

The challenges facing legal services education in the 21st Century: a case for collaboration and conversation?

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1 Introduction

The genesis of this article is a legal education conference held in Turkey in May 2014, hosted by Atlanta's John Marshall Law School, Bahçeşehir University and the Turkish Bar Association. As the lone British participant, I was struck by the extent to which all of us were responding, in different ways in our different jurisdictions, to similar crises in and affecting legal education. These crises transcend both the civil and common law dichotomy and the variations between the structures in which pre-qualification education for those intending to provide legal services ("legal services education and training": LSET²) is delivered. Indeed, in this article it will be my thesis that response to these crises could bring those models closer together. I do, however, apologise to my hosts if this article inadvertently contains any errors about their legal education models, in Turkey or in any part of the USA.

2 The components of a legal services education

There is a tendency to focus on the obvious differences between legal education structures, and to argue whether a law degree should be postgraduate or undergraduate, or about the relative contribution of the academy and practitioners to the support and development of young lawyers. In some jurisdictions, including my own, there is an ongoing debate about the role of a university legal education as liberal arts study, or as a preparation for the practice of law. Whatever the culture, or regulatory or constitutional environment within which we work, however, there is a finite list of structural components seen in pre-qualification³ LSET across the world:

- Undergraduate law degrees (of 3-5 years);
- Postgraduate law degrees (e.g. LLM or conversion course for graduates in non-law disciplines) or JD;

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² This acronym was adopted in the Legal Education and Training Review materials to distinguish an education for practice in the field from academic education in the law for its own sake.

³ For some discussion of CLE/CPD schemes in use in legal professions, see chapter 5 of Webb J and others, 'Legal Education and Training Review Research Phase Literature Review' (Legal Education and Training Review 2013) <<http://letr.org.uk/literature-review/index.html>> accessed 5 June 2014 and citations therein.

- Postgraduate vocational courses (variously called practical legal training course, diploma in professional practice, legal practice course, postgraduate certificate in laws etc) which are consciously vocational and skills-based, often using experiential learning as a vehicle for delivery;
- Summative bar examinations;⁴
- Periods of apprenticeship in the workplace (variously called articles, training contract, pupillage, clerkship, internship) (“supervised practice”);
- Courses, interventions or assessments undertaken whilst working; and
- Investigations into fitness and character.

In addition, there is a range of mechanisms to permit horizontal transfer of foreign or (in a federal jurisdiction) out of state qualified lawyers into a profession. In some jurisdictions there is also a need to facilitate horizontal transfer between different legal professions (as, for example, between solicitors and the Bar, or between legal executives and solicitors, in England and Wales). Conceptually the choice is between approaches that require the transferee to take an identical assessment to that of domestic and standard entrants and those that recognise or exempt foreign qualifications, out of state qualifications, qualifications of a different legal profession or even previously acquired skills. In the USA, for example, the trend is towards the former, whereas in England and Wales, there are separate assessments for incoming foreign lawyers who wish to become solicitors or barristers.⁵

Finally, although the place of learning in the early career in the workplace is explicit in those structures which demand formalised periods of supervised practice, it is necessarily tacit in others. Where there is a vocational course, generally taught by practitioners, it will explicitly cover oral skills such as advocacy, negotiation or client interviewing and perhaps even practice skills such as teamwork. This introduces at least some aspects of the second Carnegie apprenticeship identified by the authors of the Carnegie report:

... to the forms of expert practice shared by competent practitioners. Students encounter this practice-based kind of learning through quite different pedagogies from the way they learn the theory. They are often taught by faculty members other than those from whom they learned about the first, conceptual apprenticeship. In this second apprenticeship, students learn by taking part in simulated practice situations, as in case studies, or in actual clinical experience with real clients.⁶

⁴ To be contrasted with initial aptitude tests such as LNAT in the USA, LSAT or BCAT in the UK. A review of the potential for an aptitude test for intending solicitors in England and Wales is provided in Baron H, ‘Evaluation of Use of Aptitude Tests for Entry to the Legal Practice Course’ (Law Society of England and Wales 2011) <from <http://www.lawsociety.org.uk/representation/articles/lpc-aptitude-test-report-published/>> accessed 5 June 2014. For aptitude tests generally in law, see Dewberry C, ‘Aptitude Testing and the Legal Profession’ (Legal Services Board 2011) <<https://research.legalservicesboard.org.uk/wp-content/media/Aptitude-tests-and-the-legal-profession-2011.pdf>> accessed 5 June 2014.

⁵ Qualifications of different legal professions are generally dealt with by way of exemption.

⁶ Sullivan WM and others, ‘Educating Lawyers Preparation for the Practice of Law’ (The Carnegie Foundation for the Advancement of Teaching 2007)

In those structures that emphasise legal knowledge, legal writing, research and reasoning in their classroom activity, those oral and practice skills must, therefore be assumed to be learned in the workplace. This can separate, to a large extent, the initial intellectual and cognitive apprenticeship identified in the Carnegie report, from the second and certainly the third.⁷

The invisibility and variety of what is actually learned in the workplace in the early career is, however, difficult to standardise or regulate (if this is desirable) although, as I discuss below, there is increasing interest in seeking to do so by use of outcomes and competence frameworks.

There is, however, a difficulty if we focus only on structures and the configuration of their component parts. Do academics, practitioners and students agree on what is delivered by each component? Does what is learned in each component complement what is learned in other components, or clash with it? How much of the structure and content of LSET should be prescribed, and by whom? In the next sections I consider the implications of two common configurations.

3 Configurations of the components of a legal education: monocentric models in Turkey and the USA

Flood has characterised legal education structures as being either monocentric or polycentric.⁸ The monocentric is typified by that of the USA (and a number of civil law countries including Turkey) where there is a single recognised legal profession to which entry is strongly academicised through the university. The profession may nevertheless then “re-filter” by use of a bar examination or a period of supervised practice. Indeed, Wilson, in a survey on the role of practice in legal education, largely in countries which fall into the “continental civil law tradition” found a required period of supervised practice in every country which submitted reports to his investigation.⁹

<http://www.carnegiefoundation.org/sites/default/files/publications/elibrary_pdf_632.pdf> accessed 5 June 2014, 28.

⁷ Sullivan WM and others, ‘Educating Lawyers Preparation for the Practice of Law’ (The Carnegie Foundation for the Advancement of Teaching 2007)

<http://www.carnegiefoundation.org/sites/default/files/publications/elibrary_pdf_632.pdf> accessed 5 June 2014: “The third apprenticeship, which we call the apprenticeship of identify and purpose, introduces students to the purposes and attitudes that are guided by the values for which the professional community is responsible. Its lessons are also ideally taught through dramatic pedagogies of simulation and participation. But because it opens the student to the critical public dimension of the professional life, it also shares aspects of liberal education in attempting to provide a wide, ethically sensitive perspective on the technical knowledge and skill that the practice of law requires. The essential goal, however, is to teach the skills an inclinations, along with the ethical standards, social roles, and responsibilities that mark the professional.”

⁸ Flood J, ‘Legal Education in the Global Context: Challenges from Globalization, Technology and Changes in Government Regulation’

<http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/lbs_legal_education_report_flood.pdf> accessed 5 June 2014.

⁹ Wilson R, ‘The Role of Practice in Legal Education’ [2010] Working Papers

<http://digitalcommons.wcl.american.edu/fac_works_papers/12> accessed 5 June 2014.

The Turkish legal education system is an example of the latter. It relies on a four year undergraduate law degree,¹⁰ followed by a year's (unpaid) apprenticeship for intending avukatlar¹¹ and an examination of character and fitness.¹² There is, at present, no prescription, by the Bar or otherwise, of the subjects included in the law degree although Executive Board Decision No: 2009.35.5665 of the Council of Higher Education, obliges a law school to have departments covering certain subjects.¹³ As is common in civil law jurisdictions, prosecutors and judges qualify separately following the undergraduate degree.

Legal education in the USA, whilst also monocentric, at least at state level,¹⁴ is strongly focused around the JD, a postgraduate academic degree, entry to which is highly competitive. The American Bar Association ("ABA") accredits the JDs¹⁵ of some, but not all law schools. This is significant because opportunities for qualification may be contingent on having graduated from an ABS accredited school. Although individual knowledge areas are not mandated, ABA standard 302 requires:

- (a) A law school shall require that each student receive substantial instruction in:
 - (1) the substantive law generally regarded as necessary to effective and responsible participation in the legal profession;
 - (2) legal analysis and reasoning, legal research, problem solving, and oral communication;
 - (3) writing in a legal context, including at least one rigorous writing experience in the first year and at least one additional rigorous writing experience after the first year;
 - (4) other professional skills generally regarded as necessary for effective and responsible participation in the legal profession; and
 - (5) the history, goals, structure, values, rules and responsibilities of the legal profession and its members.
- (b) A law school shall offer substantial opportunities for:

The report is, however, complicated by the fact that, in some places but not necessarily consistently, postgraduate vocational programmes are treated as part of the period of supervised practice, even if, as in Australia, England and Wales, Ireland and New Zealand they are delivered by the academy and their content is to any extent prescribed.

¹⁰ There is a national examination which permits entrance to university and is organised by a public body, rather than by the universities themselves. For a history of legal education in Turkey, see Lonbay J and Toprak M, 'Legal Education in Turkey: Ottoman to Bologna' in Shuvro Prosun Sarker (ed), *Legal Education in Asia* (Eleven International Publishing 2013).

¹¹ In the first six months, the apprenticeship is served in a court or sequence of courts. Advocacy Apprenticeship Regulations govern the apprentices' activities during this period. Local bar associations are also expected to offer training to apprentices. The second six months is served with a law firm under the supervision of a senior lawyer. Again, the Advocacy Apprenticeship Regulations prescribe the apprentices' activities during this period. For further discussion and commentary on the effectiveness of the apprenticeship, see Lonbay J and Toprak M, 'Legal Education in Turkey: Ottoman to Bologna' in Shuvro Prosun Sarker (ed), *Legal Education in Asia* (Eleven International Publishing 2013), 188-192.

¹² "Advocacy Act No. 1136, dated 19 March 1969, implemented by the Advocacy Act Regulations of the Union of Turkish Bars, made in accordance with article 182 of the Advocacy Act" Lonbay J, 'Experts' Report on the Legal Education and Training System in Turkey.' (2009)

<http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1677818> accessed 5 June 2014, 18, fn 12.

¹³"a.) constitutional law; b.) criminal and criminal procedure law; c.) general public law; d.) history of law; e.) administrative law; f.) Labor and social security law; g.) financial law; h.) civil law; i.) civil procedure and bankruptcy law; j.) public international law; k.) private international law and l.) commercial law" Menu for Justice, 'Regarding Undergraduate Law Degree Programmes' (Menu for Justice 2010) <https://www.academic-projects.eu/.../TURKEY_Undergraduate_TF1.doc> accessed 5 June 2014.

¹⁴ To the extent that individual entrants might forum shop for entry between different states, it is polycentric.

¹⁵ The ABA does not accredit non-JD programmes, such as LLMs, although non-JD offering must not "detract from" the JD offering at an ABA-accredited school. See American Bar Association, 'ABA Standards and Rules of Procedure for Approval of Law Schools, 2013-14'

<http://www.americanbar.org/groups/legal_education/resources/standards.html> accessed 5 June 2014.

- (1) live-client or other real-life practice experiences, appropriately supervised and designed to encourage reflection by students on their experiences and on the values and responsibilities of the legal profession, and the development of one's ability to assess his or her performance and level of competence;
- (2) student participation in pro bono activities; and
- (3) small group work through seminars, directed research, small classes, or collaborative work.¹⁶

Unlike the law degree in England and Wales to which I will turn in the next section, the JD is, therefore, consciously envisaged as a programme for those who wish to practise as lawyers, a role reinforced by a series of reports.¹⁷ I discuss the conclusions of the most recent report, published in 2013, below.

Admission to practice is administered on a state by state basis, either through the courts or the local bar association.¹⁸ A very few states require a minimum period of tuition on ethics or professional responsibility to be taken during law school; others require such tuition to take place after admission. Some states restrict admission to graduates of ABA-accredited law schools but all require entrants to pass a state bar examination.¹⁹ This is normally taken after graduation, although some states allow it to be taken earlier. In eight states, non JD graduates who have completed a period of work in practice may be eligible for the examination under "law office" programmes.²⁰ The bar examination is coupled with a detailed investigation into character and antecedents which may be required as a condition of eligibility to take the examination (e.g. Georgia) or taken after successful completion of the examination (e.g. New York).

The multistate bar examination (MBE) developed by the National Council of Bar Examiners is used by almost all states. A number of states also use the NCBE's

¹⁶ Clarificatory notes add that "Trial and appellate advocacy, alternative methods of dispute resolution, counseling, interviewing, negotiating, problem solving, factual investigation, organization and management of legal work, and drafting are among the areas of instruction in professional skills that fulfill Standard 302" and that "A school may satisfy the requirement for substantial instruction in professional skills in various ways, including, for example, requiring students to take one or more courses having substantial professional skills components. To be "substantial," instruction in professional skills must engage each student in skills performances that are assessed by the instructor".

¹⁷ For example, American Bar Association Section of Legal Education and Admissions to the Bar, 'An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap.' (American Bar Association 1992)

<http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2013_legal_education_and_professional_development_maccrate_report%29.authcheckdam.pdf> accessed 5 June 2014; Stuckey and others R, 'Best Practices for Legal Education: A Vision and a Road Map' (Clinical Legal Education Association 2007) <http://www.cleaweb.org/Resources/Documents/best_practices-cover.pdf> accessed 5 June 2014.

¹⁸ See National Conference of Bar Examiners and American Bar Association Section of Legal Education and Admissions to the Bar, 'Comprehensive Guide to Bar Admissions Requirements 2014'

<http://www.ncbex.org/assets/media_files/Comp-Guide/CompGuide.pdf> accessed 5 June 2014.

¹⁹ There is an exception for admission to the bar of Wisconsin for graduates of two law schools in that state. They are not, however, exempt from the fitness and character investigation.

²⁰ National Conference of Bar Examiners and American Bar Association Section of Legal Education and Admissions to the Bar, 'Comprehensive Guide to Bar Admissions Requirements 2014'

<http://www.ncbex.org/assets/media_files/Comp-Guide/CompGuide.pdf> accessed 5 June 2014, p 20. For an example, Garvey J, 'New Hampshire's Performance-Based Variant of the Bar Examination: The Daniel Webster Scholar Honors Program Moves beyond the Pilot Phase' (2010) 14 The Bar Examiner, 13

<http://www.equippingourlawyers.org/documents/790210_Garvey.pdf> accessed 5 June 2014; Garvey JB, 'Making Law Students Client-Ready: A New Model in Legal Education' (2009) 1 Duke Forum for Law & Social Change 101

<http://heinonline.org/HOL/Page?handle=hein.journals/dukef1&div=6&collection=journals&set_as_cursor=0&men_tab=srchresults> accessed 5 June 2014.

Multistate Essay Examination (MEE), although most states also use locally drafted essay questions. The MEE syllabus covers Business Associations, Conflict of Laws, Constitutional Law, Contracts, Criminal Law and Procedure, Evidence, Family Law, Federal Civil Procedure, Real Property, Torts, Trusts and Estates, and the Uniform Commercial Code and its aim includes testing of the candidate's abilities in written communication.²¹ A multistate performance test (MPT) is also available to test "Problem solving, legal analysis and reasoning, factual analysis, communication, organization and management of a legal task, and recognizing and resolving ethical dilemmas".²² A considerable amount of resource is invested in setting and administering these examinations. The Society of American Law Teachers has, however, argued that:

The bar examination does not even attempt to screen for many of the skills identified in the MacCrate Report, including key skills such as the ability to perform legal research, conduct factual investigations, communicate orally, counsel clients and negotiate. Nor does it attempt to measure other qualities important to the profession, such as empathy for the client, problem-solving skills, the bar applicant's commitment to public service work or the likelihood that the applicant will work with underserved communities.²³

Assessments of these such skills are rare in single point of assessment centralised bar examinations, but not unknown. In Denmark, for example, the bar examination includes an advocacy test.²⁴ In England and Wales, the Qualified Lawyers Transfer Scheme (QLTS) for incoming foreign lawyers, lawyers from other parts of the UK and barristers who wish to become solicitors, is an assessment of knowledge, reasoning and problem-solving and also of skills such as advocacy and interviewing. It is in part assessed by OSCEs developed from the medical model.²⁵ The QLTS deploys a considerable investment in resources to test against a range of "day one outcomes" including client interviewing and advocacy. As we shall see, explicit teaching and assessment of such skills is more common in those jurisdictions which embed them in a distinct vocational course.

²¹ National Conference of Bar Examiners, 'Overview of the MEE' <<http://www.ncbex.org/about-ncbe-exams/mee/overview-of-the-mee/>> accessed 5 June 2014.

²² National Conference of Bar Examiners, 'The MultiState Performance Test' <<http://www.ncbex.org/about-ncbe-exams/mpt/>> accessed 5 June 2014.

²³ Society of American Law Teachers (SALT), 'Society of American Law Teachers Statement on the Bar Exam - July 2002' (2002) 52 *Journal of Legal Education* 446 <<http://www.saltlaw.org/userfiles/SALTBarExam.pdf>> accessed 5 June 2014, p 20. See also Society of American Law Teachers, 'Potential Alternatives to the Existing Bar Exam' <http://www.saltlaw.org/userfiles/file/2004_SALTbarexamalternatives.pdf> accessed 5 June 2014; Society of American Law Teachers (SALT), 'SALT Raises Questions for States Considering Adoption of a Uniform Bar Exam' <<http://www.saltlaw.org/userfiles/file/1-19-10SALTuniformbarexamfinal.pdf>> accessed 5 June 2014.

²⁴ Neilsen C, 'How to Qualify as a Lawyer in Denmark' <http://www.ibanet.org/PPID/Constituent/Student_Committee/qualify_lawyer_Denmark.aspx> accessed 5 June 2014.

²⁵ See Solicitors Regulation Authority, 'The QLTS Regulations 2011' <<http://www.sra.org.uk/solicitors/handbook/qlts/content.page>> accessed 5 June 2014. For a description of the QLTS itself, see Fry E, Crewe J and Wakeford R, 'The Qualified Lawyers Transfer Scheme: Innovative Assessment Methodology and Practice in a High Stakes Professional Exam' (2012) 46 *The Law Teacher* 132. The Bar Transfer Test for incoming barristers and transferring solicitors involves an advocacy test and may require a short period of compulsory apprenticeship by way of pupillage. See Bar Standards Board, 'Bar Transfer Test' <<https://www.barstandardsboard.org.uk/qualifying-as-a-barrister/transferring-lawyers/bar-transfer-test/>> accessed 5 June 2014.

Although, for those schools which are ABA accredited, there is a requirement that "A law school shall maintain an educational program that prepares its students for admission to the bar, and effective and responsible participation in the legal profession",²⁶ this does not go as far as stipulating that the JD programme must cover any of the subjects that are tested in the state bar examination. Separate bar preparation programmes are provided by commercial organisations²⁷ although no doubt the topics prescribed in the local bar examination at least influence the JD curriculum of the state's universities in the same way that, in England and Wales - although it is in principle possible to offer a law degree that is not a "qualifying law degree" - the market dictates that no one does. There is, however, some evidence of initiatives in the USA to, for example, allow some students to take their bar exam in the third year of the JD;²⁸ to convert the third year into something more closely resembling a vocational course²⁹ or to make the third year optional³⁰ and there are increasing calls for bar examinations to be incorporated into the JD.

It is well-known that the licence to practise in the US is not normally³¹ contingent on a period of pre-qualification supervised practice (although there is evidence of some reverse engineering in this respect for early-career attorneys once in employment).³² Several states, however, require new attorneys to attend bridge to practice programmes or participate in new lawyer mentoring initiatives.³³ Voluntary incubator programmes for new lawyers are also available in some places.³⁴ This is a contrast to the position in

²⁶ American Bar Association, 'ABA Standards and Rules of Procedure for Approval of Law Schools, 2013-14' <http://www.americanbar.org/groups/legal_education/resources/standards.html>, accessed 5 June 2014, 19.

²⁷ Chan L, 'How to Select a Bar Exam Prep Course' <<http://www.nationaljurist.com/content/how-select-bar-exam-prep-course>> accessed 5 June 2014.

²⁸ See for example: Forcier J, 'Making "Practice Ready" Practice Ready: Arizona's Attempt to Streamline the Final Process for Admission to the Bar' <http://phoenixlawreview.org/pdf/Forcier_Jason-Making%20Practice%20Ready%20Practice%20Ready.pdf> accessed 5 June 2014; Illinois State Bar Association, 'Special Committee on the Impact of Law School Debt on the Delivery of Legal Services Final Report & Recommendations' (Illinois State Bar Association 2013) <<http://www.isba.org/sites/default/files/committees/Law%20School%20Debt%20Report%20-%203-8-13.pdf>> accessed 5 June 2014.

²⁹ Washington and Lee University, 'Washington and Lee's New Third Year Reform' <<http://law.wlu.edu/thirdyear/>> accessed 5 June 2014.

³⁰ Estreicher S, 'The Roosevelt-Cardozo Way: The Case for Bar Eligibility after Two Years of Law School.' (2012) 15 *New York University Journal of Legislation and Public Policy* <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2126849> accessed 5 June 2014; Rodriguez D and Estreicher S, 'Make Law Schools Earn a Third Year' *New York Times* (2013) <http://www.nytimes.com/2013/01/18/opinion/practicing-law-should-not-mean-living-in-bankruptcy.html?_r=0> accessed 5 June 2014.

³¹ Delaware and Vermont do require periods of prequalification supervised practice and, from 2015, there will be a 50 hours pro bono work requirement in New York (although this may be envisaged more as a matter of good citizenship than as a formative period of apprenticeship).

³² Furlong J, 'The Return of the Apprentice New Lawyer Training Models for the 21st Century', *Law firm evolution: brave new world or business as usual?* (Center for the Study of the Legal Profession 2010) <<http://dotank.nyls.edu/futureed/Furlong%20The%20Return%20of%20the%20Apprentice.pdf>> accessed 5 June 2014; Westfahl S, 'Response: Time to Collaborate on Lawyer Development' (2010) 59 *Journal of Legal Education* 645.

³³ State Bar of Georgia, 'Transition Into Law Practice Program (TILPP).' <<http://www.gabar.org/membership/tilpp/>> accessed 5 June 2014.

³⁴ Finkel E, 'INCubator-Style Programs Growing Among Law Schools' (2013) 42 *Student Lawyer* <http://www.americanbar.org/publications/student_lawyer/2013-14/october-2013/incubatorstyle_programs_growing_among_law_schools.html> accessed 5 June 2014.

England and Wales, which tends to emphasise the supervised practice component, possibly to the detriment of the academic phase.

4 Configurations of the components of a legal education: polycentric models, monocentric models and multiple professions in England and Wales³⁵

Flood's polycentric model is by the four routes into qualification as a solicitor in England and Wales, one of which accommodates non-law graduates and another non-graduates. There are, however, eight separate professions recognised as "lawyers of England and Wales" by the Legal Services Act 2007. In descending order of size these are: solicitors; barristers; chartered legal executives;³⁶ patent attorneys³⁷; licensed conveyancers;³⁸ notaries;³⁹ registered trade mark attorneys⁴⁰ and costs lawyers.⁴¹ Some of these professions adopt monocentric models, albeit not necessarily mediated through a university (e.g. that of patent attorneys).⁴² Some professions are so small that they do so by default, their numbers only justifying a single course with a single provider.

The existence of multiple professions leads to the need to accommodate horizontal transfer between them, the creation or merger of professions, or their evolution from paralegal status into an independent profession. So, for example, in

³⁵ Scotland and Northern Ireland, together with other parts of the British Isles, such as the Channel Islands and the Isle of Man, have their own distinct legal education systems. The possibility of a separate system for Wales has also been canvassed: Welsh Government, 'Consultation on a Separate Legal Jurisdiction for Wales' (Welsh Government 2012) WG 15109

<<http://wales.gov.uk/docs/caecd/consultation/120326separatelegaljurisdiction.pdf>> accessed 5 June 2014.

³⁶ The Chartered Institute of Legal Executives prides itself on the flexibility of its qualification system.

Consequently, whilst there is a comparatively small number of practitioners who have attained full chartered status; the number of members of the institute who are regulated lawyers with more junior membership designations, exceeds the total number of members of the bar. See Chartered Institute of Legal Executives, 'Chartered Legal Executive Lawyer Qualifications' (*Chartered Institute of Legal Executives*)

<http://www.cilex.org.uk/study/lawyer_qualifications.aspx> accessed 5 June 2014.

³⁷ Intellectual Property Regulation Board, 'Patent Attorney and Trade Mark Attorney Qualification and Registration Regulations [2009]'

<http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/1annex_1.pdf> accessed 5 June 2014;

Intellectual Property Regulation Board, 'Rules for the Examination and Admission of Individuals to the Registers of Patent and Trade Mark Attorneys 2011' <http://ipreg.org.uk/wp-content/files/2012/08/Rules_for_Examination_and_Admission_of_Individuals_2011.pdf> accessed 5 June 2014.

³⁸ Council for Licensed Conveyancers, 'Information For Applicants To Be Registered As A Student With CLC. (includes syllabus)' <<https://www.clc-uk.org/documents.php?docID=CLC0001>> accessed 5 June 2014.

³⁹ The vast majority of notaries in England and Wales are dual-qualified solicitors and the role is closer to that of the Latin notary than that of the notary public in the USA: Master of the Faculties, 'Notaries (Qualification) Rules 2013'

<[http://www.legalservicesboard.org.uk/Projects/statutory_decision_making/pdf/notaries_\(qualification\)_rules%202013.pdf](http://www.legalservicesboard.org.uk/Projects/statutory_decision_making/pdf/notaries_(qualification)_rules%202013.pdf)> accessed 5 June 2014.

⁴⁰ Institute of Trade Mark Attorneys, 'Flowchart to Qualification'

<http://www.itma.org.uk/download/1428/Flow_chart.pdf> accessed 5 June 2014.

⁴¹ Costs Lawyer Standards Board, 'Training and CPD Rules 2013'

<<http://www.clsb.info/RulesRegulations/TrainingCPDRules.aspx>> accessed 5 June 2014; Association of Costs Lawyers, 'Train to Be a Costs Lawyer' (*Association of Costs Lawyers*)

<<http://www.associationofcostslawyers.co.uk/train-to-be-a-costs-lawyer/>> accessed 5 June 2014. Some categories of accountant are also licensed to provide legal services under the act. Claims management companies and immigration advisors are also regulated, but under different legislation, and directly by the Ministry of Justice.

⁴² Chartered Institute of Patent Attorneys, 'Patent Examination Board' (*Patent Examination Board*)

<<http://www.cipa.org.uk/pages/Patent-Examination-Board-PEB>> accessed 5 June 2014. Patent attorneys, in order to have rights of audience before the European Patent Office, must also satisfy European qualification requirements: European Patent Office, 'Regulation on the European qualifying examination for professional representatives' <http://archive.epo.org/epo/pubs/oj011/12_11/12_sup0.pdf> accessed 5 June 2014.

England and Wales, the legal executive has developed from a supporting, paralegal role, to a position where there are legal executive partners in law firms, legal executive advocates, at least one legal executive judge, and where the profession is in the process of obtaining permission to engage in independent practice through distinct "legal executive firms".⁴³

The complexity of legal services provision in England and Wales is a product both of history and deliberate government intervention. Historically, divisions between generalist, specialist and supporting legal professions were comparatively clear.⁴⁴ Barristers were specialist advocates, operating solely by referral from solicitors and not involved in any part of the conduct of litigation other than representation in court. With a conscious professional commitment to the rule of law, the majority were self-employed, coming together in co-operative "chambers" to share resources and the supporting services of barristers' clerks, and employing the "cab rank rule"⁴⁵ to ensure that even unpopular clients or cases could receive support. Solicitors carried out transactional work and the preparation of cases for litigation, with rights to advocate only in the lower courts. Legal executives and costs draftsmen (later costs lawyers) were employed in solicitors' firms as specialist supporting professionals. Patent and trade mark agents (later attorneys) existed largely outside this structure and a very small number of notaries (most of whom were also solicitors) dealt largely with translation and notarisation of documents for use overseas. Corporate counsel were – and remain – generally qualified as solicitors or barristers. Prosecutions, at least in substantial cases were undertaken by barristers who had the police or a government department as a client. Nevertheless, members of the legal professions had monopolies only over a comparatively small list of types of legal work ("reserved activities"), and this list⁴⁶ has been problematized:

⁴³ Hall K, 'New Practice Rights Pending for Legal Executives' *Law Society Gazette* (10 December 2013) <<http://www.lawgazette.co.uk/practice/new-practice-rights-pending-for-legal-executives/5039166.article>> accessed 5 June 2014.

⁴⁴ For the history, see, for example: Abel RL, *The Legal Profession in England and Wales* (Blackwell 1998); Burrage M, 'From a Gentlemen's to a Public Profession: Status and Politics in the History of English Solicitors' (1996) 3 *International Journal of the Legal Profession* 45; Galanter M and Roberts S, 'From Kinship to Magic Circle: The London Commercial Law Firm in the Twentieth Century' (2008) 15 *International Journal of the Legal Profession* 143; Pleasance P, Balmer NJ and Moorhead R, 'A Time of Change: Solicitors' Firms in England and Wales' (The Law Society of England and Wales, Legal Services Board, Ministry of Justice 2012) <<https://www.lawsociety.org.uk/.../research.../research-publications/.../a-time-of-change---solicitor-firms-in-england-and-wales/CachedSimilar>> accessed 5 June 2014.

⁴⁵ For a recent review, see Flood J and Hviid M, 'The Cab Rank Rule: Its Meaning and Purpose in the New Legal Services Market' (Legal Services Board 2013) <https://research.legalservicesboard.org.uk/wp-content/media/Cab-Rank-Rule_final-2013.pdf> accessed 5 June 2014.

⁴⁶ By Legal Services Act 2007, s 12, the reserved legal activities are:

- a) the exercise of a right of audience (i.e. advocacy);
- b) the conduct of litigation;
- c) reserved instrument activities (i.e. some forms of property transactions);
- d) probate activities;
- e) notarial activities;
- f) the administration of oaths.

Not all professions are licensed to carry out all the reserved activities. Barristers, for example, are not normally licensed to carry out the conduct of litigation.

the origins of many of the reservations of legal activities are remarkably obscure. We consider that the often non-existent, and sometimes limited, evidence of Parliamentary consideration and debate at the time the reservations were created or confirmed provides little basis for suggesting a common policy rationale that justifies their existence. Instead, what we most often find is statutory confirmation of then current practice without any exploration of continuing justifications for reservation.⁴⁷

Issues about monopolies and the potential for conflicts of interest began to emerge in the 1980s. Concerns that the police - and solicitors employed by the police - should not both investigate crime and prosecute it, led to the creation in 1986 of an independent Crown Prosecution Service, albeit largely staffed by solicitors and barristers.⁴⁸ The solicitors' monopoly on conveyancing work was broken in the 1980s by the creation of a specialist profession of licensed conveyancer. Solicitors and patent and trade mark attorneys obtained increased rights of audience; the Bar obtained rights to see clients directly rather than by referral through a solicitor. Nevertheless, a number of reports,⁴⁹ and in particular that of David Clementi in 2004,⁵⁰ led to the wholesale restructuring of regulation of legal services provision in the Legal Services Act 2007. This not only brought all the professional regulators into a single umbrella structure under the Legal Services Board, but allowed for the possibility of other individuals and entities becoming authorised to provide the reserved legal activities.⁵¹ A multiplicity of legal professions is not unique to England and Wales,⁵² but it is notable that, at that stage and even given the statutory objective of "encouraging an independent, strong, diverse and effective legal profession" no attempt was made to interfere either with the existence of the separate professions, or with their educational structures.

Those educational structures can be broadly categorised in three ways:

⁴⁷ Legal Services Institute, 'The Regulation Of Legal Services: Reserved Legal Activities – History And Rationale' <<http://stephenmayson.files.wordpress.com/2013/08/mayson-marley-2010-reserved-legal-activities-history-and-rationale.pdf>> accessed 5 June 2014., p 37. See also Legal Services Institute, 'The Regulation Of Legal Services: What Is The Case For Reservation?' <<http://stephenmayson.files.wordpress.com/2013/08/mayson-marley-2011-what-is-the-case-for-reservation.pdf>> accessed 5 June 2014 and Roy A and Handford C, 'Reserved and Unreserved Lawyers' Activities' <http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/reserved_and_unreserved_lawyers.pdf> accessed 5 June 2014.

⁴⁸ Crown Prosecution Service, 'History' <<http://www.cps.gov.uk/about/history.html>> accessed 5 June 2014.

⁴⁹ For example, Office of Fair Trading, 'Competition in Professions' (Office of Fair Trading 2001) <http://80.86.35.165/shared_oftr/reports/professional_bodies/oftr328.pdf> accessed 5 June 2014; Department of Constitutional Affairs, 'The Future of Legal Services: Putting Consumers First' (Department of Constitutional Affairs 2005) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/272192/6679.pdf> accessed 5 June 2014; Hunt D, 'The Hunt Review of the Regulation of Legal Services' (Law Society of England and Wales 2009) <http://www.nzls.org.nz/catalogue/opac/DigitalContent/Legal_Regulation_Report_FINAL.PDF?jsessionid=59C098BA43C679461703712227096824?parenttreeid=f4cb742268ce4c4984e1d382ea50d5f4&sessiondepth=1&k=18> accessed 5 June 2014.

⁵⁰ Clementi D, 'Report of the Review of the Regulatory Framework for Legal Services in England and Wales' (2004) <<http://www.legal-services-review.org.uk/content/report/index.htm>> accessed 5 June 2014.

⁵¹ For comment on this from a US perspective, see Rhode D, 'Reforming American Legal Education and Legal Practice: Rethinking Licensing Structures and the Role of Nonlawyers in Delivering and Financing Legal Services' (2013) 16 Legal Ethics 243.

⁵² See the discussion in Nollent A and Ching J, 'Legal Education for the Professions in Two Jurisdictions: Comparison, Consolidation or Fragmentation' (2011) 45 Law Teacher 310.

- Specialist v generalist;
- Graduate v non-graduate;
- Sequential v concurrent.

Specialist v generalist

The question of education for breadth or for specialisation is, of course, one of content, rather than structure. In England and Wales, for example, solicitors, legal executives and barristers are educated for breadth. They must cover a variety of areas of legal knowledge, and achieve competence in a range of required skills. Thereafter, with some limitations, they are licensed to practise in any area of law, whether or not it has been covered in their initial education and, normally, without any requirement for formal education in the new area.⁵³ Other professions (patent and trade mark attorneys, costs lawyers, licensed conveyancers, notaries) are both educated in specialist fields and licensed only to practise within them. A licensed conveyancer is, therefore, licensed only to provide conveyancing (transfer of real property) services, and that is what the licensed conveyancer qualification system teaches him or her to do. A licensed conveyancer who wishes to, say, conduct property litigation must either transfer into a different profession, or lobby his or her professional regulator to seek additional rights for the entire profession. A solicitor, on the other hand, is restrained from dabbling in intellectual property law, in which he or she has not specifically been trained, only by his or her professional code, by contrast with the patent or trade mark attorney specifically trained in intellectual property work and licensed only to conduct that work.

There is, however, overlap in the sector, as might be expected when the governing legislation explicitly promotes competition in the legal services marketplace. Conveyancing, for example, can be carried out by members of four professions;⁵⁴ and advocacy by six.⁵⁵

There is here some equivalence to calls for and initiatives for, limited licensures in the USA.⁵⁶ An alternative suggestion, that legal services in England and Wales should be

⁵³ There are limited exceptions, for example, rights of audience in the higher courts can only be obtained by solicitors following additional study and an assessment of their advocacy performance: Solicitors Regulation Authority, 'Higher Rights of Audience Regulations 2011'

<<http://www.sra.org.uk/solicitors/handbook/higherrights/content.page>> accessed 5 June 2014.

Specialist accreditations are available, but these are intended to recognise and promote specialist practice; they are not licences to practise in that field.

⁵⁴ Solicitors, legal executives, licensed conveyancers and some notaries.

⁵⁵ Barristers, solicitors, CILEx members, patent attorneys, registered trade mark attorneys, costs lawyers. Some rights of audience are limited to the specialist field, as for the IP attorneys and the costs lawyers, or may be contingent on obtaining a separate qualification and enhanced licensure.

⁵⁶ See Rhode D, 'Delivery of Legal Services by Non-Lawyers' (1990) 4 Georgetown Journal of Legal Ethics 209; Holland B, 'The Washington State Limited License Legal Technician Practice Rule: A National First In Access To Justice' (2013) 82 Mississippi Law Journal 75 <http://mississippilawjournal.org/wp-content/uploads/2013/02/3_Holland_DRAFT.pdf> accessed 5 June 2014; Cooper BP, 'Access to Justice without Lawyers' (2014) 47 Akron Law Review 205 <<http://www.uakron.edu/dotAsset/a30dee88-519c-4547-bbe8-c0b77cc9a777.pdf>> accessed 5 June 2014.

regulated by activity, rather than by title,⁵⁷ has so far met with limited support, not least from practitioners who have a personal and emotional tie to their particular profession. "Partial access" to reserved activity is, however demanded by European legislation.⁵⁸

Graduate v non-graduate

The apprenticeship model, involving immersion in what is at least ostensibly a community of practice, is tenacious within the British legal education models. Flood and others have pointed out that substantial graduatisation of even the solicitors and barristers' professions did not occur until the 1970s.⁵⁹ It remains possible for non-graduates to become solicitors and, at least at the discretion of the Bar Standards Board, barristers. The non-graduate regulated professions (legal executives, licensed conveyancers, costs lawyers⁶⁰) pride themselves on their diversity and access for a wide variety of entrants.

The defining issue here, then, may be one of level. Typically, the non-graduate professions recruit directly from school (at 16), and expect students to work and study in parallel for qualifications which often take a two stage approach: a foundation at level 3 (equivalent to the level expected of school leavers at 18) and a final stage at level 6 (equivalent to the final year of an undergraduate degree). Study may be by day release or distance learning. A more recent development, and not confined to law⁶¹ is that of the state sponsored apprenticeship. The legal services apprenticeship is linked to the Chartered Institute of Legal Executive qualifications, providing a route (at present) into qualification as a legal executive.⁶² There are also plans to create more advanced

⁵⁷ Legal Services Consumer Panel, 'Legal Education and Training - Submission to the Research Team' <http://www.legalservicesconsumerpanel.org.uk/publications/consultation_responses/documents/2012-05-21LETRsubmission.pdf> accessed 5 June 2014 and commentary in Moorhead R, 'Activity Based Regulation versus Professional Identity' <<http://lawyerwatch.wordpress.com/2012/05/21/activity-based-regulation-versus-professional-identity-some-thoughts-on-the-lscps-thoughts-on/>> accessed 5 June 2014.

⁵⁸ See Lonbay J, 'Activity Based Regulation – EU Perspectives on Partial Access to Reserved Activities' <<http://julianlonbay.wordpress.com/2012/03/09/activity-based-regulation-eu-perspectives-on-partial-access-to-reserved-activities/>> accessed 5 June 2014. For a more detailed discussion of the European perspective, see Lonbay J, 'Assessing the European Market for Legal Services: Developments in the Free Movement of Lawyers in the European Union' (2011) 33 *Fordham International Law Journal* 1629 <<http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2217&context=ilj>> accessed 5 June 2014.

⁵⁹ See Galanter M and Roberts S, 'From Kinship to Magic Circle: The London Commercial Law Firm in the Twentieth Century' (2008) 15 *International Journal of the Legal Profession*. 143; Boon A and Webb J, 'Legal Education and Training in England and Wales: Back to the Future?' (2008) 58 *Journal of Legal Education* 79; Flood J, 'Legal Education in the Global Context: Challenges from Globalization, Technology and Changes in Government Regulation' <http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/lrb_legal_education_report_flood.pdf> accessed 5 June 2014.

⁶⁰ The patent and trade mark attorneys and notaries are almost all graduates, albeit not necessarily in law.

⁶¹ National Apprenticeship Service, 'Types of Apprenticeships' <<http://www.apprenticeships.org.uk/types-of-apprenticeships.aspx>> accessed 5 June 2014.

⁶² Chartered Institute of Legal Executives, 'Chartered Legal Executive Lawyer Qualifications' (*Chartered Institute of Legal Executives*) <http://www.cilex.org.uk/study/lawyer_qualifications.aspx> accessed 5 June 2014.

apprenticeship routes which are directly equivalent in level to the undergraduate degree and to the postgraduate vocational courses, bypassing the university altogether.⁶³

Sequential v concurrent.

One can deploy the educational components in sequence, concurrently, or blend them together. In England and Wales, by tradition and as a result of the Ormrod report of 1971,⁶⁴ solicitors and barristers are conventionally educated in sequence: undergraduate law degree or non-law undergraduate degree followed by postgraduate conversion course, followed by vocational course (Legal Practice Course or Bar Professional Training Course), followed by the period of supervised practice (training contract or pupillage). Legal executives, and the other smaller professions tend to use structures in which students work and study concurrently, although there may be some element of sequential progression between levels.⁶⁵ The principal component of the main sequential structures, however, is the undergraduate law degree and to some extent, other systems and parts of the system define themselves by reference to it. The smaller professions, generally, regard it as a partial exemption from their own structures. Even for solicitors and barristers the undergraduate law degree is still in principle an exemption from professional examinations.

The undergraduate law degree ("LLB")

⁶³ Skills for Justice, 'Apprenticeships' <<http://www.sfjuk.com/sectors/legal-services/developing-talent/apprenticeships/>> accessed 5 June 2014.

⁶⁴A number of sector-wide reports are generally cited: Royal Commission on Legal Services, 'Final Report' (Royal Commission on Legal Services 1979); Marre, 'A Time for Change. Report of the Committee on the Future of the Legal Profession' (General Council of the Bar and the Council of the Law Society 1988); Lord Chancellor's Advisory Committee on Legal Education and Conduct (ACLEC), 'First Report on Legal Education and Training' (Lord Chancellor's Advisory Committee on Legal Education and Conduct (ACLEC 1996) <<http://www.ukcle.ac.uk/resources/he-policy/aclec/>> accessed 5 June 2014. For an overview and some comparisons with the MacCrate agenda in the USA, see Boon A and Webb J, 'Legal Education and Training in England and Wales: Back to the Future?' (2008) 58 Journal of Legal Education 79.

Further investigation and strategy was, until 2013, carried out for individual professions. For example: Goriely T and Williams T, 'The Impact of the New Training Scheme: Report on a Qualitative Study' (Law Society of England and Wales 1996); Shaw G, 'Notaries in England and Wales: Modernising a Profession Frozen in Time' (2000) 7 International Journal of the Legal Profession 141; Boon A and Webb J, 'Report to the Law Society of England and Wales on The Consultation and Interim Report on the Training Framework Review' (Law Society of England and Wales 2002); Sherr A and Harding R, "'Where Science Meets Law'" Report of a Review of the Education, Training and Examinations for the Chartered Institute of Patent Agents and the Institute of Trade Mark Attorneys' (Chartered Institute of Patent Attorneys 2002) <www.cipa.org.uk/...report.../888A8DC3-3C6C-44F7-B55F-C4C105F6EFC7> accessed 5 June 2014; Solicitors Regulation Authority, 'Education, Training and Development for Solicitors: The Way Ahead' (Solicitors Regulation Authority 2007); Bar Standards Board, 'Review of the Bar Vocational Course: Report of the Working Group' (Bar Standards Board 2008) <https://www.barstandardsboard.org.uk/media/1353435/bvc_report_final_with_annexes_as_on_website.pdf> accessed 5 June 2014; Bar Standards Board, 'Review of Pupillage: Report of the Working Group' (Bar Standards Board 2010) <https://www.barstandardsboard.org.uk/media/1383787/pupillage_report.pdf> accessed 5 June 2014; Smedley N, 'The Smaller Approved Regulators An Assessment of Their Capacity and Capability to Meet the Requirements of the Legal Services Act 2007, with Analysis and Recommendations' (Legal Services Board 2011) <http://www.legalservicesboard.org.uk/what_we_do/Research/Publications/pdf/20110622_sar_report_final.pdf> accessed 5 June 2014.

⁶⁵ For example, between foundation and finals stages or, for trade mark attorneys, between academic study and vocational study.

Although there is a longstanding and in my view ultimately insoluble debate about the purpose of the LLB as liberal arts education or as necessary preparation for entry into two of the legal professions,⁶⁶ this is in fact enabled by the existence of the vocational courses as deliberately angled towards preparation for practice. It is also enabled by the existence of the Graduate Diploma in Law ("GDL"), originally the Common Professional Examination from which the LLB was an exemption, but which has developed into a university-delivered, one year conversion course for graduates from non-law disciplines.⁶⁷ To add further complication, it is at least alleged that GDL graduates are preferred by law firms⁶⁸ and one law school disingenuously advertises its undergraduate law degree as reducing the period to qualification by a year (because graduates of a law degree are not required to take the GDL as well).

The LLB was, until very recently, dual regulated under the Joint Statement of the Bar Council and Law Society as professional bodies⁶⁹, whose Joint Academic Stage Board ("JASB") accredits "qualifying law degrees" for the purpose of progression into the solicitors or barristers professions.⁷⁰ The most significant aspect of the Joint Statement for current purposes is that it prescribes seven mandatory foundation subjects, and the proportion of the curriculum that they must occupy, if the LLB is to be a qualifying law degree. This is not unusual in common law countries, as, for example, in Australia,

⁶⁶ For some sense of the arguments, see Twining W, 'Pericles and the Plumber' (1967) 83 *Law Quarterly Review* 396; Bradney A, *Conversations, Choices and Chances: The Liberal Law School in the Twenty-First Century* (Hart Publishing 2003); Bradney A, 'Transforming Legal Education: Learning and Teaching Law in the Early Twenty-First Century' (2008) 35 *Journal of Law and Society* 565; Vollans T, 'The Law School with Two Masters?' (2008) 2 *Web Journal of Current Legal Issues* <<http://www.bailii.org/uk/other/journals/WebJCLI/2008/issue2/vollans2.html>> accessed 5 June 2014; Cownie F, 'Legal Education and the Legal Academy', *The Oxford Handbook of Empirical Legal Research* (Oxford University Press 2010); Cownie F, 'Twining, Teachers of Law and Law Teaching' (2011) 18 *International Journal of the Legal Profession* 121 <<http://dx.doi.org/10.1080/09695958.2011.619855>> accessed 16 May 2014; Huxley-Binns R, 'What Is the "Q" For?' (2011) 45 *Law Teacher* 294; Strevens C, 'The Changing Nature of the Legal Services Market and the Implications for the Qualifying Law Degree' (2011) 1 *Web Journal of Current Legal Issues* <<http://www.bailii.org/uk/other/journals/WebJCLI/2011/issue1/strevens1.html>> accessed 5 June 2014; Hardee M, 'Career Aspirations of Students on Qualifying Law Degrees in England and Wales.' (Higher Education Academy 2012) <<http://www.heacademy.ac.uk/assets/documents/disciplines/law/Hardee-Report-2012.pdf>> accessed 5 June 2014; Jones MW and others, 'The State, the Universities and Liberal Legal Education: Students' Views from England, South Africa and Mauritius' (Society of Legal Scholars Annual Conference, Society of Legal Scholars Annual Conference, Edinburgh, Scotland, 3 September 2013) <<http://archive.legalscholars.ac.uk/edinburgh/index.cfm>> accessed 16 May 2014.

⁶⁷ GDL graduates cannot however, without more, transfer into the Bar in the USA as the period of teaching in the GDL is not sufficient to cross-accredit.

⁶⁸ *Birmingham V and Hodgson J*, 'Desiderata: What Lawyers Want from Their Recruits' (2001) 35 *Law Teacher* 1.

⁶⁹ One corollary of the Legal Services Act has been to require the professional bodies to split their representative and regulatory functions. Consequently, the Law Society represents solicitors, whilst the Solicitors Regulation Authority regulates them. Similarly, the Bar Standards Board regulates barristers; ILEX Professional Standards regulates legal executives and the Intellectual Property Regulation Board regulates patent and registered trade mark attorneys.

⁷⁰ Joint Academic Stage Board, 'Joint Statement' <<https://www.barstandardsboard.org.uk/qualifying-as-a-barrister/academic-stage/joint-academic-stage-board/jasb-documents/>> accessed 5 June 2014. Law degrees are often allowed as exemption from the qualification system of other professions, although they do not always clearly identify whether a law degree, or a qualifying law degree is required. To some extent the distinction may be redundant as, through market forces, it would be a brave law school which did not offer a qualifying law degree. The Intellectual Property Regulation Board, for the patent and trade mark attorney professions, currently accredits specific degrees at specific institutions for the academic stage of its own qualification framework.

where the Priestley 11 plays an equivalent role.⁷¹ Qualifying law degrees may also be delivered part-time or as joint honours with another subject.⁷²

Simultaneously, because the LLB a university award, it is also regulated by the Quality Assurance Agency through its Subject Benchmark Statement for Law.⁷³ The two documents do not align precisely and the JASB was formally disbanded in December 2013 (see recommendation 10 of the Legal Education and Training Review research report which I discuss further below).⁷⁴ This does not, however, necessarily mean that the concept of the foundation subjects has disappeared. The Subject Benchmark is under review and is likely to be influenced by initiatives, which I discuss below, to move towards regulation by way of prescription, by the professional regulators, of day one competences.

An example of the consequences of the undefined purpose of the LLB is provided by the question whether "ethics" should be an additional mandatory component, as it is in some countries. This proposal can be pejoratively assumed by those who favour the liberal arts agenda, however, as meaning "professional ethics" – coverage of the professional codes of conduct – which can then be argued to be inappropriate for a degree not confined to preparation for the legal professions, rather than the "wide range of legal concepts, values, principles and rules of English law" in fact mandated by both the QAA Benchmark and the Joint Statement. A debate at least equivalent in vigour to that about inclusion of "ethics" in the curriculum is the place of skills in the LLB. Again, there is a confusion of terminology. Even those who object to "skills" in principle must admit that "Analysis, synthesis, critical judgement and evaluation", "Autonomy and ability to learn", "Communication and literacy", "Numeracy, information technology and teamwork", "Application and problem-solving" of the QAA Benchmark and the stipulation in the Joint Statement that:

Students should be able:

- i. To apply knowledge to complex situations;
- ii. To recognise potential alternative conclusions for particular situations, and provide supporting reasons for them;
- iii. To select key relevant issues for research and to formulate them with clarity;
- iv. To use standard paper and electronic resources to produce up-to-date information;
- v. To make a personal and reasoned judgement based on an informed understanding of standard arguments in the area of law in question;
- vi. To use the English language and legal terminology with care and accuracy;

⁷¹ See Webb J and others, 'Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales' (Legal Education and Training Review 2013) <<http://letr.org.uk/the-report/index.html>> accessed 5 June 2014, Chapter 4, table 4.4 for some comparison of compulsory subjects.

⁷² This includes courses such as the double *maîtrise*, which is a qualifying law degree for both Anglo-Welsh and French professions.

⁷³ Quality Assurance Agency, 'Subject Benchmark Statement - Law' <<http://www.qaa.ac.uk/Publications/InformationAndGuidance/Pages/Subject-benchmark-statement-Law-2007.aspx>> accessed 5 June 2014.

⁷⁴ Joint Academic Stage Board, 'Joint Academic Stage Board' <<https://www.barstandardsboard.org.uk/qualifying-as-a-barrister/academic-stage/joint-academic-stage-board/>> accessed 5 June 2014.

- vii. To conduct efficient searches of websites to locate relevant information; to exchange documents by email and manage information exchanges by email;
- viii. To produce word-processed text and to present it in an appropriate form.

describe “skills” which are inherent in the LLB. Skills regarded pejoratively by this camp are, therefore, likely to be those perceived as more relevant to practice: specific legal drafting rather than more generic legal writing; client interviewing and counselling, negotiation and advocacy rather than, or in addition to, mooting.

This is not to say, however, that LLBs with a consciously vocational stance are unavailable. My own institution has been offering a “sandwich degree” in law for more than forty years,⁷⁵ and in its mainstream LLB, core subjects are deliberately linked to a practice-oriented skill,⁷⁶ with a “path to professional practice” module available as an alternative to a more academic research dissertation in the final year. The University of York offers a problem based learning model with three streams (Law and Society, Law and the Business Environment and Law and Practice). Clinics, servicing the public in a variety of ways, are attached to many law schools, operating either for credit or as an extra-curricular activity.⁷⁷ Some compressed two year degrees are also available, possibly as a response to increased tuition fees for higher education study. Finally, the exempting law degrees pioneered by Northumbria and now available at a number of universities combine the undergraduate law degree with the vocational courses required for entry to the solicitors’ or barristers’ professions.

Vocational courses

Three of the professions (solicitors, barristers and trade mark attorneys) require entrants to complete distinct vocational courses as well as academic study. The other, specialist, professions might argue that the entirety of their educational content is vocational by definition. Where distinct vocational courses exist, however, they provide an unarguable place for experiential learning, role play and simulation and the teaching and assessment of both written and oral skills.⁷⁸ The Bar Professional Training Course (BPTC) is heavily regulated by the Bar Standards Board⁷⁹ and has an invisible export function for foreign

⁷⁵ The sandwich model has an established pedigree in the UK in disciplines such as Business and Engineering and in modern languages. Typically students are in the classroom for the first two years of study, are in a work placement during the third, and return for a fourth year to complete their study. In the NLS LLB (Sandwich), successful students are awarded a Diploma in Professional Practice in addition to their degree.

⁷⁶ For example, Land Law and Professional Advice; Commercial Law and Negotiation

⁷⁷ See the list at <http://lawworks.org.uk/index.php?cID=10352#LondonClinics> although note that not all clinics listed are student clinics.

⁷⁸ For some early discussion of the Legal Practice Course, see Boon A and Whyte A, ‘Legal Education as Vocational Preparation?: Perspectives of Newly Qualified Solicitors’ (University of Westminster 2002); Fancourt A, ‘Hitting the Ground Running? Preparing Students for Practice’ (UK Centre for Legal Education 2004) <<http://www.ukcle.ac.uk/research/ukcle/fancourt.html>> accessed 5 June 2014;; Boon A and Whyte A, ‘Looking Back: Analysing Experiences of Legal Experience and Training’ (2007) 41 Law Teacher 169.

⁷⁹ From 2010. Its predecessor, the Bar Vocational Course, was substantially reviewed by a committee under Derek Wood QC in 2008: Bar Standards Board, ‘Review of the Bar Vocational Course: Report of the Working Group’ (Bar Standards Board 2008) <https://www.barstandardsboard.org.uk/media/1353435/bvc_report_final_with_annexes_as_on_website.pdf>

nationals who wish to be called to the English Bar and then return to their own countries.

It covers:

- Case Work Skills
- Legal Research
- General written skills
- Opinion-writing (that is, giving written advice)
- Interpersonal Skills
- Conference Skills (interviewing clients)
- Resolution of Disputes Out of Court (ReDOC)
- Advocacy (court or tribunal appearances)
- Civil Litigation & remedies
- Criminal Litigation & sentencing
- Evidence
- Professional Ethics
- Two optional subjects, selected from a choice of at least six.

Assessment is largely by the provider of the course (of which there are nine), although following a review in 2008,⁸⁰ the Civil Litigation, Criminal Litigation and Professional Ethics assessments have, not without difficulty, been centralised under the aegis of the professional regulator, the Bar Standards Board.⁸¹

For intending solicitors, the Legal Practice Course, (LPC)⁸² delivered by upwards of 25 institutions, both public and private, covers, in stage 1, professional conduct and regulation; wills and administration of estates, taxation and core practice areas of business law and practice, property law and practice and civil and criminal litigation. In stage 2 - in principle severable from stage 1 - students must complete three elective topics. In addition, students must learn and be assessed in writing, drafting, practical legal research, solicitors' accounts, business accounts, interviewing and advising and advocacy. There is rather more variation between LPC models than between BPTC models, with bespoke programmes for larger law firms or consortia of firms; a variety of electives, and at some institutions, streams or courses that emphasise different kinds of practice (e.g. corporate, commercial, "high street").

accessed 5 June 2014. The document regulating the BPTC is achieved prescribes resources, structures, assessment processes and outcomes to be achieved by students: Bar Standards Board, 'Bar Professional Training Course Course Specification Requirements and Guidance'

<https://www.barstandardsboard.org.uk/media/1542061/bptc_handbook_2013-14.pdf> accessed 5 June 2014.
⁸⁰ Bar Standards Board, 'Review of the Bar Vocational Course: Report of the Working Group' (Bar Standards Board 2008)

<https://www.barstandardsboard.org.uk/media/1353435/bvc_report_final_with_annexes_as_on_website.pdf> accessed 5 June 2014.

⁸¹ Bar Standards Board, 'The Bar Standards Board Central Examinations Board Chair's Report July 2013' <https://www.barstandardsboard.org.uk/media/1527844/130725_mac_130628_chair_ceb_first_sit_report_july_2013_v_1.pdf> accessed 5 June 2014; Bar Standards Board, 'The Bar Standards Board Central Examinations Board Chair's Report November 2013'

<https://www.barstandardsboard.org.uk/media/1546342/central_examination_board_report_november_2013.pdf> accessed 5 June 2014.

⁸² Solicitors Regulation Authority, 'Legal Practice Course Outcomes' <<http://www.sra.org.uk/students/lpc.page>> accessed 5 June 2014. The LPC began in 1993, and its design and content was influenced by Canadian models for legal vocational courses.

The Professional Certificate in Trade Mark Law and Practice is consciously pegged to both models and includes assessment in interviewing, advocacy and trade mark searching. However, because it services a small profession, it is at present offered by a single institution.⁸³

The LPC and BPTC are currently full year programmes although part-time versions are offered by some providers. The resources required for their delivery render them expensive and, although the large law firms will sponsor their own recruits, the majority of students pay their own fees.

The trade mark course is only available in a part-time mode, and is only offered by one provider. Although in principle a sequential model, its delivery therefore has similarities with the concurrently delivered education frameworks used by the smaller regulated professions.

Concurrent study

The sequential model tends to separate the three Carnegie apprenticeships. Knowledge is separated from procedure (or knowledge-that from knowledge-how), and both from contextualisation in the workplace.

[Initial Professional Education] syllabi are notoriously overcrowded because they attempt to include all the knowledge required for a lifetime in the profession... There is little sign as yet of IPE being conceived in a context of lifelong professional learning, in spite of increasing evidence that the frontloading of theory is extremely inefficient. Many IPE courses exacerbate this situation by frontloading theory within the IPE stage itself, thus maximising the separation between theory and practice.⁸⁴

The smaller professions, as I have said, make a virtue of expecting at least some of their classroom study to take place concurrently with initial workplace experience. This has clear advantages in cost, and at least in principle in contextualisation of what is learned, alongside additional pressure of making place for study at the same time as work. Although the legal executives courses, notarial practice course and trade mark courses operate within the higher or further education framework, the education systems of other professions are operated largely by or through the profession itself, with consequential difficulties in comparison of, for example, level, with those of the professions aligned with the university system. There are, nevertheless, challenges as well as advantages in the "earn while you learn" approach, not limited to difficulties in juggling workload. For example, where there is potential for a clash between what is taught in the classroom and what is actually done in the workplace (lack of practice

⁸³ Nottingham Trent University, 'Professional Certificate in Trade Mark Law and Practice' (*Nottingham Trent University*, 2012) <http://www.ntu.ac.uk/apps/pss/course_finder/108627-1/3/Professional_Certificate_Trade_Mark_Practice.aspx#overview> accessed 5 June 2014.

⁸⁴ Eraut M, *Developing Professional Knowledge and Competence* (Falmer Press 1994), pp 11-12.

validity), those discrepancies must become more immediately apparent to the student moving between both environments in part-time study.

Whether classroom education is delivered sequentially or concurrently, however, all the professions in England and Wales, as in Turkey, require some form of supervised practice prior to independent licensure.

*Periods of supervised practice*⁸⁵

The relationship of learning in the workplace to entry into the legal profession has a long tradition in England and Wales, perhaps even more so than elsewhere. It is drawn from:

...the deeply embedded history of the Inns of Court in England, the traditional route into the bar in that country since the Middle Ages, by contrast with continental entry through the university that developed in the same time period. One route lay through practice, the other through theory. Thus, today the common law jurisdictions, which only "recently" (within the last 100 years!) moved into the university, provide a greater array of options for entry, and across widely varying periods of from no formal schooling at all (the reader, or apprentice, in a law firm only -still an option in England,⁸⁶ and at least in theory, in a few states of the United States); a five year undergraduate career in Australia; the standard Bologna formulation of 3 plus 1-3 in Ireland ...; and a seven year period of combined undergraduate study (4 years) and graduate study in law (3 years) in the U.S. England too offers law as a form of graduate study, as one of many options.⁸⁷

The polycentric model for the education of solicitors, therefore, retains the opportunity for chartered legal executives to transfer into the solicitors' profession by a route where work and study are combined in the workplace and without a university degree. The "five years man" – who qualified as a solicitor by virtue not of a degree, but of a five years' apprenticeship and successful completion of those professional examinations from which a law degree was merely an exemption – has a nostalgic resonance for many. Mr Guppy, in Dickens' *Bleak House*, was one such. As the five years' route only ceased to be available in the 1980s, there is a residuum of senior practitioners who qualified in this way. Increases in university tuition fees, the increasing profile of the legal executive profession and the growth of state sponsored apprenticeships in legal services available to school leavers suggests a popular return to the model.⁸⁸

As Wilson identifies, a large number of jurisdictions employ a required period of pre-qualification experience in the workplace. This may be organised by the state as formal internships, as in Germany, or subject to the market, as in England and Wales. In

⁸⁵ For a comparison of periods of supervised practice in England and Wales, see Webb J and others, 'Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales' (Legal Education and Training Review 2013) <<http://letr.org.uk/the-report/index.html>> accessed 5 June 2014, Chapter 2, Annex II.

⁸⁶ This is probably a reference to the legal executive route, although this does in fact involve "formal schooling" through the qualifications offered by the Chartered Institute of Legal Executives. None of the legal professions in England and Wales regulated under the Legal Services Act in fact uses a structure without any formal study.

⁸⁷ Wilson R, 'The Role of Practice in Legal Education' [2010] Working Papers <http://digitalcommons.wcl.american.edu/fac_works_papers/12> accessed 5 June 2014, 46.

⁸⁸ See for example Hall K, 'Number of Legal Executives to Grow 17% in next Decade' *Law Society Gazette* (6 June 2014) <<http://www.lawgazette.co.uk/practice/number-of-legal-executives-to-grow-17-in-next-decade/5041562.article>> accessed 10 June 2014.

England and Wales, the period of supervised practice is a precursor to qualification for all but barristers and notaries, for whom it is a precursor to independent practice. There is, therefore, the risk of a bottleneck. In England and Wales, there are more places on the BPTC or LPC than there are available pupillages or training contracts.⁸⁹ I discuss the consequences of this further below. Formal assessment of the period of supervised practice amongst the legal professions in England and Wales is, generally, only by way of sign off by the employer. Attempts have been made to standardise both the experience undertaken by the trainee and the standard of his or her performance at the end of the period. Trainee solicitors are, for example, required to experience at least three different areas of legal practice, including both contentious and non-contentious work and to attain the (comparatively passive) Practice Skills Standards⁹⁰. Pupil barristers are signed off against a competence framework.⁹¹ There are required courses to be undertaken during the period of apprenticeship, which may, as with the Business and Finance element of the Professional Skills Course for solicitors, be summatively assessed. Perhaps the most sophisticated approach is, currently that of CILEx, who require candidates for chartered status to demonstrate a list of competences in a portfolio which is assessed not only by the employer but by the professional body.⁹² Without some such prescription, I suggest, - and in some cases even with it - there is considerable scope for exploitation of entrants, and considerable lack of clarity about what the period of supervised practice is for. Is it for example, about socialisation into the habitus of the profession?⁹³ Is it a period of legitimate peripheral participation in a community of practice?⁹⁴ Are trainees expected to improve in their performance over their performance

⁸⁹ This is particularly acute for the bar: Bar Standards Board, 'Health Warning for Prospective Bar Professional Training Course Students' <https://www.barstandardsboard.org.uk/media/1363162/final_health_warning_for_bsb_website_24_jan_2012.pdf> accessed 5 June 2014.

⁹⁰ Solicitors Regulation Authority, 'Training Trainee Solicitors Guidance to the SRA Regulations on Training Contracts 10 April 2013' <<http://www.sra.org.uk/students/professional-skills-course/psc-guidance.page>> accessed 10 June 2014.

⁹¹ Bar Standards Board, 'Pupillage Handbook' <https://www.barstandardsboard.org.uk/media/1534328/pupillagehandbook_zk2.pdf> accessed 5 June 2014.

⁹² ILEX Professional Standards, 'Work Based Learning: Handbook' <[http://www.cilex.org.uk/pdf/WBL%20App%20Annex%204%20\(1\).pdf](http://www.cilex.org.uk/pdf/WBL%20App%20Annex%204%20(1).pdf)> accessed 5 June 2014. Prior to this, the Solicitors Regulation Authority carried out an extensive pilot of a portfolio-based assessment of competences both in the training contract and for a group of LPC graduates in legal services employment which did not qualify as a training contract. The results of this experiment have to some extent been absorbed into the results of the Legal Education and Training Review but see: Solicitors Regulation Authority, 'Work-Based Learning Pilot' (*Solicitors Regulation Authority*) <<http://www.sra.org.uk/students/work-based-learning.page>> accessed 5 June 2014; Ching J, "'I Intend to Do Very Well in It': The Road(s) to Competence." (2010) 19 Nottingham Law Journal 22 <http://irep.ntu.ac.uk:1801/view/action/singleViewer.do?dvs=1401903441924~232&locale=en_GB&VIEWER_URL=/view/action/singleViewer.do?&DELIVERY_RULE_ID=12&application=DIGITool-3&frameId=1&usePid1=true&usePid2=true> accessed 5 June 2014; BMG Research, 'Final Evaluation of the Work-Based Learning (WBL) Pilot' (Solicitors Regulation Authority 2012) <<http://www.sra.org.uk/sra/news/wbl-cpd-publication.page>> accessed 5 June 2014.

⁹³ Somerlad H, 'What Are You Doing Here? You Should Be Working in a Hair Salon or Something': Outsider Status and Professional Socialization in the Solicitors' Profession' (2008) 2 Web Journal of Current Legal Issues <<http://www.bailii.org/uk/other/journals/WebJCLI/2008/issue2/sommerlad2.html>> accessed 5 June 2014.

⁹⁴ Ching J, 'The Significance of Work Allocation in the Professional Apprenticeship of Solicitors.' (2012) 34 Studies in Continuing Education 1.

in the preceding vocational course, or simply to contextualise what was learned in it? Or is it simply a period of humble service which is the price of admission into the arcane mysteries of the profession? It is, I suggest, right that the norms of legal education are periodically questioned and in that context, I turn to recent reviews of legal education in Turkey, England and Wales and in the USA.

5 Reviews of legal education and LSET

In 2008, a Promoting Civil Society Dialogue between Bars Through Legal Education project, funded by the European Union, allowed representatives of a number of legal professions in Europe to conduct a scoping exercise to:

review the legal education and training system in Turkey in the light of other European experiences and best practice and to foster an evidence-based debate within the Turkish legal profession, prior to reforming the initial education and training system as well as introducing a continuous professional education system.⁹⁵

This report⁹⁶ identified 43 law schools in operation in Turkey in 2008, an exponential rise over the preceding fifteen years. This number has, it appears, increased to at least 57 in 2010⁹⁷ and to 68 by 2013.⁹⁸ Legal education in Turkey is, clearly, of significant interest.

The investigation concluded with a recommendation for:

- A working group of stakeholders, including both practitioners and academics;
- The development of training standards:

to devise and improve the standards and develop the content of vocational training on matters such as professional ethics, legal drafting, advocacy and the like⁹⁹

These two themes, of collaboration and of development of consistent standards, foreshadow those of the later investigations in England and Wales and in the USA, to which I now move.

The investigation in Turkey is unusual in having been carried out by practitioners and academics from outside the country and from a range of jurisdictions. Intramural review of legal education and its fitness for 21st century practice has, however, been a preoccupation in recent years in jurisdictions as varied as Australia, Canada, mainland

⁹⁵ Lonbay J, 'Experts' Report on the Legal Education and Training System in Turkey.' (2009) <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1677818> accessed 5 June 2014, 7.

⁹⁶ Which refers to a bar examination having been in place for a short period, but subsequently having been rescinded by the Turkish parliament.

⁹⁷ Menu for Justice, 'Regarding Undergraduate Law Degree Programmes' (Menu for Justice 2010) <https://www.academic-projects.eu/.../TURKEY_Undergraduate_TF1.doc> accessed 5 June 2014.

⁹⁸ Lonbay J and Toprak M, 'Legal Education in Turkey: Ottoman to Bologna' in Shuvro Prosun Sarker (ed), *Legal Education in Asia* (Eleven International Publishing 2013), p 184. There are an additional four law schools in Northern Cyprus.

⁹⁹ Lonbay J, 'Experts' Report on the Legal Education and Training System in Turkey.' (2009) <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1677818> accessed 5 June 2014, p46. Additional recommendations were made about CPD and payment of apprentices.

China, France, Hong Kong, India, Mauritius, South Africa and the USA. Although their remits and methodologies have varied, themes related to cost, competence, globalisation, parity of qualification and the balance between regulation and autonomy and innovation, pervade them. Attempts to harmonise different regulatory models are becoming visible, as are attempts to educate on a supra national basis, either through joint or double degrees, or by embedding comparative and international law and cross-cultural competences into individual degree programmes. I will, however, focus on two examples which are linked to the conference in Turkey.

In 2011, the three largest professional regulators in England and Wales - the Solicitors Regulation Authority, Bar Standards Board and ILEX Professional Standards - instigated a substantial research project to investigate legal education and training in England and Wales.¹⁰⁰ Although individual professions had reviewed their own qualification frameworks, this was the first examination of education in the whole sector since 1971. It covered all eight regulated legal professions, and also investigated some of the areas which are not yet regulated, such as will-writers and employment advisors. A research team of academics, of whom I was one, was commissioned to conduct the initial research phase of what became known as the Legal Education and Training Review (LETR). Qualitative aspects of the project involved:

- individual and stakeholder responses to Discussion Papers produced by the research team;
- unsolicited submissions to the research team;
- free text comments submitted as part of an online survey; and
- interviews, meetings and focus groups with a total of 307 respondents including academics, regulators, practitioners of all eight regulated professions and in a variety of organisations (including in-house lawyers) and students distributed across both England and Wales.

Five quantitative surveys were also used to generate quantitative data (with 1,128 respondents to the largest survey). We were also given access to a substantial corpus of consumer data obtained by BDRC Continental for the Legal Services Board.

The overall aim of the project was to ensure that the legal education and training system achieved the objectives set out in the Legal Services Act 2007. Consequently, we had a number of aims:

- a) assessing the perceived strengths and weaknesses of the existing systems of legal education and training across the regulated and unregulated sectors in England and Wales;

¹⁰⁰ The project was prompted by the Legal Services Board: Edmonds D, 'Training the Lawyers of the Future: A Regulator's View' (Lord Upjohn lecture, London, November 2010) <http://www.legalservicesboard.org.uk/news_publications/speeches_presentations/2010/de_lord_upjohn Lec.pdf> accessed 5 June 2014.

- b) identifying the skills, knowledge and attributes required by a range of legal service providers currently and in the future;
- c) assessing the potential to move to sector-wide outcomes for legal services education and training;
- d) assessing the potential extension of regulation of legal services education and training for the currently unregulated sector;
- e) making recommendations as to whether and, if so, how, the system of legal services education and training in England and Wales may be made more responsive to emerging needs;
- f) including suggestions and alternative models to assure that the system will support the delivery of:
 - i. high quality, competitive and ethical legal services;
 - ii. flexible education and training options, responsive to the need for different career pathways, and capable of promoting diversity.

A number of briefing and discussion papers were generated during the course of the research phase,¹⁰¹ which was also assisted by a Consultation Steering Panel convened as a sounding board and advisory body to the ongoing investigation. Our final report, published in 2013 (<http://letr.org.uk/index.html>) explores the context of education for those working in the sector, including new forms of business structure and the impact of technology; the content of legal services education, including gaps in knowledge and skills; and systems and structures of legal education, in particular standards, access, progression and diversity.¹⁰² It contains 26 recommendations for change, grouped around outcomes and standards; content; structures (including continuing professional development; periods of supervised practice; apprenticeship routes and information available to entrants) and suggestions for further review (see appendix A).

Although response to the final report varied,¹⁰³ with some suggestions that it had not gone far enough, or that it might prejudice the liberal arts agenda in relation to the LLB, at the time of writing, the regulators are implementing changes in response to the report. So, for example, the Solicitors Regulation Authority and Bar Standards Board are working together on creation of a joint competence framework which will set out what a newly qualified solicitor or barrister should know and be able to do. The Solicitors

¹⁰¹ Webb J and others, 'Briefing and Discussion Papers' (*Legal Education and Training Review*) <<http://letr.org.uk/briefing-and-discussion-papers/index.html>> accessed 5 June 2014. For other discussion of the genesis and early stages of the investigation, see Webb J, 'Regulating Lawyers in a Liberalized Legal Services Market: The Role of Education and Training' (2013) 24 *Stanford Law and Policy Review* 533

¹⁰² Webb J and others, 'Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales' (*Legal Education and Training Review 2013*) <<http://letr.org.uk/the-report/index.html>> accessed 5 June 2014.

¹⁰³ See for example, in a special edition: Childs P, Firth N and de Rijke H, 'The Gap between Law Student Career Aspirations and Employment Opportunities' (2014) 48 *The Law Teacher* 51 <<http://www.tandfonline.com/doi/abs/10.1080/03069400.2013.875302>> accessed 5 June 2014; Ferris G, 'Values Ethics and Legal Ethics: The QLD and LETR Recommendations 6, 7, 10, and 11' (2014) 48 *The Law Teacher* 20 <<http://www.tandfonline.com/doi/full/10.1080/03069400.2013.875673>> accessed 5 June 2014; Guth J and Ashford C, 'The Legal Education and Training Review: Regulating Socio-Legal and Liberal Legal Education?' (2014) 48 *The Law Teacher* 5 <<http://www.tandfonline.com/doi/abs/10.1080/03069400.2013.875304>> accessed 5 June 2014; Hamilton A, 'In an Ever-Changing Legal Landscape, Paralegals Are the Way Forward' (2014) 48 *The Law Teacher* 104 <<http://www.tandfonline.com/doi/full/10.1080/03069400.2013.875305>> accessed 5 June 2014; Hardee M, 'To Prescribe or Not to Prescribe? That Is the Question' (2014) 48 *The Law Teacher* 69 <<http://www.tandfonline.com/doi/abs/10.1080/03069400.2013.875306>> accessed 5 June 2014; Leighton P, 'Back from the Future: Did the LETR Really Prepare Us for the Future?' (2014) 48 *The Law Teacher* 79 <<http://www.tandfonline.com/doi/abs/10.1080/03069400.2013.875308>> accessed 5 June 2014; Twining W, 'LETR: The Role of Academics in Legal Education and Training: 10 theses1' (2014) 48 *The Law Teacher* 94 <<http://dx.doi.org/10.1080/03069400.2013.875309>> accessed 16 May 2014.

Regulation Authority, in its Training for Tomorrow project, has also proposed changes to its CPD scheme and potentially wide-ranging changes to regulation of the qualification structure, including the possibility that the LLB/GDL stage and LPC stage could be achieved by “equivalent means”, and opening up the regulation of the training contract.¹⁰⁴

In 2012, the ABA in the USA convened a task force on the future of legal education (with sub-committees on costs and economics and on delivery of legal education and regulation) to consider how best to address the challenges presented by:

- The impact of economic trends on the rising cost of legal education and declining legal employment prospects;
- Innovations, methods and advocacy efforts by state and local bar associations and other groups to reduce the cost of legal education, improve practical skills training, match new lawyers with job opportunities, and provide student loan debt relief; and
- The impact of structural changes in law practice to the nature of lawyer work and the number and distribution of attorneys in the bar.¹⁰⁵

This group conducted meetings and outreach activities, attended public events and solicited submissions and comments from respondents (including students). Its final report was issued in January 2013,¹⁰⁶ reaching conclusions and making recommendations about pricing and funding of legal education, accreditation (i.e. regulation of legal education); innovation, skills and competences and broader delivery of legal services (see appendix B).

On first reading of the draft ABA report, I was struck by the similarity of the recommendations of the two investigations, as well as the extent to which they opened up the potential for greater convergence between the two ostensibly polarised education models. In practice, of course, the extent of apparent convergence may already be substantial. So, for example, where an Anglo-Welsh GDL, for graduates in non-law disciplines, is coupled with the vocational Legal Practice Course and additional academic or research study to create an LLM award, this starts to look something like a JD; while a JD with a substantial experiential or clinical component starts to look like an Anglo-Welsh academic degree and vocational course combination. Of particular interest was the

¹⁰⁴ Bar Standards Board, 'Legal Education and Training Review (LETR): Next Steps' <<https://www.barstandardsboard.org.uk/qualifying-as-a-barrister/letr-next-steps/>> accessed 5 June 2014; ILEX Professional Standards, 'Fit for the Future: IPS Responds to LETR' (*ILEX Professional Standards*) <http://www.cilex.org.uk/ips/ips_home/notice_board/ips_responds_to_letr.aspx> accessed 5 June 2014; Solicitors Regulation Authority, 'Training for Tomorrow' (*Solicitors Regulation Authority*, 2013) <<http://www.sra.org.uk/sra/policy/training-for-tomorrow.page>> accessed 5 June 2014; Legal Services Board, 'Statutory Guidance on Legal Education and Training' <http://www.legalservicesboard.org.uk/news_publications/press_releases/pdf/20140304_LSB_Education_And_Training_Consultation_Response_And_Guidance.pdf> accessed 5 June 2014.

¹⁰⁵ American Bar Association, 'Task Force on the Future of Legal Education Initial Charge' <http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/initial_charge_of_the_task_force_on_the_future_of_legal_education.authcheckdam.pdf> accessed 5 June 2014.

¹⁰⁶ American Bar Association Task Force on the Future of Legal Education, 'Report And Recommendations American Bar Association Task Force On The Future Of Legal Education' (American Bar Association 2013) <http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/report_and_recommendations_of_aba_task_force.authcheckdam.pdf> accessed 5 June 2014.

insistence in the ABA Task Force approach, on skills and competences, to which I will return below.

Because, however, the two reports were designed for different audiences: the LETR report for regulators and the ABA Task Force report to a wide range of stakeholders, including the press, it is not easy to correlate the recommendations directly against each other. There are, nevertheless, clear points of consistency in, for example:

- The desire for more information, and for a centre to enhance legal education generally, in ABA A2-A4 and in LETR 20, and 25;
- A desire to encourage limited licensure or alternative means to practise in ABA C3 and, to the extent not already visible in England and Wales, in LETR 22 and 23;
- A desire to work to point of entry standards in ABA C4 and LETR 1-5;
- A focus on skills in ABA C5 and D1 and in LETR 10-13; and
- A focus on financing through the ABA report and on flexible and alternative routes of entry throughout the LETR report.

In this next section, however, I take the five principle areas of concern identified in the ABA Task Force report, and explore convergence and divergence between the US and Anglo-Welsh responses.

6 Problems and solutions: convergence and divergence?

Pricing and Funding

The tuition fees for an undergraduate law degree in England and Wales are paid by the individual rather than paid or subsidised by the state.¹⁰⁷ Since 2012, they have peaked at £9,000 a year. Tuition fees for the LPC are in the region of £12-14,000 and the BPTC in the region of £16,000. Qualification for solicitors or in the case of the bar, independent practice rights are, however, contingent on also obtaining a particular kind of employment contract (training contract or pupillage) in order to complete the supervised practice component. Although there is some evidence that numbers are decreasing, places on both BPTC and LPC outnumber available training contracts and pupillages by some margin, leaving a number of graduates in limbo, and unable to obtain a salary that will allow them to recoup their debt.¹⁰⁸ This leads to a buyer's market in jobs for "paralegals by default" and the possibility of exploitation of individuals by holding out to them the prospect of a training contract at an unspecified point in the future. In what may be an unlikely manifestation of the competition between professions enshrined in

¹⁰⁷ Except in Scotland and in Wales where state subsidies remain. Tuition fees for undergraduate study in England are, however, not repaid until after graduation. Fees for the vocational courses must, however, be paid in advance, although some of the larger firms will pay, or subsidise, LPC tuition fees.

¹⁰⁸ Simmons R, 'Training: Paralegal Purgatory' *The Lawyer* (24 March 2014) <<http://www.thelawyer.com/training-paralegal-purgatory/3017068.article>> accessed 5 June 2014.

the Legal Services Act, it has also led CILEx – which also makes a point of publicising the considerably lower cost of a legal executive education¹⁰⁹ – to provide a route into a regulated status for such individuals with a fast track route into the legal executive profession.

Submissions to LETR included calls for a title to be awarded to aspiring solicitors on completion of their LPC; for a cap on the number of LPC/BPTC places; for such places to be contingent on having already obtained a training contract or pupillage,¹¹⁰ for extension to the range of types of employment that can qualify for the period of supervised practice. The move by a number of providers, of providing a “top up” by which an LPC or BPTC can be converted into an LLM - an award which has a status independent of the legal professions and is internationally recognised - might be regarded as a cynical move which only serves to increase income for law schools. At the very least, calls were made for better information, and information at an earlier stage in the educational process, to enable potential entrants to make more informed decisions. Given the concerns about information, and distrust of the information given by law schools, the prospect of litigation in England and Wales along the lines of the litigation that has flourished in the USA alleging misrepresentation of graduate employability by law schools, seemed not very far away.

Ultimately, the day one competence approach recommended by the LETR research team enables greater variety in routes to achieve those competences, which in turn provides a means by which, if the regulators are willing to do so, to lighten the financial load on entrants. Issues of cost also preoccupied the ABA Task force, from a starting point where the cost of a (postgraduate) legal education is already higher than in England and Wales, although, individual responsibility for tuition fees being longer established, methods of support including bursaries and loans are considerably more sophisticated. In addition, there is some evidence that the implications of law school debt have pushed individuals in the USA into premature independent practice, which correlates with an increase in professional negligence claims and ethics violations.¹¹¹

The ABA recommendations included reviews of the extent of undergraduate education that should be required before embarking on the JD; the cost of the JD itself and the possibility of limited licensures outside the JD route. These are being developed

¹⁰⁹ Chartered Institute of Legal Executives, ‘Lawyer Qualifications with the Chartered Institute of Legal Executives’ (*Chartered Institute of Legal Executives*) <http://www.cilex.org.uk/careers/careers_home/career_change/qualifications_and_training/lawyer_qualifications.aspx> accessed 5 June 2014.

¹¹⁰ As in Northern Ireland, where, however, it seems the bottleneck then appears at the point of completion of the law degree.

¹¹¹ Illinois State Bar Association, ‘Special Committee on the Impact of Law School Debt on the Delivery of Legal Services Final Report & Recommendations’ (Illinois State Bar Association 2013) <<http://www.isba.org/sites/default/files/committees/Law%20School%20Debt%20Report%20-%203-8-13.pdf>> accessed 5 June 2014

particularly in Washington.¹¹² Educational frameworks developed for the latter and for, paralegals in Canada,¹¹³ Scotland¹¹⁴ and England and Wales,¹¹⁵ might, therefore, appear similar to those of the smaller specialist professions in England and Wales.

Accreditation

In the USA, the principal target of professional regulation is the JD, particularly its resources and staffing. In England and Wales the focus of regulation has traditionally been on the vocational courses – the current regulations for the BPTC, for example, at 171 pages, rivalling the length of the ABA Standards for the JD – with an uneasy compromise around the LLB. In addition, there is, typically, a hands-off approach to the period of supervised practice, and measurement of CPD/CLE is by reference to inputs and hours spent rather than outputs. An exception has been CILEx, which implemented both a competence assessment at the point of qualification for candidates for chartered status and a cyclical, benefits model of CPD before the LETR report was published.

The question of regulation was considered by both reviews: by definition in the LETR investigation, commissioned as it was by the professional regulators and from the perspective of cost/benefit and the potential for stifling of innovation, by the ABA Task Force. The question is not, or not only, of more or less regulation, but of the appropriate targeting of regulation:

In assessing [competence], a regulatory perspective also requires one to ask what is an appropriate and proportionate use of regulatory resources? If “real” competence is what matters, does continuing legal education and professional development become the key? Does that mean fewer regulatory resources could (and should) be allocated to “initial” assessments of “competence” which may be of limited predictive power, and more to those points where assessment is more likely to make a direct difference to clients, consumers, and employees? Does it mean that in some key (high-risk) areas, specialist accreditation and even reaccreditation should become the norm?¹¹⁶

A refocussing of regulatory resource is already being demonstrated in responses to the LETR report, with the SRA committed to “a bonfire of the regulations” which incorporates, for example, a concept of achievement of existing stages by “equivalent means” mapped against a day one competence framework which may serve both to cut through the complexity and lack of transparency in existing transfer mechanisms and provide routes

¹¹² See fn 56.

¹¹³ Law Society of Upper Canada, ‘Paralegal Licensing Process’ (*Law Society of Upper Canada*) <<http://www.lsuc.on.ca/licensingprocessparalegal/>> accessed 10 June 2014

¹¹⁴ Law Society of Scotland, ‘Registered Paralegal Scheme’ (*Law Society of Scotland*) <<https://www.lawscot.org.uk/members/paralegals>> accessed 10 June 2014.

¹¹⁵ Institute of Paralegals, ‘Competency Standards’ <<http://www.theiop.org/national-competency-standards/contract-terms.html>> accessed 5 June 2014; National Association of Licensed Paralegals, ‘Paralegal Training Pathway’ <http://www.nalptraining.co.uk/training_pathways>

¹¹⁶ Webb J, ‘Regulating Lawyers in a Liberalized Legal Services Market: The Role of Education and Training’ (2013) 24 *Stanford Law and Policy Review* 533, 562.

which are more cost effective for individuals than the existing configuration of required components.¹¹⁷

Innovation

The ABA Task Force report also expresses concern that the extent of regulation for the JD stifles innovation and “reinforces a far higher level of standardization in law schools and legal education than is necessary to turn out capable lawyers”.¹¹⁸ One can argue whether prescription of knowledge content, explicitly as in the LLB or by implication by reference to a subsequent bar examination, stifles innovation; provides consistency which protects graduates from less prestigious law schools or is a reasonable proxy for the baseline level of knowledge required for practice in the profession which mandate them. Although, for those involved with them in England and Wales, the degree of regulation of the LLB and the LPC and BPTC may have appeared stifling, it could at least be argued that some level of heterogeneity is beneficial in other ways. For example, if the baseline content and delivery of an LPC is consistent across the country, then a mature student who is not portable should not be prejudiced by having to attend his or her local university.

It is, however, apparent that there is a willingness to innovate and that some academics in the USA are committed to doing so, even if in what is currently comparative isolation. There is, however, much that can be shared across jurisdictions. Colleagues in the USA are, I suspect, more advanced than my own in their work on legal writing. There is, however, a considerable body of work and experimentation in skills education and in vocational education in the UK and in Australasia, which can be shared. The post review landscape may, then, begin to be one of cross-jurisdictional collaboration, where academic interest groupings cluster around topics such as skills; clinical education, ethics or advocacy.¹¹⁹ This is, of course, facilitated across the English-speaking, common law or hybrid common law/civil law nations, but should not be confined to them. If, increasingly, legal practice is globalised, then so too should education for such practice. An international collegiality in legal educators is an eminently worthwhile project. The bigger question may be what we think education for legal practice is seeking to achieve.

¹¹⁷ Solicitors Regulation Authority, ‘Training for Tomorrow’ (*Solicitors Regulation Authority*, 2013) <<http://www.sra.org.uk/sra/policy/training-for-tomorrow.page>> accessed 5 June 2014.

¹¹⁸ American Bar Association Task Force on the Future of Legal Education, ‘Report And Recommendations American Bar Association Task Force On The Future Of Legal Education’ (American Bar Association 2013) <http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/report_and_recommendations_of_aba_task_force.authcheckdam.pdf> accessed 5 June 2014, p 2.

¹¹⁹ For example: legal skills (<http://qlsc.jmls.edu/2014/>); clinical legal education (http://www.numyspace.co.uk/~unn_mlif1/school_of_law/IJCLE/); legal ethics (<http://www.city.ac.uk/events/2014/jul/international-legal-ethics-conference-vi-legal-ethics-at-a-time-of-regulatory-change>) and advocacy (http://www.ntu.ac.uk/apps/events/3/home.aspx/event/155597/default/centre_for_advocacy_2014; <http://www.stetson.edu/law/conferences/eats/>)

Skills and competences

It has been a feature of all the models of legal professional education that they have tended to prescribe processes and structures (inputs). It is for this reason that I was able, at the beginning of this article, to produce a taxonomy of the “components” of legal education models. This can be contrasted with the growing movement towards the more challenging project of trying to assess competence or capability in performance as a lawyer at the point of qualification (output). Even the concept of the point of qualification can be fluid: in the USA, for example, the bar exam graduate can immediately enter sole practice. In England, a pupil barrister is entitled to take on independent work after six months of pupillage. A solicitor, on the other hand, not only does not qualify until two years of supervised practice have been completed, but is normally barred from sole practice for a further three years. The project of trying to define what a lawyer does, or can do, at the point of qualification is by no means easy.¹²⁰ On one level, it is not enough

¹²⁰ See, for example, various lists of skills, outcomes or competences in sources as varied as: Cooper J, 'What Is Legal Competence?' (1991) 54 *Modern Law Review* 112; MacCrate R and others, 'Legal Education and Professional Development - an Educational Continuum' (American Bar Association Section of Legal Education and Admissions to the Bar 1992) <http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2013_legal_education_and_professional_development_maccrate_report%29.authcheckdam.pdf> accessed 5 June 2014; Jones P, 'Competences, Learning Outcomes and Legal Education' (Institute of Advanced Legal Studies 1994); Gasteen G, 'National Competency Standards: Are They the Answer for Legal Education and Training?' (1995) 13 *Journal of Professional Legal Education* 1; Maughan C, Maughan M and Webb J, 'Sharpening the Mind or Narrowing It? The Limitations of Outcome and Performance Measures in Legal Education' (1995) 29 *Law Teacher* 255; Australasian Professional Legal Education Council, 'Competency Standards for Entry Level Lawyers' <http://www.aplec.asn.au/Pdf/Competency_Standards_for_Entry_Level_Lawyers.pdf> accessed 5 June 2014; Council of the Bars and Law Societies of the European Union, 'CCBE Recommendation on Training Outcomes for European Lawyers' <http://www.ccbe.org/fileadmin/user_upload/NTCdocument/EN_Training_Outcomes1_1196675213.pdf> accessed 5 June 2014; Solicitors Regulation Authority, 'Work-Based Learning Pilot' (*Solicitors Regulation Authority*) <<http://www.sra.org.uk/students/work-based-learning.page>> accessed 5 June 2014; American Bar Association, 'Report of the Outcome Measures Committee' (2008) <<http://apps.americanbar.org/legaled/committees/subcomm/Outcome%20Measures%20Final%20Report.pdf>> accessed 5 June 2014; Bar Standards Board, 'Pupillage Handbook' <https://www.barstandardsboard.org.uk/media/1534328/pupillagehandbook_zk2.pdf> accessed 5 June 2014; Australasian Professional Legal Education Council, 'Review of the APLEC & LACC Competency Standards for Entry-Level Lawyers: Discussion Paper Prepared by the APLEC Executive' (Australasian Professional Legal Education Council 2012) <<http://www.taslawssociety.asn.au/news/PLT%20Competences%20Review%20Discussion%20Paper%20v%206%20June%202012.pdf>> accessed 5 June 2014; Council of Australian Law Deans, 'Juris Doctor Threshold Learning Outcomes' <[http://www.cald.asn.au/assets/lists/Education/JD%20TLOs%20\(March%202012\)%20Andrew%20Kenyon.pdf](http://www.cald.asn.au/assets/lists/Education/JD%20TLOs%20(March%202012)%20Andrew%20Kenyon.pdf)> accessed 5 June 2014; Federation of Law Societies of Canada, 'National Entry to Practice Competency Profile for Lawyers and Quebec Notaries' <http://www.flsc.ca/_documents/NASCompetencesSept2012.pdf> accessed 5 June 2014; ILEX Professional Standards, 'Work Based Learning: Handbook' <[http://www.cilex.org.uk/pdf/WBL%20App%20Annex%204%20\(1\).pdf](http://www.cilex.org.uk/pdf/WBL%20App%20Annex%204%20(1).pdf)> accessed 5 June 2014; Institute of Paralegals, 'Competency Standards' <<http://www.theiop.org/national-competency-standards/contract-terms.html>> accessed 5 June 2014; Law Society of Scotland, 'The PEAT 2 Outcomes' <<http://www.lawscot.org.uk/education-and-careers/the-traineeship/providing-a-traineeship/training-a-trainee/the-peat-2-outcomes>> accessed 5 June 2014; National Conference of Bar Examiners, 'A Study of the Newly Licensed Lawyer' (National Conference of Bar Examiners 2012) <http://www.ncbex.org/assets/media_files/Research/AMP-Final-2012-NCBE-Newly-Licensed-Lawyer-JAR.pdf> accessed 5 June 2014.

An attempt to synthesise some of these as part of the LETR research appears at: Webb J and others, 'Knowledge, Skills and Attitudes Required for Practice at Present: Initial Analysis' (*Legal Education and Training Review* 2012) <<http://letr.org.uk/wp-content/uploads/012012-competence-frameworks-analysis.pdf>> accessed 5 June 2014. Final conclusions and detailed discussion of the subject appears in the final report: Webb J and others, 'Setting Standards: The Future of Legal Services Education and Training Regulation in

to seek to predict a set of competences once and for all, pegged to day one, as one might expect lawyers to continue to improve in both “scope and quality” of performance throughout the remaining 40 or so years of their careers and regulatory resources might, perhaps be better targeted on continuing competence throughout the career. This leads to objections about professional autonomy; to arguments that the market both tests and dictates the competence of a self-employed lawyer, and to the rather more contentious subject of periodic re-validation or reaccreditation of lawyers.¹²¹

Nevertheless, 21st century work on common outcomes, for the degree or for competence at the point of entry into legal practice (“day one”) is spreading.¹²² This is not without difficulty: What does “day one” or “practice ready” mean? What is its scope? What is its standard?

Nevertheless, such frameworks are already available in Australasia and in Canada. In England and Wales, they are used for signoff of completion of a barrister’s pupillage,¹²³ for qualification as a chartered legal executive, in the QLTS and have been tested in the training contract for solicitors.¹²⁴ There is evidence of experiments with the concept elsewhere, including in the Russian Federation.¹²⁵ A similar approach is under discussion as a result of the ABA Task Force report,¹²⁶ and a common framework is being developed collaboratively for solicitors and barristers in England and Wales. In addition, law firms and other organisations work with competence frameworks of their own, often using a number of levels and incorporating in the higher levels more sophisticated degrees of responsibility and complexity of work. The emphasis is placed less on the process and structures prior to qualification, but on identification and assessment of the attributes of a competent lawyer. Bar examinations, of course, also operate from this perspective but few, if any, would claim to test the complete range of competences of an entry level lawyer. Even the QLTS, tied to the initial iteration of the solicitors “day one outcomes”, assumes competence in a number of the outcomes on the basis that candidates who are already qualified lawyers elsewhere will already possess those attributes from their prior experience in practice. What is yet to take place, and would

England and Wales’ (Legal Education and Training Review 2013) <<http://letr.org.uk/the-report/index.html>> accessed 5 June 2014.

¹²¹ As advocated by the Legal Services Board Consumer Panel in Legal Services Consumer Panel, ‘Legal Education and Training - Submission to the Research Team’ <http://www.legalservicesconsumerpanel.org.uk/publications/consultation_responses/documents/2012-05-21LETRsubmission.pdf> accessed 5 June 2014 but rejected in the final LETR report.

¹²² See fn 120.

¹²³ Bar Standards Board, ‘Pupillage Handbook’ (Bar Standards Board 2013) <https://www.barstandardsboard.org.uk/media/1534328/pupillagehandbook_zk2.pdf> accessed 5 June 2014.

¹²⁴ See references at fn 25 and fn 92.

¹²⁵ Miroshnichenko O, Gaivoronskaya Y and Samusenko T, ‘Competence-Based Approach in Modern Juridical Education Experience of Far-Eastern Federal University. Part 4’ (2014) 30 World Applied Sciences Journal 116.

¹²⁶ Fisher JW, ‘Putting Students at the Center of Legal Education: How an Emphasis on Outcome Measures in the ABA Standards for Approval of Law Schools Might Transform the Educational Experience of Law Students’ (2010) 35 Southern Illinois University Law Journal 225 <<http://heinonline.org/HOL/Page?handle=hein.journals/siulj35&id=233&div=&collection=journals>> accessed 5 June 2014.

require a meta-analysis of all these competence frameworks alongside each other, is a realistic attempt to identify a supra-national or template set of competences. In Europe, a set of outcomes has been identified for a range of jurisdictions (including civil law jurisdictions) by the Council of Bars and Law Societies of Europe but it is not mandatory or embedded in any qualification system.¹²⁷ Competences of an international lawyer, assuming this to be the next level of development and necessarily involving a level of convergence, are, to the best of my knowledge, still at the stage of work by individual, possibly isolated researchers.¹²⁸

Broader delivery of legal services

Globalised legal practice is, however, at one end of the spectrum. At the other is the question of access to justice on a domestic level. The ABA Task Force has suggested investigation of the licensure provisions, potentially allowing specialist or limited licences to be available to non-JD graduates. The Legal Services Act in England and Wales actively champions this approach by increasing the variety of bodies that can be licensed. The limited range of reserved activities, however, also means that a wide range of paralegal firms – including those with no legal training, LPC or BPTC graduates who have been unable to complete training and lawyers who have been struck off – can offer advice on, for example, employment law or contracts. A risk based approach to the widening of regulated activities, evident in the regulation outside the Act of immigration advisors and claims managers, has resulted in an on again, off again, suggestion of the compulsory regulation of will writing. Registration of paralegals, whether voluntary, or through a distinct scheme such as the registered paralegal scheme in Scotland or under the Ontario model,¹²⁹ may be the next development in England and Wales, helping to define a new profession. Creation of new professions and new regulated structures aside, all professions will need to deal with new forms of delivery and new forms of legal work. Some jurisdictions, and some educational frameworks, will be better suited to doing so, than others.

7 Conclusion: collaboration and conversations

I conclude by returning to the recommendations for collaboration made in the report on Turkish education. They are echoed in the calls for a legal education hub in the LETR

¹²⁷ Council of the Bars and Law Societies of the European Union, 'CCBE Recommendation on Training Outcomes for European Lawyers' <http://www.ccbe.org/fileadmin/user_upload/NTCdocument/EN_Training_Outcomes1_1196675213.pdf> accessed 5 June 2014.

¹²⁸ See for example, Faulconbridge J and Muzio D, 'Legal Education, Globalization, and Cultures of Professional Practice.' [2009] Legal Ethics & Professional Responsibility (ejournal) <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1516314>; Lonbay J, 'The Education, Licensing, and Training of Lawyers in the European Union, Part II: The Emerging Common Qualifications Regime and Its Implications for Admissions in Europe' [2010] Bar Examiner 25.

¹²⁹ See fn 113 and fn 114.

report and implicitly necessary to implement the conclusions of the ABA Task Force. This involves a conversation, and a conversation that involves us all in open-minded listening to what others have to say. Clearly there are cultural, regulatory and historical differences between us. However, insofar as we are dealing with similar problems and working towards similar solutions, there can be a tendency to assume either that the other jurisdiction, the other profession, the other system, has already got it right; or that our problems and our solutions are uniquely ours. In Turkish, you may think my chickens are geese - *Komşunun tavuğu komşuya kaz görünür* – in English, I may think your grass is greener. Collaboration, I suggest, not only provides a clearer insight into the challenges and solutions adopted by others, but - *Amerikayı yeniden keşfe gerek bulunmamaktadır*¹³⁰ - reduces the extent to which our limited time and resources are expended in reinventing wheels.

¹³⁰ There is no need to rediscover America. In the English-speaking nations the sentiment is usually expressed as “there is no need to reinvent the wheel”.

Appendix A: the recommendations of the Legal Education and Training Review research phase final report

Recommendation 1

Learning outcomes should be prescribed for the knowledge, skills and attributes expected of a competent member of each of the regulated professions. These outcome statements should be supported by additional standards and guidance as necessary.

Recommendation 2

Such guidance should require education and training providers to have appropriate methods in place for setting standards in assessment to ensure that students or trainees have achieved the outcomes prescribed.

Recommendation 3

Learning outcomes for prescribed qualification routes into the regulated professions should be based on occupational analysis of the range of knowledge, skills and attributes required. They should begin with a set of 'day one' learning outcomes that must be achieved before trainees can receive authorisation to practise. These learning outcomes could be cascaded downwards, as appropriate, to outcomes for different initial stages or levels of LSET. Learning outcomes may also be set (see below) for post-qualification activities.

Recommendation 4

Mechanisms should be put in place for regulators to co-ordinate and co-operate with relevant stakeholders including members of their regulated profession, other regulators, educational providers, trainees and consumers, in the setting of learning outcomes and prescription of standards.

Recommendation 5

Longer term, further consideration should be given to the development of a common framework of learning outcomes and standards for the legal services sector as a whole.

Recommendation 6

LSET schemes should include appropriate learning outcomes in respect of professional ethics, legal research, and the demonstration of a range of written and oral communication skills.

Recommendation 7

The learning outcomes at initial stages of LSET should include reference (as appropriate to the individual practitioner's role) to an understanding of the relationship between morality and law, the values underpinning the legal system, and the role of lawyers in relation to those values.

Recommendation 8

Advocacy training across the sector should pay greater attention to preparing trainees and practitioners in their role and duties as advocates when appearing against self-represented litigants.

Recommendation 9

Learning outcomes should be developed for post-qualification continuing learning in the specific areas of:

- Professional conduct and governance.
- Management skills (at the appropriate points in the practitioner's career. This may also be targeted to high risk sectors, such as sole practice).
- Equality and diversity (not necessarily as a cyclical obligation).

Recommendation 10

The balance between Foundations of Legal Knowledge in the Qualifying Law Degree and Graduate Diploma in Law should be reviewed, and the statement of knowledge and skills within the Joint Statement should be reconsidered with particular regard to its

consistency with the Law Benchmark statement and in the light of the other recommendations in this report. A broad content specification should be introduced for the Foundation subjects. The revised requirements should, as at present, not exceed 180 credits within a standard three-year Qualifying Law Degree course.

Recommendation 11

There should be a distinct assessment of legal research, writing and critical thinking skills at level 5 or above in the Qualifying Law Degree and in the Graduate Diploma in Law. Educational providers should retain discretion in setting the context and parameters of the task, provided that it is sufficiently substantial to give students a reasonable but challenging opportunity to demonstrate their competence.

Recommendation 12

The structure of the Legal Practice Course stage 1 (for intending solicitors) should be modified with a view to increasing flexibility of delivery and the development of specialist pathways. Reduction of the breadth of the required technical knowledge-base is desirable, so as to include an appropriate focus on commercial awareness, and better preparation for alternative practice contexts. The adequacy of advocacy training and education in the preparation and drafting of wills needs to be addressed.

Recommendation 13

On the Bar Professional Training Course (for intending barristers), Resolution of Disputes out of Court should be reviewed to place greater practical emphasis on the skills required by Alternative Dispute Resolution, particularly with regard to mediation advocacy.

Recommendation 14

LSET structures which allow different levels or stages (in particular formal education and periods of supervised practice) to take place concurrently should be encouraged where they do not already exist. It should not be mandated. Sequential LSET structures, where formal education is completed before starting supervised practice, should also be permitted where appropriate. In either case, consistency between what is learned in formal education and what is learned in the workplace is encouraged, and facilitated by the setting of 'day one' outcomes.

Recommendation 15

Definitions of minimum or normal periods of supervised practice should be reviewed in order to ensure that individuals are able to qualify or proceed into independent practice at the point of satisfying the required day one outcomes. Arrangements for periods of supervised practice should also be reviewed to remove unnecessary restrictions on training environments and organisations and to facilitate additional opportunities for qualification or independent practice.

Recommendation 16

Supervisors of periods of supervised practice should receive suitable support and education/training in the role. This should include initial training and periodic refresher or recertification requirements.

Recommendation 17

Models of CPD that require participants to plan, implement, evaluate and reflect annually on their training needs and their learning should be adopted where they are not already in place. This approach may, but need not, prescribe minimum hours. If a time requirement is not included, a robust approach to monitoring planning and performance must be developed to ensure appropriate activity is undertaken. Where feasible, much of the supervisory task may be delegated to appropriate entities (including chambers), subject to audit.

Recommendation 18

There should be regular and appropriate supervision of CPD, and schemes should be audited to ensure that they correspond to appropriate learning outcomes. Audit should be a developmental process involving practitioners, entities and the regulator.

Recommendation 19

In the short to medium-term, regulators should cooperate with one another to facilitate the cross-recognition of CPD activities, as a step towards more cost-effective CPD and harmonisation of approaches in the longer term.

Recommendation 20

In the light of the Milburn Reports on social mobility, conduct standards and guidance governing the offering and conduct of internships and work placements should be put in place.

Recommendation 21

Work should proceed to develop higher apprenticeship qualifications at levels 5-7 as part of an additional non-graduate pathway into the regulated professions, but the quality and diversity effects of such pathways should be monitored.

Recommendation 22

Within regulated entities, there is no clearly established need to move to individual regulation of paralegals. Regulated entities must however ensure that policies and procedures are in place to deliver adequate levels of supervision and training of paralegal staff, and regulators must ensure that robust audit mechanisms provide assurance that these standards are being met. To ensure consistency and enhance opportunities for career progression and mobility within paralegal work, the development of a single voluntary system of certification/licensing for paralegal staff should also be considered, based on a common set of paralegal outcomes and standards.

Recommendation 23

Consideration should be given by the Legal Services Board and representative bodies to the role of voluntary quality schemes in assuring the standards of independent paralegal providers outside the existing scheme of regulation. The Legal Services Board may wish to consider this issue as part of its work on the reservation and regulation of general legal advice.

Recommendation 24

Providers of legal education (including private providers) should be required to publish diversity data for their professional or vocational courses, Qualifying Law Degrees and Graduate Diplomas in Law and their equivalents.

Recommendation 25

A body, the 'Legal Education Council', should be established to provide a forum for the coordination of the continuing review of LSET and to advise the approved regulators on LSET regulation and effective practice. The Council should also oversee a collaborative hub of legal information resources and activities able to perform the following functions:

- Data archive (including diversity monitoring and evaluation of diversity initiatives);
- Advice shop (careers information);
- Legal Education Laboratory (supporting collaborative research and development);
- Clearing house (advertising work experience; advising on transfer regulations and reviewing disputed transfer decisions).

Recommendation 26

In the light of the regulatory objectives and the limited engagement by consumers and consumer organisations in the research phase of the LETR, it is recommended that the regulators ensure that appropriate consumer input and representation are integrated into the consultation and implementation activities planned for the next phase of the LETR.

Appendix B: summary of the conclusions of the ABA Task Force

A. American Bar Association

The American Bar Association should undertake the following:

1. Establish a Task Force to Examine and Recommend Reforms Concerning the Pricing and Financing of Law School Education. Issues within the Scope of Such a Project Should Include:

- a. Current methods of pricing used by law schools, including the impact of readily available loans and common methods of discounting based on LSAT scores and related factors.
- b. The relative lack of need-based discounting offered by law schools.
- c. The impact of current methods of pricing on access to law school.
- d. The impact on legal education and access to justice of reliance on loans to finance law school education.
- e. The structure of the current loan program for financing of law school education and potential alternative.

2. Establish a Center or other Framework to Institutionalize the Process of Continuous Assessment and Improvement in the System of Legal Education.

3. Establish a Mechanism for Gathering Information About Improvements in the System of Legal Education and Disseminate that Information to the Public.

4. Establish Training and Continuing Education Programs for Prelaw Advisors to Improve their Understanding of the System of Legal Education and the Current Environment.

B. The Council of the ABA Section of Legal Education and Admissions to the Bar

The Council of the Section of Legal Education and Admissions to the Bar should undertake the following:

1. Eliminate or Substantially Moderate the Restrictiveness of Standards, Interpretations, and Rules that Directly or Indirectly Raise the Cost of Delivering a J.D. Education without Commensurately Contributing to the Goal of Ensuring That Law Schools Deliver a Quality Education.

2. Eliminate or Substantially Moderate the Restrictiveness of Standards, Interpretations, and Rules that Directly or Indirectly Impede Law School Innovation in Delivering a J.D. Education without Commensurately Contributing to the Goal of Ensuring That Law Schools Deliver a Quality Education.

3. Carefully Study whether to Eliminate or Substantially Moderate the Requirement in Standard 304(b), of a Course of Study for the J.D. Consisting of No Fewer than 58,000 Minutes of Instruction Time, in that the Requirement may Impede Law School Innovation in Delivering a J.D. Education without Clearly Contributing to the Goal of Ensuring that Law Schools Deliver a Quality Education.

4. Revise the Standards, Interpretations, and Rules Concerning Variances

5. Provide Additional Consumer Information to Prospective Students as Recommended in 2007 by the Section's Accreditation Policy Task Force and in 2008 by the Section's Special Committee on Transparency.

6. Establish Standards for Accreditation of Programs of Legal Education Other than the J.D. Program.

C. State Supreme Courts, State Bar Associations, and Other Regulators of Lawyers and Law Practice

State and territorial high courts, state bar associations, and other regulators of lawyers and law practice should undertake or commit to the following:

1. Undertake to Develop and Evaluate Concrete Proposals for Reducing the Amount of Law Study Required for Eligibility to Sit for a Bar Examination or be Admitted to Practice,

in Order to be Able to Determine Whether Such a Change in Requirements for Admission to the Bar Should be Adopted.

2. Undertake to Develop and Evaluate Concrete Proposals for Reducing the Amount of Undergraduate Study Required for Eligibility to Sit for a Bar Examination or be Admitted to Practice, in Order to be Able to Determine Whether Such a Change in Requirements for Admission to the Bar Should be Adopted..

3. As a Means of Expanding Access to Justice, Undertake to Develop and Evaluate Concrete Proposals to: (a) Authorize Persons Other than Lawyers with J.D.'s to Provide Limited Legal Services Without the Oversight of a Lawyer; (b) Provide for Educational Programs that Train Individuals to Provide those Limited Legal Services; and (c) License or Otherwise Regulate the Delivery of Services by Those Individuals, to Ensure Quality, Affordability, and Accountability.

4. Establish Uniform National Standards for Admission to Practice as a Lawyer, including adoption of the Uniform Bar Examination.

5. Reduce the Number of Doctrinal Subjects Tested on Bar Examinations and Increase Testing of Competences and Skills.

6. Avoid Imposing More Stringent Educational or Academic Requirements for Admission to Practice than those Required Under the ABA Standards for Approval of Law Schools.

D. Universities and Other Institutions of Higher Education

Universities and other institutions of higher education should undertake the following:

1. Develop Educational Programs to Train Persons, other than Prospective Lawyers, to Provide Limited Legal Services. Such Programs May, but Need Not, Be Delivered through Law Schools that are Parts of Universities.

E. Law Schools

Each law school should undertake the following:

1. Develop and Implement a Plan for Reducing the Cost and Limiting Increases in the Cost of Delivering the J.D. Education, and Continually Assess and Improve The Plan.

2. Develop and Implement a Plan to Manage the Extent of Law School Investment in Faculty Scholarly Activity, and Continually Assess Success in Accomplishing the Goals in the Plan.

3. Develop a Clear Statement of the Value the Law School's Program of Education and other Services Will Provide, Including Relation to Employment Opportunities, and Communicate that Statement to Students and Prospective Students.

4. Adopt, as an Institution-Wide Responsibility, Promoting Career Success of Graduates and Develop Plans for Meeting that Responsibility.

5. Develop Comprehensive Programs of Financial Counseling for Law Students, and Continually Assess the Effectiveness of Such Programs.

F. Law Faculty Members

Law school faculty members should undertake the following:

1. Become Informed About the Subjects Addressed in This Report and Recommendations, in Order to Play an Effective Role in the Improvement of Legal Education at the Faculty Member's School.

2. Recognize the Role of Status as a Motivator but Reduce its Role as a Measure of Personal and Institutional Success.

3. Support the Law School in Implementing the Recommendations in Subsection E.

G. The Legal Profession

Members of the legal profession should undertake the following:

1. Become Informed About the Subjects Addressed in This Report and Recommendations, and Play an Effective Role in the Education of Law Students and Young Lawyers.

H. Those Who Inform the Public About Legal Education

Those who supply information and those who employ it should undertake the following:

1. Law Schools, the Profession, and Others in the System of Legal Education Should Commit to Providing the Public with Information about Improvements and Innovations in Legal Education that Respond to the Criticisms Previously Raised.
2. News Organizations Should Strive to Develop Expertise Regarding Legal Education among Staff, and the Organized Bar Should Seek to Assist Them in Doing so.
3. U.S. News & World Report Should Cease Using Law School Expenditures as a Component of Its System for Ranking Law Schools and, in General, Should Ensure that Its Ranking Methodology Does Not Promote Conduct Damaging to the Interests of Law Students and the System of Legal Education.