, with organised education and assessment beginning to emerge with the University of London, founded in the 1830s. Take-up of such education was slow to develop.³³ While degree level education has a longer

Law School (Oxford: Hart, 2010) Ch3, 65-95, 80, citing D Sugarman, ‘“A Hatred of Disorder”: Legal Science, Liberalism and Imperialism’ in P Fitzpatrick (ed), *Dangerous Supplements: Resistance and Renewal in Jurisprudence* (London: Pluto Press, 1991) 34, 60 .

³⁰ D. Sugarman, ‘Legal Theory, the Common Law Mind and the Making of the Textbook Tradition’ in W Twining (ed), *Legal Theory and Common Law* (Basil Blackwell 1986); David Sugarman, ‘A special relationship? American influences on English legal education, c. 1870–1965’ (2011) 18 *International Journal of the Legal Profession* 7. See further commentary by P. Leighton, ‘The LLB as a liberal degree? A re-assessment from an historical perspective’ (2015) 22 *International Journal of the Legal Profession* 1, 87-102

³¹ Andrew Boon and Julian Webb, ‘The Legal Professions as Stakeholders in the Academy in England and Wales’, in Fiona Cownie (ed), *Stakeholders in the Law School* (Oxford: Hart, 2010) Ch3, 65-95, 81.

³² David Sugarman, ‘Beyond ignorance and complacency: Robert Stevens’ journey through Lawyers and the Courts’ (2009) 16 *International Journal of the Legal Profession* 7

³³ L.C.B., Gower, ‘English Legal Training’ (1950) 13 *MLR* 137, 139-142

history with the Bar, it was a post-1945, and especially in the 1960s onwards, that market demand for higher education which led the solicitors profession to move towards graduate entry, replacing non-graduate apprenticeships, as the most common route to qualification.³⁴ It has been observed from these early stages of wider university involvement in the provision of legal education that they tended towards curricula which followed closely professional requirements and ‘to be vocational rather than scientific and cultural with little opportunity for advanced research.’³⁵ In more recent decades the position has become more nuanced, with professional requirements for qualifying law degree purposes playing a significant part, but accompanied by pedagogic debates within legal academia. Aspects of such debates have revolved around tensions between meeting professional qualification requirements and the educational expectations of students interested in paths to practitioner status, and desires for law as an academic discipline to be more ‘liberal’ or ‘purely’ academic in nature.³⁶ Such debates include calls that liberal legal education should focus on professional life no more

³⁴ The solicitors profession introduced a law school attendance requirement in the early 1920s and universities became further involved in legal education, but this did not amount to compulsory degree level education. For further discussion of these and other early historical developments, see, L.C.B., Gower, 'English Legal Training' (1950) 13 *MLR*137; Andrew Boon and Julian Webb, 'The Legal Professions as Stakeholders in the Academy in England and Wales', in Fiona Cownie (ed), *Stakeholders in the Law School* (Oxford: Hart, 2010) Ch3, 65-95.

³⁵ L.C.B., Gower, 'English Legal Training' (1950) 13 *MLR*137, 146

³⁶ See, for example, Andrew Boon and Julian Webb, 'The Legal Professions as Stakeholders in the Academy in England and Wales', in Fiona Cownie (ed), *Stakeholders in the Law School* (Oxford: Hart, 2010) Ch3, 65-95, 81-82. Citing A.C. Hutchinson, 'Beyond Black-Letterism: Ethics in Law and Legal Education' (1993) 33 *Law Teacher* 301, M. Partington, 'Academic Lawyers and "Legal Practice" in Britain: A Preliminary Reappraisal' (1988) 15 *Journal of Law and Society* 374

than incidentally,³⁷ and contrasting ideas that professional elements of legal education are what many students see as important and their importance should be reflected as such. In this latter vein Economides and Smallcombe argued that:

‘Perhaps in the interests of preserving some spurious notion of academic autonomy, lawyers in higher education have on the whole shut themselves off from the needs of the legal profession and the clients they serve.’³⁸

It has also been noted as part of these debates that the meaning of a liberal legal education itself lacks definitional certainty. As BurrIDGE and Webb observe:

‘liberals (at least in legal education) don’t necessarily have a clear idea of what theories of learning they espouse consistently with their liberalism, or what the implications of their liberalism are for pedagogy, including their own role as teachers and facilitators of learning.’³⁹

³⁷ Roger BurrIDGE and Julian Webb, ‘The Values of Common Law Legal Education: Rethinking Rules, Responsibilities, Relationships and Roles in the Law School’ (2007) 10 *Legal Ethics* 1, 72-97 at 77, citing Anthony Bradney, ‘An Educational Ambition for “Law and Literature”’ (2000) 7 *International Journal of the Legal Profession* 343

³⁸ K. Economides and J. Smallcombe, *Preparatory Skills Training for Solicitors* (London: The Law Society, 1991) 4, cited by Andrew Boon and Julian Webb, ‘The Legal Professions as Stakeholders in the Academy in England and Wales’, in Fiona Cownie (ed), *Stakeholders in the Law School* (Oxford: Hart, 2010) Ch3, 65-95, 81-82.

³⁹ Roger BurrIDGE and Julian Webb, ‘The Values of Common Law Legal Education: Rethinking Rules, Responsibilities, Relationships and Roles in the Law School’ (2007) 10 *Legal Ethics* 1, 72-97 at 88-89, citing

It has been suggested that up to 50 per cent of law academics may prefer socio-legal approaches to their work, although such self-declaration must be treated with caution in a climate of disagreement about the very meaning of socio-legal.⁴⁰ In contrast, there are some indicative findings that students attracted, for example, to a law school based upon reputationally considerations may subsequently express less satisfaction with the more theoretical, less practitioner relevant aspects of the teaching they experience.⁴¹ It has also been suggested that socio-legal and theoretical approaches are those less favoured when subjects studied within a degree are considered by the legal professions.⁴² Such sentiments are not confined to more recent, higher fee higher education models. For example, following an earlier review of legal education it was suggested that:

‘...unless they are very different from most people in English society (and most societies) today, students are not likely to be much motivated by the values embedded in the ACLEC [The Lord Chancellor’s Advisory Committee on Legal Education and Conduct] Report—“the essential link between law and legal practice and the preservation of fundamental democratic

Fiona Cownie, “The Importance of Theory in Law Teaching” (2000) 7 *International Journal of the Legal Profession* 225, 237.

⁴⁰ Andrew Sanders, ‘The Future of the Law Degree’, in Hilary Sommerlad, Sonia Harris-Short, Steven Vaughan and Richard Young (eds), *The Futures of Legal Education and the Legal Profession* (Oxford: Hart, 2015)

⁴¹ For further discussion, see, Andrew Boon and Avis Whyte, ‘Will there be Blood? Students as Stakeholders in the Legal Academy’, in Fiona Cownie (ed), *Stakeholders in the Law School* (Oxford: Hart, 2010) Ch7, 185-224, 217, citing Fiona Cownie, *Legal Academics: Cultures and Identities* (Oxford: Hart, 2004); D Halpern, *Entry Into the Legal Professions: The Law Student Cohort Study Years 1 and 2* (London: Law Society, 1994)

⁴² Vera Bermingham and John Hodgson, ‘Desiderata: What Lawyers Want From Their Recruits’ (2000) 35 *Law Teacher* 1, 15

rights" ... or "the philosophical, ethical and humanitarian dimensions of law" What they want, in all likelihood, is a job, preferably satisfying and well-paid, in a labour market characterised by almost universal insecurity and widespread deskilling.⁴³

Supporting evidence for such observations is not always clear cut and it seems likely that among 50,000 law students at any one time and around 150,000 practising solicitors and barristers there will be ample scope for variation of opinion. In the absence of agreement within legal academia about the meaning and scope of terms such as 'liberal', 'post-liberal' etc the true extent of any antithesis between these ideas and 'vocational' legal education with also remain uncertain.⁴⁴ With regard to more recent arguments about the desirability or otherwise of 'constructivist learning approaches involving clinics, simulations and practitioner placements' - these may be viewed by some 'as symptoms of a pernicious vocationalism; the focus upon student learning is evidence of an unhelpful consumerism that is commodifying education services' and by others as important additions to a law school curriculum which has meaningful impact beyond the confines of the academy.⁴⁵

Relevance of the pedagogic arguments to professional body deliberations

⁴³ H. Arthurs, 'Half a League Onward' (1997) 31 *Law Teacher* 1 at 8, making reference to ACLEC, *The Lord Chancellor's Advisory Committee on Legal Education and Conduct' First Report* (1996).

⁴⁴ Hepple, for example, expressed the opinion that there was a 'false antithesis' in this regard. Hepple, B. (1996). 'The Renewal of the Liberal Law Degree' (1996) 55 *The Cambridge Law Journal* 3, 470-487 at 471

⁴⁵ For the source of these quotations and further discussion see Roger Burrige and Julian Webb, 'The Values of Common Law Legal Education: Rethinking Rules, Responsibilities, Relationships and Roles in the Law School' (2007) 10 *Legal Ethics* 1, 72-97 at 94-95

While the debates about the legal academic-practitioner divide occupy a rich seam of academic literature, when viewed over the lengthy time-frame during which such debates have been ongoing they are somewhat niche in nature compared to many other areas of legal research and scholarship.⁴⁶ In terms of the engagement with such academic analysis by the legal profession and professional bodies, the evidence is limited. In the most recent SRA and BSB consultations about the future of legal education, it was telling from the consultation and responses published⁴⁷ by the SRA in particular that there was limited evidence of deep, pedagogically focused arguments by respondents. Nor was there much well-argued support for the current QLD as an academic model. There were responses from within the professions of the type ‘if it isn’t broken don’t fix it’, along with strong opposition to initial SRA proposals that graduate status should cease to be a marker of solicitor education. The latter arguments tended to focus on the negative status impact, both at home and abroad, of future solicitors being non-graduates and perhaps having passed professional examinations after a short period of cramming. However, responses paying tribute to the current QLD *per se* from

⁴⁶ For example, very few such research outputs were found in the REF 2014 survey, discussed later. In its final report, the REF 2014 law sub-panel noted that it ‘was pleased to receive submissions relating to legal education but the methodological rigour and significance exhibited by some of these outputs was uneven.’ *Research Excellence Framework 2014: Overview report by Main Panel C and Sub-panels 16 to 26*, January 2015 at p71.

⁴⁷ It has been observed that the SRA has stated that 253 responses were received but only 148, 58 per cent, have been published. The SRA’s explanation is that permission was required from each respondent for publication.

Richard Simmons, ‘Law teachers blast ‘disingenuous’ SRA over super-exam’, *Lawyer 2B*, 9 May 2017

https://12b.thelawyer.com/issues/12b-online/law-teachers-blast-disingenuous-sra-over-super-exam/?cmpid=dnews_3399803

within academia and the professions were, in large part, notable by their absence.⁴⁸ As discussed elsewhere in this article, in backtracking from its original proposals the SRA has not reintroduced the requirement for a law degree, any degree subject will be satisfactory.

Historically, the extent and intensity of pedagogic debates may have been allayed to some extent by medium to light touch professional requirements for QLDs. Legal academia has been able to prosper financially by attracting students with the allure of the ‘qualifying’ aspect of QLDs while retaining important freedoms to determine detailed syllabus content, teaching methods and approaches to assessment. However, such freedom is not limitless. By dictating the requirement for seven foundations of legal knowledge, the BSB and SRA have removed freedom from individual law schools to determine to some extent the nature and content of at minimum one half and typically up to two-thirds of a three year degree course.⁴⁹ For many non-vocational humanities and social science subjects such levels of academic sacrifice would be unacceptable. Such is the longevity of the QLD that many, most with

⁴⁸ The nature of responses were somewhat constrained by the questions contained in the consultation documents, although in other contexts respondents appeared to be able to express their opinions reasonably freely by appropriately stretching their interpretation of selected questions.

⁴⁹ *The Joint Statement on the academic stage of training* published on behalf of the Bar and Solicitors professions specifies by title but not content detail seven foundation subjects which must account for no fewer than half of the credits on a three year QLD course. <https://www.sra.org.uk/students/academic-stage-joint-statement-bsb-law-society.page>. While there is scope for debate about the nature and extent of what is ‘foundational’, in their survey of practising lawyers Bermingham and Hodgson found that over 70 per cent considered the foundation subjects to be very important or important for underpinning areas of law important for legal practice, with the remainder almost all being neutral on the point. Similarly, high proportions of respondents considered the foundation subjects to be an “essential intellectual grounding”. Vera Bermingham and John Hodgson, ‘Desiderata: What Lawyers Want From Their Recruits’ (2000) 35 *Law Teacher* 1, 26-27.

experience only in UK law schools, academic lawyers working in Anglo-Welsh universities today will have experienced no other model.

In terms of reaching their current position, some law schools may have chosen to embrace the QLD model as best suiting their preferred mix of liberal and professionally orientated coverage. Others may have been less persuaded by underlying academic arguments, but chose the QLD route following cost-benefit analyses - attracting students in far greater numbers than can be attracted without QLD status allows for staff to be employed in greater numbers. The time costs of servicing foundational module teaching may be offset by the benefit of much higher student numbers to spread between more specialist modules. In research focused law schools especially, this allows faculty opportunities to teach far more to their research strengths. Other law schools may not have crunched the cost benefit analysis numbers, but simply played safe – not wishing to test the uncharted and potentially treacherous waters of offering only a non-qualifying law degree which has to be marketed purely on its academic appeal and value. Given the longstanding domination of QLDs in most laws schools, the reasons in many cases for the original choice are likely to be buried in archives of meeting minutes or lost to the memories of retired academics.

Playing safe is not to be denigrated. While the motivational factors influencing choice of university and subject by prospective students are varied and complicated,⁵⁰ it has been

⁵⁰ See, for example, C. Callender and J. Jackson, 'Does the Fear of Debt Constrain Choice of University and Subject of Study?' (2008) 33 *Studies in Higher Education* 4, 405–429; David Kember, Amber Ho and Celina Hong, 'Initial motivational orientation of students enrolling in undergraduate degrees' (2010) 35 *Studies in Higher Education* 3, 263-276, 264; Skatova A, Ferguson E, 'Why do different people choose different university degrees? Motivation and the choice of degree', *Frontiers in Psychology*. (2014) 13 November, 1244.

observed that level of enjoyment of subjects at school affects the choice of degree.⁵¹ Law is offered as an ‘A’ level subject, but take-up is small compared with large ‘A’ level attractors such as English and History. Familiarity with and liking of the subject may be relied upon by university departments such as English and History because there are significant numbers of ‘A’ level students who would like to pursue further study of a subject that they have experience of and enjoy. Law schools lack this starting advantage. A prospective non-QLD and or non-SQE preparatory law school, wishing to assess the market, might be better to consider the number and size of university humanities and social science departments which have to attract applicants without the benefit of a large prospective student cohort who have experienced and come to know and like the subject at school. In terms of actual numbers, data relating to 2013-14 shows that fewer than 15,000 students began studying law at ‘AS’/’A’ level, compared with over 85,000 for English, 54,000 for History, 73,000 for Psychology and 39,000 Sociology. Law schools considering whether or not to opt out of providing SQE preparatory degrees and/or QLDs and interested in the possibility of links between ‘A’ level interest and degree choice would be comparing numbers with ‘A’ levels such as Government & Politics, with 12,000 students and Religious Studies with 22,000.⁵² While taking care not to draw unsupported causal conclusions, in the period to which these ‘A’ level figures relate, over 120,000 university applications were made to study law

⁵¹ David Kember , Amber Ho and Celina Hong, ‘Initial motivational orientation of students enrolling in undergraduate degrees’ (2010) 35 *Studies in Higher Education* 3, 263-276, 264

⁵² Ofsted, *A-level subject take-up*, March 2015, Reference no: 150048

<https://www.gov.uk/government/publications/a-level-subject-take-up> In each case the numbers given relate to the take up of a subject initially at ‘AS’ level. Proportions of students progressing to full ‘A’ level were less. For example, for law just over 70 per cent, equating to just over 10,000, full ‘A’ level students in 2013-14.

compared to around 80,000 to study history.⁵³ Over three times the number of ‘A’ level history students compared to law ‘A’ level students generated around a third fewer degree applications. Similar observations can be made with other non-vocational degree subjects.⁵⁴ Correlation does not imply causation, but these figures should give pause for thought regarding why law degrees attract applications in such large numbers in the relative absence of academic exposure pre-university and, therefore, the potential strength of the attractor factor associated with the ‘qualifying’ aspect of current law degrees.

Some evidence of the extent of law school engagement with professionally relevant activity

As Burridge and Webb observe, from the focus of a liberal education model research and teaching - the creation as well as the dissemination of knowledge and understanding - go hand-in-hand.⁵⁵ From this perspective, evidence of research activity in law schools can offer useful insights into the extent to which what some may consider the more important parts of legal education for professional practice purposes are being engaged with. The analysis provided in this section allows for consideration of the extent to which the creation of legal knowledge in law schools is synergistic with the core, practitioner relevant, elements of the

⁵³ See UCAS data at: <https://www.ucas.com/corporate/data-and-analysis/ucas-undergraduate-releases/ucas-undergraduate-end-cycle-data-resources/applications-and-acceptances-types-higher-education-course-2016>

⁵⁴ See, for example, historical data relating to sociology in Paul Wakeling, *International Benchmarking Review of Sociology Briefing document: statistical overview and commentary*, August 2009, The British Sociological Association and Economic and Social Research Council
<http://www.esrc.ac.uk/files/research/research-and-impact-evaluation/uk-sociology-statistical-overview/>

⁵⁵ Roger Burridge and Julian Webb, ‘The Values of Common Law Legal Education: Rethinking Rules, Responsibilities, Relationships and Roles in the Law School’ (2007) 10 *Legal Ethics* 1, 72-97 at 88

qualifying law degree. The findings below add to the body of literature which has engaged in classification exercises of legal research by means of approach (for example: law as a practical discipline; law as humanities; law as social sciences;⁵⁶ black-letter law; socio-legal studies, critical legal studies; legal feminism⁵⁷) by considering the subject matter of legal research and the expertise of selected legal researchers.

For the purposes of this section three sources of information are used: Research Excellence Framework data; data relating to professorial expertise, and; areas of research undertaken by doctoral students in law schools.

Research Excellence Framework Data

For any readers unfamiliar with it, the Research Excellence Framework (REF) is a peer assessment exercise intended to determine the quality of UK universities' research. A founding aim underpinning the REF is to produce indicators of research excellence which allow for benchmark comparisons of quality against international standards. The first REF took place in 2014 having replaced the Research Assessment Exercise (RAE), exercises for which ran from 1986 to 2008. REF gradings range from the highest four star - quality that is world-leading in terms of originality, significance and rigour, to one star - quality that is recognised nationally in terms of originality, significance and rigour. There is also an unclassified category - quality that falls below the standard of nationally recognised work. The value of REF data for the purposes of this article is that it indicates where academic lawyers, in the context of law schools choosing which pieces to submit for REF grading, and

⁵⁶ Mathias M. Siems and Daithí mac Síthigh 'Mapping Legal Research' (2012) 71 *Cambridge Law Journal* 3, 651- 76.

⁵⁷ Fiona Cownie, *Legal Academics* (Oxford 2004) 49–72.

those on the REF panel assigning grades, consider the most ground breaking work to lie. Is it, for example, in areas of research which might enhance the practice of law and ultimately benefit clients of lawyers, akin to research in medical schools ultimately benefiting patients, or is the focus elsewhere?

While it was argued almost two decades ago that the dominance of doctrinal research, the core methodology associated with practitioners and judges,⁵⁸ in United Kingdom university law schools was ‘entering its final death throes’,⁵⁹ the 2014 REF sub-panel for law described as ‘an indicator of the strength of the discipline’ that world-leading research was ‘demonstrated across the wide variety of methodologies ... including doctrinal...’ and that while socio-legal research methods were increasingly influential, there remained ‘many impressive examples of legal scholarship in the more traditional and classical modes’.⁶⁰ However, research methodology is only one piece in the jigsaw. The subject matter of the research plays an important role in determining its relevance to practitioners and their clients.

Published REF data is somewhat opaque in that each submitted piece is graded, but the individual grades are not disclosed. What is disclosed is the overall grading of a law school’s submission. Consideration of the REF submissions of a selection of the highest scoring law

⁵⁸ See, for example, N. Duncan and T. Hutchinson, ‘Defining and describing what we do: Doctrinal legal research’ (2012) 17 *Deakin Law Review* 1, 83-119, 107

⁵⁹ A. Bradney, ‘Law as a Parasitic Discipline’ (1998) 25 *Journal of Law and Society* 1, 71–84, 71

⁶⁰ *Research Excellence Framework 2014: Overview report by Main Panel C and Sub-panels 16 to 26*, January 2015 at p71

[http://www.ref.ac.uk/media/ref/content/expanel/member/Main per cent20Panel per cent20C per cent20overview per cent20report.pdf](http://www.ref.ac.uk/media/ref/content/expanel/member/Main_per cent20Panel per cent20C per cent20overview per cent20report.pdf)

schools can, therefore, provide a partial picture of the subject areas of research outputs which the REF Panel considered were among the highest quality.

The following data are drawn from 10 of the 'top' law schools in the 2014 REF. Given the scope for debate about how REF data should be analysed and ranked, the mechanism of choice for this article was to use the Times Higher Education subject rankings.⁶¹ These rankings order subject units by means of three categories derived from REF data: Overall; Output, and; Impact. Law schools in the top 20 for each of these three categories differ to some extent between categories, as does ranking order of those which are in all three. In the absence of what might clearly be agreed to be a definitive 'top 10', a selection of nine of the English law schools which were in the top 20 for all three categories plus the one law school from Wales which was also in this position were chosen.

The 10 law schools considered submitted in total 1612 research outputs. This constituted 29 per cent of the total 5,525 REF outputs from across the whole of the participating law school sector.⁶² Of the 1612, 1522, 94 per cent, were categorized for the purposes of this research. Those not included consisted of foreign language publications and a small number of other publications which fitted no standard category and for which an additional category would have constituted such a small percentage as to add nothing meaningful to the research arguments.

⁶¹ <https://www.timeshighereducation.com/sites/default/files/Attachments/2014/12/17/x/o/z/sub-14-01.pdf>

⁶² *Research Excellence Framework 2014: Overview report by Main Panel C and Sub-panels 16 to 26*, January 2015 at p70

http://www.ref.ac.uk/media/ref/content/expanel/member/Main_per cent20Panel_per cent20C_per cent20overview_per cent20report.pdf

Categories were reasonably broadly defined and, as such, offer the potential for some disagreement at the margins. Decisions also had to be made regarding the placing of pieces which overlapped categories, for example contract and commercial law or environmental and aspects of property law. However, the categorization process should be sufficiently precise for the purposes of this article – the intention being to give a general sense of research concentration among higher rated institutions.⁶³

Category (percentage of the total)

QLD core areas (lowest to highest)

Property Law (1.5 per cent)

Contract Law (3.1 per cent)

Tort (3.5 per cent)

Equity & Trusts (3.6 per cent)

Public Law (7.2 per cent)

European Union Law (10.2 per cent)

Criminal Law/Criminology (12.9 per cent)

Other areas (lowest to highest)

⁶³ With regard to research which had an international focus or focused on another jurisdiction in areas relevant to Anglo-Welsh legal practice, this was included under the heading for that area – for example, research relating to contract law in another jurisdiction was included in the ‘contract’ category. In that respect, it may be argued that a strength of academic research, in addition to the generation of new ideas and interpretations, is the opportunities it offers for Anglo-Welsh legal practice to be strengthened by innovations and experience from other jurisdictions.

Media Law (0.3 per cent)

Privacy/Confidentiality (0.7 per cent)

Legal Practice (0.8 per cent)

Civil Justice (1.3 per cent)

Environmental Law (2.1 per cent)

Comparative Law (2.4 per cent)

Legal History (2.4 per cent)

Employment Law (2.8 per cent)

Healthcare Law (3.5 per cent)

IT/Intellectual Property/Data Protection (3.8 per cent)

Family Law (4.4 per cent)

Human Rights (4.4 per cent)

International (7.7 per cent)

Legal Theory (9.7 per cent)

Company/Commercial Law (11.6 per cent)

It is instructive to compare this research activity with the concentration of work undertaken by solicitors in practice, identified from Law Society research data.⁶⁴ The following are among the most widely practiced areas, but areas which appear not to be well represented in terms of cutting edge, developmental research in law schools at the top end of REF rankings.

Key areas of work (percentage of practitioners undertaking the work) (lowest to highest)

Employment (11 per cent)

⁶⁴ <http://www.lawsociety.org.uk/support-services/research-trends/categories-of-work-undertaken-by-solicitors-2015/>

IT&IP law (14 per cent)
 Wills, probate & trusts (17 per cent)
 Family Law⁶⁵ (18 per cent)
 Tort based litigation⁶⁶ (19 per cent)
 Property⁶⁷ (43 per cent)
 Commercial⁶⁸ (52 per cent)

Along similar lines, as part of the Legal Education and Training Review an online survey directed at practising lawyers (barristers, solicitors and members of The Chartered Institute of Legal Executives) sought feedback regarding the importance placed from within practice on different elements of legal knowledge. Highest among these for solicitors were: Legal and Professional Ethics; Contract Law; Tort Law; Business; Equity and Land Law.⁶⁹ While the LETR report acknowledges that care must be taken in terms of the weight placed on these results, given the survey response rates, and criticism has also been forthcoming from post-

⁶⁵ Including child law and family mediation

⁶⁶ Including professional negligence, which as a broad descriptive term includes in some instances of contract based litigation. The Law Society also has a general litigation category, at 20 per cent, which is likely to include some additional tort examples.

⁶⁷ Including commercial and domestic conveyancing, planning and landlord & tenant

⁶⁸ Including business affairs, corporate finance, commercial litigation and insolvency

⁶⁹ Jane Ching, Paul Maharg, Avrom Sherr, Julian Webb (Lead Researchers) *Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales* (2013), paras 2.67-2.77

<http://www.lettr.org.uk/the-report/index.html>

LETR commentary,⁷⁰ the results do correlate with some elements of the Law Society data regarding dominant practitioner work areas.

In contrast, areas of work more highly represented in leading university research terms, but which feature less prominently in the practitioner arena include: criminal law, undertaken by 9.6 per cent of practitioners; civil liberties/human rights, undertaken by 2 per cent of practitioners; European Union law, directly undertaken by fewer than 3 per cent of practitioners, and; other international law undertaken by 2 per cent of practitioners.

These comparisons can only be crude indicators of the cross-over importance between academic law and legal practice. For example, criminal law research has much wider social and political importance than considerations only of its income generating capacities for practising lawyers. The QLD represents the academic stage of legal education and, as such a key part of that educational process is to help students to develop their analytical and critical reasoning skills, to see connections and contrasts between discipline areas and to learn from other jurisdictional approaches. Both local norms and practices and internationalism may be seen to be important to the law curriculum – in the words of Burrige and Webb ‘integral to the study of law’.⁷¹ Nor should the comparisons lead to a call for, in Rothblatt’s terms, more ‘servile’ education.⁷²

⁷⁰ See, for example, Andrew Sanders, ‘The Future of the Law Degree’, in Hilary Sommerlad, Sonia Harris-Short, Steven Vaughan and Richard Young (eds), *The Futures of Legal Education and the Legal Profession* (Oxford: Hart, 2015)

⁷¹ Roger Burrige & Julian Webb, ‘The Values of Common Law Legal Education: Rethinking Rules, Responsibilities, Relationships and Roles in the Law School’ (2007) 10 *Legal Ethics* 1, 72-97 at 93

⁷² Sheldon Rothblatt, ‘The limbs of osiris: liberal education in the English-speaking world’ in Sheldon Rothblatt and Björn Wittrock (eds), *The European and American University Since 1800* (Cambridge: Cambridge University Press, 1993), 26, 33 and 43

However, as with the earlier medical school comparison, it is arguable that academic institutions attracting students and taking their fees on the basis that they provide an element of compulsory professional education should be mindful of the reasonable obligations implicit in the formal or informal bargains reached with students and professions. In this latter respect, in return for the professional accreditation which has helped law schools grow and remain financially buoyant, to what extent might the professions have reasonably expected to benefit from advances which might have accrued from cutting edge research by leading academic lawyers?

A further measure of specialist concentration in leading law schools is the area of focus of their leading academics, those with full professor status. Using publicly available information, a review was undertaken in April and May 2017 in which 269 full professors were identified in the 10 leading REF law schools discussed above. Around a quarter of these professors listed a number of areas of research interest, such that a clear focus of specialisation could not confidently be ascertained from this methodology. Most of the remainder had a named title, for example 'Professor of Public International Law' or listed a very narrow range of expertise. As percentages of the total 269, title and/or narrowly focused expertise broke down as follows.

QLD core areas (lowest to highest)

Contract Law (0.7 per cent)

Equity & Trusts (1.1 per cent)

Tort (1.1 per cent)

Land/Property (2.2 per cent)

Public Law (4.1 per cent)

European Union Law (6.3 per cent)

Criminal Law/Criminology (8.2 per cent)

Other areas (lowest to highest)

Civil Justice (0.4 per cent)

Law & Gender (0.4 per cent)

Law & Policy (0.4 per cent)

Media Law (0.4 per cent)

Professional Ethics (0.4 per cent)

Civil Law (0.7 per cent)

Comparative Law (1.0 per cent)

Competition Law (0.7 per cent)

IT Law (0.7 per cent)

Law & Religion (0.7 per cent)

Family Law (1.0 per cent)

Employment/Labour Law (1.1 per cent)

Intellectual Property Law (1.1 per cent)

Human Rights (2.0 per cent)

Legal History (2.0 per cent)

Environmental Law/Sustainability (2.2 per cent)

Socio-Legal (3.0 per cent)

Healthcare/Medical/Bioethics (3.0 per cent)

Private Law (4.1 per cent)

Legal Theory/Jurisprudence (6.0 per cent)

International Law (8.0 per cent)

Finance/Company/Commercial/Tax (10.0 per cent)

Finally, in addition to REF research and the title or specialist focus on the most senior academics in leading law schools, it is also instructive to consider research undertaken by doctoral students as a further indication of the focus of the research culture in Anglo-Welsh law schools. This was a broader exercise than the two above, as all of those doctoral theses within a pre-determined time-frame from Anglo-Welsh law schools which were available were considered. A review of the British Library EThOS⁷³ database of doctoral theses in law revealed 900 completed in Anglo-Welsh universities between the year 2000 and 2016. This number isn't necessarily comprehensive, EThOS doesn't yet hold all theses, but the number identified is sufficient to demonstrate patterns. As with REF submissions, categorisations at the margins are debatable, but nevertheless the listings are sufficient for the purposes of this article. It is also of note that unlike REF submissions and professorial expertise where, by the nature of the exercise, the author was employed in a UK law school, a number of doctoral students will be from other jurisdictions to which many will return after completing their studies. While it is to the credit of Anglo-Welsh law schools that they attract international students who are seeking research supervision with an international or other jurisdiction focus, the presence of such theses makes interpreting the data in terms of its relevance to the interests of the Anglo-Welsh legal professions more problematic. However, subject to such limitations, the data is particularly useful for assessing a direction of travel in recent years in terms of the concentrations of expertise within a key applicant pool from which junior academic faculty can be recruited.⁷⁴

⁷³ <http://ethos.bl.uk/Home.do?jsessionid=6770365687E1163F1E8372D492E0E74B>

⁷⁴ In recent years qualification to doctoral level has become all but essential for early career applicants to research led law schools. [reference redacted]

Doctoral Category (percentage of the total)

QLD core areas (lowest to highest)

Equity & Trusts (1.0 per cent)

Tort (1.6 per cent)

Contract Law (1.7 per cent)

Property Law (2.1 per cent)

Public Law (2.8 per cent)

Criminal Law/Criminology (6.8 per cent)

European Union Law (8.4 per cent)

Other areas (lowest to highest)

Legal Practice/Legal Education (1.1 per cent)

Civil Litigation (1.1 per cent)

Legal History (1.9 per cent)

Employment Law (2.0 per cent)

Family Law (2.0 per cent)

Healthcare Law (3.1 per cent)

Legal Theory (3.2 per cent)

Human Rights (3.7 per cent)

IT and Intellectual Property (4.4 per cent)

Commercial Law (15.7 per cent)

International (36.8 per cent)

Overall, the data relating to leading REF submissions, professorial titles/expertise and doctoral degree subjects suggests that, in some institutions at least, there has developed a mismatch between a number of areas of law important to practising lawyers and areas which appear to be of greater importance within legal academia. In this regard, the attractor value of QLD status may have provided a solid financial foundation which law schools have been able to utilise to pursue their interests distinct from those of the practising professions. In terms of looking forwards, the data gives some credence to anecdotal indications that recruiting junior and even senior faculty with high level expertise in some of the foundation fields important to practitioners is problematic. This could be exacerbated in future with the indications that there will be an increased practice focus of some SQE subject areas and the addition of new compulsory subjects. For example, the professorial data detailed above includes only one ‘Professor of Professional Ethics’ - professional conduct is an area included in the SRA SQE 1 subject list. Depending upon the detail which emerges as the SRA’s SQE1 development plans unfold, some law schools may not be in strong a position to offer leadership in some subject areas and, depending upon their broader faculty composition, could even struggle to hold themselves out as fully SQE 1 preparatory without reconsidering their faculty makeup. At the time of writing the SRA were maintaining the stance that providers of SQE training would not be subject to direct oversight or regulation. Publication, the SRA has argued, of student performance data in the externally set and marked SQE assessments will provide a market mechanism to facilitate future student choice about the quality of SQE preparation offered by institutions. Law schools which pursue the SQE path will be mindful of the reputational implications of this, as well as the legal framework within which they operate in

terms of, for example, allegations of misrepresentation and/or breach of contract and/or negligent misstatement if appropriate expertise to provide SQE preparation is not available.⁷⁵

Risks of exacerbating access inequalities

As discussed above, ‘perceived hostility’ by some university law schools towards “vocationalism” and a practical approach⁷⁶ is not new and it is possible that some schools will take the introduction of the SQE as an opportunity to move further away from the limited vocationalism necessitated by the QLD. SRA arguments that the SQE should enhance rather than further inhibit access to the solicitors’ profession have been subject to some criticism in responses to the SRA’s consultation exercises and elsewhere.⁷⁷ One move which could lead to such concerns coming to fruition is a significant numerical withdrawal of current QLD providers from the SQE market.

⁷⁵ For further discussion of contractual and associated obligations see Dennis Farrington and David Palfreyman *The Law of Higher Education* (Oxford: Oxford University Press, 2nd edn, 2012), ch12. In addition, institutions will need to be mindful of advertising standards issues in relation to publicity materials – see, for example, the following Advertising Standards Authority decision relating to a law school <https://www.asa.org.uk/rulings/the-university-of-law-ltd-and-marketing-vf-ltd-a16-346902.html>

⁷⁶ Andrew Boon and Julian Webb, ‘The Legal Professions as Stakeholders in the Academy in England and Wales’, in Fiona Cownie (ed), *Stakeholders in the Law School* (Oxford: Hart, 2010) Ch3, 84, citing J Webb, ‘Inventing the Good: A Prospectus for Clinical Education and the Teaching of Legal Ethics in England’ (1996) 30 *The Law Teacher* 3 270, 271.

⁷⁷ A report by the Bridge Group, highlighted by the SRA during the consultation process, recognises the risks associated with the SRA’s SQE proposals and indicates the need for all interested parties to work together towards solutions. Bridge Group, *Introduction of the Solicitors Qualifying Examination: Monitoring and Maximising Diversity* March 2017

A number of studies have suggested that issues of finance play a significant role in influencing choices by prospective students about what to study and where. In particular, fear of debt has been found to have greater influence on choices by prospective students from low-income families compared to their wealthier counterparts.⁷⁸ There also continue to be notable socio-economic inequalities in terms of accessibility based around schooling and pre-university academic performance. In general terms, around 3 per cent of young people from the most disadvantaged geographical areas in the UK were admitted to selective high tariff universities in 2015-16. For Russell Group universities other than Oxford and Cambridge, students from the most privileged geographical backgrounds were up to 12 times more likely to be admitted compared with those from the most disadvantaged backgrounds. For Cambridge and Oxford the disparities were greater, with students from privileged backgrounds being between 14 and 16 times more likely to gain admission.⁷⁹

⁷⁸ See, for example, A. Forsyth and A. Furlong, *Socio-economic disadvantage and access to higher education*. (Bristol: Policy Press/Joseph Rowntree Foundation, 2000); A. Forsyth and A. Furlong, *Losing out? Socioeconomic disadvantage and experience in further and higher education* (Bristol: Policy Press/Joseph Rowntree Foundation, 2003); Claire Callender and Geoff Mason, 'Does Student Loan Debt Deter Higher Education Participation? New Evidence from England' (2017) 671 *The ANNALS of the American Academy of Political and Social Science* 1, 20 - 48. Callender and Jackson note that debt aversion was not found to correlate with choice of subject studied, although they acknowledge that this is in contrast to findings of other research and is likely to reflect differences in approaches to methodology and data analysis. They also acknowledge that changes in student funding arrangements may influence these findings. Four years after their study fees for English based students rose by around 300 per cent, to the £9,000 maximum introduced in 2012. C. Callender and J. Jackson, 'Does the Fear of Debt Constrain Choice of University and Subject of Study?' (2008) 33 *Studies in Higher Education* 4, 405-429

⁷⁹ See Office for Fair Access, *Outcomes of Access Agreement Monitoring for 2014-15*, paras 21 and 65-66 <https://www.offa.org.uk/wp-content/uploads/2016/05/2016.04-Outcomes-of-access-agreements-monitoring->

If some current QLD providing law schools choose not to develop SQE preparatory degrees, unless there is a notable move by students away from these providers towards degrees which are SQE preparatory, students will incur additional expense in undertaking postgraduate SQE preparation. Choice may be especially difficult if a student is offered one or more places at what they consider to be a high status institutions but for non-SQE preparatory degrees, and places on SQE preparatory but at less prestigious institutions. At the time of writing, the detail of the costs associated with postgraduate SQE preparation have yet to emerge. The SRA proposals will also result in the demise of the Legal Practice Course (LPC), with the most practical aspects of solicitor training being examined by means of SQE 2 after a period of workplace experience. In the event of a reduction in the number of SQE 1 preparatory degrees compared with current QLDs, and the associated increased necessity for postgraduate SQE preparation, it seems likely that two postgraduate study stages – one for SQE 1 and one for SQE 2 - will be required. How the combined costs will compare with current LPC fees and what aspects may be met voluntarily by employing law firms, or other organisations providing a period of recognised training, remains to be seen. Based upon experience from the current qualification system, it seems likely that City of London and some other large solicitors' firms will take first choice of graduates, law or non-law, and fund their postgraduate education and training. Currently this is LPC plus, for non-law graduates, GDL. In future, it will be SQE 1 and SQE 2. Smaller firms, charitable organisations, advice

[1.pdf](#) and UCAS data <https://www.ucas.com/corporate/data-and-analysis/ucas-undergraduate-releases/ucas-undergraduate-reports-sex-area> . For further discussion, see [reference redacted]

agencies and similar which may provide opportunities for recognised training are far less likely to be able to afford to pay for the SQE preparation elements.⁸⁰

From experience under the current education and training model, these issues matter in terms of accessibility to qualify as a solicitor. Research looking at the historic propensity for more prestigious solicitors firms to recruit largely from a select group of UK universities, including preferring non-law graduates from these universities to law graduates from some universities outside of the select group, poses challenging questions for an SQE legal education environment.⁸¹ As noted above, there continue to be access issues for students from certain

⁸⁰ In documentation relating to the SQE proposals the SRA has indicated that workplace training may be able to include work in student law clinics. However, the messages from this documentation are mixed and potentially inconsistent – for example, some indications that the workplace element of training is likely to come after SQE 1 would rule out counting law clinic work at undergraduate level. The SRA is also yet to provide detail of workplace experience content requirements in terms of breadth and type of experience. Careful consideration will be needed of the value to be placed, for example, on clinic work undertaken by a student on a non-SQE preparatory degree compared with a student on an SQE preparatory degree. Each can also be compared with a prospective solicitor undertaking the workplace element after passing SQE 1, the model which will most closely resemble the current post-LPC training contract/period of workplace learning model. In each instance the value of workplace experience may vary depending upon the participant’s knowledge of practice related/SQE subjects. In this latter regard, with the growth of law clinics across the law school sector some concerns about levels of expertise and competence are beginning to emerge. See, for example, *R v Conaghan & Ors* [2017] EWCA Crim 597

⁸¹ See, for example, observations by Vera Bermingham and John Hodgson, ‘Desiderata: What Lawyers Want From Their Recruits’ (2000) 35 *Law Teacher* 1; Heather Rolfe & Tracy Anderson, ‘A Firm Choice: Law Firms’ Preferences in the Recruitment of Trainee Solicitors’ (2003) 10 *International Journal of the Legal Profession*, 315; Louise Ashley & Laura Empson, ‘Differentiation and Discrimination: Understanding Social Class and Social Exclusion in Leading Law Firms’ (2013) 66 *Hum. Rel.* 219; Chambers Student, ‘Law Firms’ Preferred

demographics to certain institutions. Law school decisions about their engagement with the SQE have the potential to exacerbate these access issues. Should law schools from this ‘elite’ or ‘select’ sector disproportionately opt out of SQE preparation then those students from poorer backgrounds who succeed in gaining offers to study law at these universities may find themselves forced to choose an alternative option if postgraduate SQE 1 preparation is unaffordable. Depending upon how many law schools, and which they are, choose to opt in or out of SQE 1 preparation, the potential is present to worsen the accessibility landscape.⁸²

As discussed earlier, there may also be a cost risks to university law schools which choose to opt out of building SQE preparation into their degrees. In the context of ‘elite’ universities, to the extent that some law firms continue to favour graduates from these universities, the advantage that a QLD currently brings in terms of the savings in time and expense on the route to qualification would disappear in the absence of SQE preparation. Firms could select a greater proportion of non-law graduates from their favoured universities if the extra education required, a preparatory course for SQE1, is the same or very similar for both law

Universities, <http://www.chambersstudent.co.uk/where-to-start/newsletter/law-firms-preferred-universities>. L.

Ashley, J. Duberley, H. Sommerland and D. Scholarios, *A qualitative evaluation of non-educational barriers to the elite professions* (2015) Social Mobility Commission report. In recent years there have been initiatives from within legal practice to address issues of accessibility related to degree awarding institution, although these remain a work in progress. See, for example, Kathleen Hall, ‘Clifford Chance broadens diversity with ‘CV blind’ scheme’, *Law Society Gazette*, 10 January 2014 <http://www.lawgazette.co.uk/practice/clifford-chance-broadens-diversity-with-cv-blind-scheme/5039349.fullarticle> ; The Law Society, *Using blind and contextual processes for the recruitment of trainee solicitors: Encouraging social mobility Guidance and toolkit for England*, January 2016

⁸² A point recognised by the SRA, Solicitors Regulation Authority, *Solicitors Qualifying Examination (SQE) Equality, Diversity and Inclusion Risk Assessment*, April 2017, p4

and non-law recruits. Elite university law schools may in this environment put themselves in greater competition with non-law subjects within their own and other elite institutions. The extent of such a change can only be speculative at present, but under the current model there is evidence that while some law firms value highly the supposed cultural capital provided by their more favoured elite universities, this need not be provided by the law schools in these universities. The cultural capital, it seems, is associated with the institution rather than any particular subject area. Some commentators have even suggested that, in some contexts, under the current training model some firms may prefer non-law graduates.⁸³ There is also evidence that leading law firms currently are happy that *all* of the legal education provided to their non-law graduate recruits can be provided other than by traditional elite universities. Such firms tend to direct their future trainees to whichever institution, usually one of the large ‘for profit’ providers – BPP or the University of Law – with which the firm has an arrangement for the academic GDL stage and LPC provision.⁸⁴

Conclusions

The Solicitors Qualifying Examination proposals from the Solicitors Regulation Authority mean that Anglo-Welsh law degree providers face threats posed by a potentially significant

⁸³ Boon and Webb suggest that commercial firms may prefer non-law graduates who then take the GDL because contract law, central to commercial practice, is typically a first year subject in many LLBs and therefore studied when students new to law are not best equipped to appreciate its subtleties. Furthermore, first year subjects may largely be forgotten by the time a student reaches his or her training contract. Andrew Boon and Julian Webb, ‘The Legal Professions as Stakeholders in the Academy in England and Wales’, in Fiona Cownie (ed), *Stakeholders in the Law School* (Oxford: Hart, 2010) Ch3, 65-95, 76.

⁸⁴ Together, BPP and the University of Law claim preferred status arrangements with over 80 leading firms.

change to their ‘business’ models. However, there are parallel opportunities to radically rethink their academic models – albeit on a potentially smaller scale in terms of student numbers. This forced rethinking provides impetus for the law school sector to revisit the debates and arguments which have been simmering in the background for a number of decades. Debates which arise from observations of the type:

‘...it is not true that because the academy and the practising profession happen to have an interest in the same students at different locations on an educational continuum, their interests are congruent. In fact, the academy and the profession exist for different reasons, have different values, do different work, even operate on different understandings of what is meant by ‘law’. ...

The *raison d’etre* of the academy is the disinterested pursuit of knowledge through the fostering of independent, critical intelligence; that of the profession is to make specific forms of knowledge and skill available to, and for the benefit of, its clients. Neither of these positions is unworthy... But they are not identical or even, in many instances, compatible.’⁸⁵

Similar sentiments were expressed more recently by Sanders:

‘...academic education is supposed to challenge the status quo, not simply equip students with the skills to leech off it.’⁸⁶

⁸⁵ H.W. Arthurs, ‘Half a league onward: The report of the Lord Chancellor’s advisory committee on legal education and conduct’ (1997) 31 *The Law Teacher*, 1-12 at 9

⁸⁶ Andrew Sanders, ‘The Future of the Law Degree’, in Hilary Sommerlad, Sonia Harris-Short, Steven Vaughan and Richard Young (eds), *The Futures of Legal Education and the Legal Profession* (Oxford: Hart, 2015), 154

In contrast, as Burridge and Webb observe, it is neither necessary nor desirable to view theory, practice and critique as ‘mutually exclusive moments of education.’⁸⁷

Other arguments in each of these directions further engage with discussion of the purpose of university law schools in the late twentieth and early twenty first centuries – for example Bradney⁸⁸ compared with Savage and Watt.⁸⁹

As illustrated by the REF data, professorial expertise and doctoral degree data presented in this article, it is arguable that many areas of the academy have kept a distance from the interests of the legal professions. However, the waters have been muddied by a significant presence in the syllabus of professionally prescribed QLD subjects, and a proportion of the law student population attracted by qualifying status and at least the possibility of future professional qualification. The current QLD model is such that it allows for compromise, possibly an uncomfortable compromise in parts, between the different interests in the law school and practitioner communities. The future QLD model proposed by the Bar Standards Board is likely to offer the prospect for this to continue. It is much more challenging to visualise how this might be achieved with the SRA’s proposed SQE, without significant curriculum remodelling and reconsidering overall faculty composition. Anglo-Welsh law schools therefore face important decisions - whether to remain engaged with the preparatory

⁸⁷ Roger Burridge and Julian Webb, ‘The Values of Common Law Legal Education: Rethinking Rules, Responsibilities, Relationships and Roles in the Law School’ (2007) 10 *Legal Ethics* 1, 72-97, 95

⁸⁸ A. Bradney, *Conversations, Choices and Chances: the liberal law school in the twenty first century* (Oxford: Hart Publishing, 2003)

⁸⁹ N. Savage and G. Watt, ‘A “House of Intellect” for the Professions’ in P. Birks (ed), *Presenting Problems in the Law Volume 2: What Are Law Schools For?* (Oxford: Oxford University Press, 1996)

aspects of professional legal education and, if so, how this might best be achieved. An added complication is that if a law school steps away from SQE provision, will it be worth its while to tie its hands with a BSB QLD? With typical annual numbers of workplace training places (pupillages) for prospective barristers being well below 1,000,⁹⁰ less than 10 per cent of average annual law graduate numbers, the attractor value to law schools of offering only a BSB QLD will be modest unless the school is one which attracts a disproportionate number of would-be barristers and/or international students requiring a BSB accredited QLD. With these considerations in mind, it is useful to reflect further on the observations from history discussed in the opening of this article. As Gower noted prior to the introduction of the current QLD:

‘A candidate who has judiciously selected his subjects in, for example, the London LL.B., can cover virtually the whole of the Bar Final, some part of the Solicitors’ Final and the whole of the Solicitors’ Honours but will not obtain exemption from any of them. The result is that a student who takes a university law degree spends a considerable amount of his time duplicating his examination tests.

...

The universities have partly followed the professional bodies and partly reacted from them. If the universities say ‘The professional bodies are so severely practical that to get a balance we must continue to be theoretical’, the professional bodies say ‘The universities are so woolly and wide of the mark that we must insist on something useful’. Between the two the law student has fared none too well . . .⁹¹

⁹⁰ BSB Pupillage Statistics <https://www.barstandardsboard.org.uk/media-centre/research-and-statistics/statistics/pupillage-statistics/>

⁹¹ L.C.B. Gower, ‘English Legal Training’ (1950) 13 MLR 137, 155

In the context of the SQE, the option for law schools to address the sentiments expressed in the first part of this quotation have fallen away from their control. The SRA has rejected arguments that law schools should to be empowered teach and assess modules which would provide some SQE exemption. Therefore, for prospective solicitors, a return to a position similar to that described in 1950 appears to be a possibility. Law schools do, however, retain the option to address the sentiment in the second paragraph by, for example, moving further in the direction of the professional and vocational, to the extent needed to embrace the SQE.

For some, perhaps many, law academics this may represent a step too far. Instead, more radical curriculum remodelling could see law degrees which pay little attention to the professional model and more fully embrace liberal, socio-legal or other theoretical models. This could see a rejuvenation of the Anglo-Welsh law school community in terms of the nature and variety of curriculum design and content, albeit possibly accompanied by a shrinking student population and, over time, an associated reduction in numbers of law faculty.

Opting-in or opting-out of SQE preparation has potentially significant consequences for law schools and students, including consequences in terms of equalities agendas. Opt-in is likely to involve more than a minor tweaking of the curriculum. It will also require a willingness to accept featuring in league tables drawn from student performance in externally run examinations and the pedagogic implications which arise from this. Among the risks faced are those critiqued by observers of the primary and secondary education sectors, that teaching

to the externally imposed test risks superficial short-term knowledge acquisition at the expense of deeper learning.⁹²

Careful consideration of the requirements of the QAA Subject Benchmark for Law will also be needed if modules are to be devised which can serve both for internal degree awarding purposes and as preparation for external SQE assessments. Connected to this will be the need to ensure that FHEQ and EQF level criteria are met and consideration given to how order of teaching will be effected. For example, it is unlikely that, as currently happens with many QLDs, SQE 1 subjects could be taught in year one of a degree course, assessed at that stage for internal purposes, but not examined for SQE purposes until after graduation. In terms of both academic development at first year level and challenges for memory, it is unlikely that this would be effective for many students. For the same reasons, consideration will also need to be given to the choice of modules taught in year two of a degree course. However, concentrating SQE 1 preparation towards the end of a degree course may have significant knock-on effects in terms of what many academic lawyers may currently be used to -

⁹² Higher education league tables are already very familiar to academic lawyers and have been subject more broadly to scrutiny and debate. See, for example, M. Tight, M, 'Do League Tables Contribute to the Development of a Quality Culture? Football and Higher Education Compared' (2000) 54 *Higher Education Quarterly*, 22–42; L. Morley, *Quality and Power in Higher Education* (Buckingham: Open University Press, 2003). However, in the context of primary and secondary schools subject to externally set assessments it may be argued that the challenges presented are even greater. See, for example, H. Jones, 'National Curriculum tests and the teaching of thinking skills at primary schools - parallel or paradox?' (2010) 38 *Education* 1, 69-86; N. Stotesbury and D. Dorling, *Understanding Income Inequality and its Implications: Why Better Statistics are Needed*, *Statistics Views* (2015), 21st October,

<http://www.statisticsviews.com/details/feature/8493411/Understanding-IncomeInequality-and-its-Implications-Why-Better-Statistics-Are-N.html>

specialist option subjects being taken predominantly in year three by students with a good grounding in other law study.

To end on a reflective note, ultimately the current challenges facing law schools have the potential to bring into sharp focus the observation by Boon and Whyte:

‘The existence of satisfaction surveys is great, but it is secondary to the most diffuse, but possibly the most effective, form of student pressure. The mechanism of the market, manifest in failure to choose law as a subject of study or to shun particular types of provision or providers, involves no interaction with institutions, disciplines or even pollsters. There is nothing quite like the threat of extinction to change behaviour.’⁹³

⁹³ Andrew Boon and Avis Whyte, ‘Will there be Blood? Students as Stakeholders in the Legal Academy’, in Fiona Cownie (ed), *Stakeholders in the Law School* (Oxford: Hart, 2010) Ch7, 185-224, 219-20