NOTTINGHAM LAW JOURNAL

VOL 13(2) 2004

BOOK REVIEWS

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ASPIRATIONS FOR LAW IN THE UNIVERSITY

Conversations, Choices and Chances: The Liberal Law School in the Twenty-First Century by ANTHONY BRADNEY, Oxford, Hart, 2003, xii + 208 pp, Hardback, £22·50, ISBN 1-84113-248-9

In this short and engaging book Anthony Bradney attempts several tasks, and succeeds at more then one. The self-imposed tasks of the author are: to contribute to scholarly work concerned with higher education in general and the law school in particular; to assess the current state of the law school and legal education in the UK; to criticise certain approaches to the teaching of law in Universities; to set out a model of liberal education and the liberal law school that is both desirable and practicable in the UK. On the foundation established by performance of these tasks the ultimate aim is to form a strategy for the development of law as an academic subject. A strategy designed to protect what is valuable in the contemporary law school, and to facilitate a collective resistance by law schools to philistine and damaging criticism and distorting institutional pressures.

The book starts with an overview of the current situation and an introduction to the argument being advanced. There is an introduction to the field of scholarly writing that the book falls within, which places the book in an academic context. The book is also placed within a practical context, the contemporary state of academic law in the UK. The current situation is judged favourably, but not uncritically. The enemies of healthy development, philistine criticism and inappropriate regulatory mechanisms, are identified. The role of the "liberal" law degree, as a standard around which academics can rally, is sketched. This treatment makes for a lively start, and manages to carry the reader a long-way into the author's concerns in a serious yet entertaining manner.

In setting the scholarly context Bradney wrestles with a particular problem law as a discipline has had within universities. The discipline of law in the common law world has always been defined with reference to a social activity (law) rather then any distinct methodology for enquiry. Among legal academics significant numbers have had, and significant numbers still do have, professional rather than academic qualifications. Many students have always entered into a law degree as a route to professional qualification. The subject matter studied on a law degree programme has been partially determined by the professional bodies. Post-graduate research degree programmes have not been prominent historically in the law school. For all these reasons law is prone to being viewed by other academics as less than a true academic subject, less than a discipline, and the law school as little more than a training facility. Bradney is anxious

to meet this criticism, and certainly makes a robust case for the modern law school as a centre of truly academic activity.

Certainly I can confirm from personal experience that some non-law colleagues are inclined to sneer at the idea of law as a discipline. However, I suspect part of the resentment is fuelled by the ability of law to recruit capable students rather than the nature of the discipline *per se*. Too extreme a reaction to such criticism might smack of ingratitude to the very forces that both generate the resentment, and make the thriving state of law possible. Universities have always relied upon students who have sought to enter the "learned" professions or the state bureaucracy, whether the students have been funded privately or by the state. In this respect law is actually typical rather than exceptional as a discipline. Regardless of any such caveat Bradney's treatment of the issue is thought provoking and useful.

The positive assessment of the current state of the law school is welcome. Some of the enthusiasm seems a little hyperbolic, but the basic argument seems convincing. Law schools and legal academics are working in a very positive environment of expanded opportunities and achievements. Whilst there are contemporary problems the allegedly halcyon days of the past are rather shabby when realistically compared with the present. In many ways our discipline has never been healthier. This seems the correct approach for an attempt to influence the future aspirations of university law schools. The programme is not primarily defensive, it is from a position of considerable strength that academic lawyers can seek to define the future of their discipline.

The identification of the enemies of healthy development is perhaps less convincing. External regulators (RAE, QAA), philistine and uninformed public criticism, and the demands of the profession (sometimes as regulator, sometimes as "the market") are the major enemies identified. Internal "enemies" are less clearly identified, internal meaning here internal to the institution (the university), internal to the professional group (fellow academics), and internal to the discipline (legal academics). At this stage of the book the reader is being offered a unifying call to arms. This book is aimed at legal academics almost to the exclusion of any other audience. The focus upon external agents in identifying the enemies of the liberal law school is a sign that the need to appeal to the whole of that audience has had an effect on the architecture of the argument.

This has some consequences. The group that must be united is not lawyers, nor those involved in legal education: the group is those academics who specialise in law. The concept of the liberal law school, and in practice this must mean the liberal law degree, is intended to be defining for this group of scholars. This means a lot of weight is placed upon this central idea. It is intended to become the basis of the group's self-definition, the standard around which the group can rally, the ideal towards which the group can aspire, the key to successful strategies for repelling our enemies and building the future. It is at this crucial point, for this reviewer, that the book fails to identify any idea that can sustain the pressures placed upon it by the argument. The attempt to formulate the necessary ideal is undertaken in chapter two of the book.

The paradigm formulation put forward for the qualities indicated by the idea of a liberal university education is derived from a speech in 1852 by John Henry Newman (Cardinal Newman, as he subsequently became). To quote from two passages excerpted by Bradney:

> [the university is] an assemblage of learned men ... [who] learn to respect, to consult, to aid each other. Thus is created a pure and clear atmosphere of thought ... [the student]

> profits by an intellectual tradition, which is independent of particular teachers, which guides him in his choice of subjects, and duly interprets for him those which he chooses. He apprehends the great outlines of knowledge, the principles on which it rests, the scale of its parts, its lights and its shades, its great points and its little, as he otherwise cannot apprehend them. Hence it is that his education is called "Liberal". A habit of mind is formed which lasts through life, of which the attributes are, freedom, equitableness, calmness, moderation, and wisdom.

This model of a liberal education is static, complacent, hierarchical, and leaves the student strangely passive (his or her role is to apprehend, not actively analyse nor synthesize, and never to lead but always to follow). It is a monkish view of education, with emphasis not on action, perish the thought, but on acceptance and quietude. The underlying idea of knowledge is derived from classic enlightenment thought: all "truth" is reconcilable and arranged by an intelligence that has ensured that ultimate contradiction is impossible. For some lucky, if insufferable, few it may be that the contemplation of the rational order and perfect realisation of this order in the world fuels a calm and equitable intellectual activity. For me it is the irritation of the discord I perceive between ideal and reality, between purpose and design, between desire and achievement. Cardinal Newman's intellectual life was far more interesting and conflicted than his ideal of a liberal education.

The inadequacy of this vision of liberal education demands reflection. Why has Bradney made this the keystone to the structure of his argument? The answer lies in what he wishes to reject, the enemy within, the vocational law school. Newman stresses the non-practical, the eternal verities, the superiority of wise contemplation over futile activity. There seems no other convincing reason for placing Newman's conception of a liberal education centre stage unless these features are desirable. It entails having to deal with Newman's sexism, his antagonism towards research within the University, his elitism, and his irrelevance in several ways, both intellectual and practical. The reason proffered, that Newman's conception has been very influential, is hardly compelling. Smallpox has been influential, but that is not a recommendation. The argument must be not that Newman has been influential, but that his influence has been beneficial and will continue to be so. It is the substance of the approach that has been adopted, because it has attractive features for the author.

It is at this point that I must disagree with Bradney. His vision of the law school is not the only available version of liberal education, and for me it is profoundly unattractive. The use of this vision as a tool to build a sense of group identity among academic lawyers will probably serve to do little more than confirm the opposition of legal academics in two resentful camps: the impractical high-theorists versus the stolid vocational-trainers, to caricature both sides. Such a division is all the more dangerous to unity, because it risks reflecting an institutional divide between the old and the new universities. If the aim is to forge a vision that can inform the self-image of legal academics then Newman's vision is not likely to work.

The challenge is to integrate the practical and the theoretical, not to have the proponents of the two approaches arguing at cross-purposes. For this challenge, if we want a historical authority figure, we are better looking to John Dewey. Dewey was an enemy of a dichotomy between valuable education and worthless practical activity. His key insight into education was that learning is not a passive process, education is not a transmission from one mind to another of a substance called knowledge, learning is something that happens through activity. Wisdom, contrary to the implication of the ironic cliché, is not "received"; it is earned. Therefore, for Dewey the important issues

were what was done, and what was learnt from the doing. Consider this passage as a basis for a theory of liberal legal education:[1]

> Two conclusions important for education follow. (1) Experience is primarily an active-passive affair; it is not primarily cognitive. But (2) the *measure of the value* of an experience lies in the perception of relationships or continuities to which it leads. It includes cognition in the degree to which it is cumulative or amounts to something, or has meaning.

Here is an approach to education that allows an escape from the unreality of pure book learning without losing sight of the fact that the exercise is the subject matter for exploration, rather than an end in itself. This opens up a real possibility for co-operation between the "vocational" and the "theoretical", a necessary aim as each without the other must be ultimately barren. A vision more different to Newman's is difficult to imagine. The development of this integrating and active vision as an ideal is surely the better choice for law schools.

Bradney criticises a model of legal education that would make the role of the university that of a mere training agency for the profession. His criticisms are cogent and convincing, and should be read by everyone who is concerned with the future of university law schools. But rejecting this approach does not entail adopting Newman's vision. As Bradney recognises one of the attractions of a call for a "liberal" education is the lack of clarity and consensus over what a "liberal" education entails.

If we start with the discussion of the word "liberal" by Raymond Williams in *Keywords* then we can identify:[2] three qualities of the word "liberal" that form the core of its attraction for legal academics; two qualities of "liberal" that academic supporters of a liberal education would probably reject; and three qualities of "liberal" that would probably prove contentious. The hope is that an analysis of the word "liberal", as used in the expression "liberal education", may allow us to reach a level of consensus that will prove unobtainable if we proffer potentially contradictory paradigms for consideration.

Of the three core attractions of the word "liberal" the most important is probably the individualistic focus of education implied by liberal education. Liberal doctrine is concerned with the individual, and his or her relations with society. Liberal education is concerned with the development of the individual student, and his or her relations with the discipline and the world. This implies a rejection of a model of education that sees the key measure of success to be the accomplishment of some social purpose, a model that reduces the student from being the point (*raison d'être*) of the system to being a product of the system. A liberal education aims to encourage the development of the student: this ideally leads to an increase in capacity, an improvement in ability, and a broadening of horizons in the student. However, and crucially, the purpose is not to make the student more useful to others, but to make the student more.

Second, and generally attractive in theory at least, "liberal" in the phrase a "liberal education" implies an open-minded education, as opposed to a dogmatic education. The student is meant to develop his or her own understanding, and that includes the possibility that the student will ultimately reject the underlying ethical approach of the teacher. This aspect of "liberal" is often associated with the linked idea of tolerance. It is an important aspect of a liberal education that it is not a process that leads to any particular pre-determined conclusion.

[1] John Dewey, *Experience and Thinking, Democracy and Education* (Macmillan Co, 1916) reprinted in John J McDermott (ed) *The Philosophy of John Dewey*, (University of Chicago Press, 1981) at 496.

[2] Raymond Williams, *Keywords*, (Flamingo, 1983).

Third, and probably the least often articulated of the three, a liberal education implies a generous spirit towards the task of education. One meaning of "liberal" is open-handed. This is an important quality of a liberal education. The western ideal of the free exchange of ideas and free discussion is worth upholding. It is a generous attitude, and far from universal in history. Scholarship is an inherently collaborative venture and students are entering a community when they enter a university. One reason plagiarism is deplored is that it is a failure to acknowledge the help proffered to the student, who seeks to steal what was freely given.

It seems to me that it is these three qualities of "liberal": a focus on the development of the individual, an open-mind as to what conclusions will be reached, and an ideal of generosity both within and from the community: that attract legal academics to the idea of a liberal approach to education, and probably to academia itself. If there is an easy consensus to be formed it is likely to form around these qualities of liberalism as expressed in the phrase a "liberal education".

Of the two qualities of "liberal" that are likely to be rejected the first is "liberal" as the pursuits and culture of a leisured class. The purpose of such an education is little more than the assertion of social superiority through learned prejudices of taste and comportment. The second quality of "liberal" that is likely to be rejected is "liberal" as sloppy, ill-disciplined, and lacking in rigour. Sentimentality and inability to make difficult choices are qualities often associated with "liberal" when the word is used in a pejorative sense. It is unlikely that the rejection of these meanings of "liberal" will weaken the attraction of the idea of a liberal education.

Three remaining qualities of "liberal" are the ones most likely to divide legal academics, and therefore, are probably the most interesting. First, the word "liberal" is a very close cousin of "licentious", and carries a similar meaning of "unrestrained by convention". Whether experimenting with the boundaries of what is acceptable is part of a liberal education, or not, is surely moot. Second, the very core of the attraction of "liberal" is its focus on the individual. The neglect of social forces and an anti-collectivist bias has been the bane of liberal thinkers, who have been assaulted from both the left (Marx) and the right (Burke) on the issue. Within the confines of a liberal education the individualistic focus on the development of the individual student is attractive. However, whether this focus on the individual should have any broader application is a matter of deeply felt disagreement. Finally, "liberal" has connotations of "radical" or "progressive". Whether these connotations are a necessary part of a liberal education is likely to be both a matter of dispute, and a question that would demand its own analysis of the terms before it could be carried out in a useful manner.

If we can agree that the first three qualities of a liberal education identified above are core, the second two mere calumny, and that we will have to debate over the last three, then we have enough of a consensus to provide a defining collective approach to legal education.

At this point Bradney again provides an important contribution in his book. The model of a liberal education set out by Bradney is applied, *seriatim*, to the "mission" or general activity of law schools, to the curriculum of law degrees, to the research conducted in law schools, to the administrative structure of law schools and to the auditing of law schools. The critique of both current practice and alternative approaches is probably the strongest single aspect of the book.

The viability of multiple aims for law schools is doubted. The idea that universities should serve the economy in the manner determined by government is rejected as totalitarian in principle and as miserably under-resourced in practice. The idea that the

law school should become a state subsidised training agency for the profession is subjected to withering scorn. The presence of an umbilical cord between research activity and academic status is proclaimed. The ham-fisted and wasteful process of audit is condemned to the status of a social madness: ill-conceived and irrational in principle, damaging in practice. It is in the use of a model of a liberal law school as a tool for critical appraisal of practice and critical analysis of alternative models that the potential vigour of the approach used by Bradney is realised. It is in the tearing down and defacement of false idols that Bradney excels, and that job is always a useful and necessary one.

The constructive use of the model of a liberal law school is seen in an attempt to sketch out the legitimate boundaries of activity in a liberal law school. The discussion of administration is particularly useful. The comparative neglect in discussions of legal education of how things are actually done, when compared with the attention given to what things should be done, is a sign of weakness of spirit and analysis. Here the actual institutional processes for the delivery of a liberal education are considered as a vital question, rather than as an inevitable and dull necessity. Raising the profile of administration, and the organisation of decision-making, within law schools above the horizon is a necessary part of an investigation into the law school. The conclusion reached is that the actual way in which decisions are made and implemented is not a mere matter of chance, of no importance in principle. A liberal law school needs a collegiate structure if it is to be a community of scholars. If it is not a community of scholars it will not be able to support a liberal law school.

This book has a limited audience. It is directed primarily at legal academics, and secondarily at everyone who is interested in the future of legal education in UK universities. It is highly recommended to that audience. I do not agree with all the arguments put forward by Bradney. However, the treatment of the subject in a lively and entertaining manner is to be applauded. The seriousness of intention is admirable. The identification of issues of interest or concern is useful. In a short, and easily read, book it would be churlish to ask for more.

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