
Literature Review

2. Legal education, professional standards and regulation

Introduction

1. We should perhaps preface our discussion of the place of standards and regulation by noting some general historical movements. The relationship of education, professional standards and regulation has always been present in the modern period as an uneasy triangle of concerns and stakeholders. In the nineteenth century, for instance, a Parliamentary Select Committee in 1846 warned of the current poor standards in legal education, while a Royal Commission reiterated many of the same recommendations (Boon & Webb, 2008, 83). The relationship has intensified in the modern period, however, particularly post WW2, as professional standards developed a higher profile in debates surrounding the professions generally, and as professions themselves moved from being elite and privileged structures, formed on kinship lines, to institutions whose ethos was bourgeois and at least claimed to be meritocratic (Abel, 2003, 96-7). In addition a number of social movements have contributed to this process: the bureaucratization of professions; the rise of credentialism and concomitant occupational closure; the erosion of professional autonomy and subsequent breakup of specialist practice and associated knowledge and practices; stratification and conformity to niche norms (Abel, 2003, chapter three).
2. The concept of a professional standard shifted, too, in the latter half of the twentieth century. As lawyers and their regulators reacted to the increasing interests of government and lay bodies, so their perception grew of the importance of stated standards in maintaining the aura of professionalism and the independence of a professional cadre. We shall see this movement in the key reports from 1971-2008 – the Ormrod, Benson, Marre and ACLEC Reports, and the reports commissioned by regulators thereafter – the Training Framework Review Group Reports and (slightly later) the Wood Reports.

Ormrod Report, 1971

3. The *Report of the Committee on Legal Education* is one of the key documents for English legal education in the second half of the twentieth century. It was instructed and written at a time when it was recognized that much more information about legal education was needed if the profession were to define what its future might be (Wilson 1966; Wilson & Marsh 1975, 1978, 1981). The Committee's remit was at once wide but directive, and defined by two of the three terms (the third being a catch-all term):
 1. To advance legal education in England and Wales by furthering co-operation between the different bodies now actively engaged upon legal education;
 2. To consider and make recommendations upon training for a legal professional qualification in the two branches of the legal profession, with particular reference to:
 - a. The contribution which can be made by the Universities and Colleges of Further Education; and
 - b. The provision of training by The Law Society and the Council of Legal Education, the co-ordination of such training, and of qualifying examinations relating thereto (Ormrod, 1971, 1)

4. From the outset the terms do not envisage that the Committee would investigate radical change to the historical directions that legal education had taken to date. 'Furthering co-operation' was as far as the Committee was to go, while the second term of remit envisages no fundamental change to the bifurcated nature of legal education and training. From the start, the Committee acknowledged the 'duality' of English legal education, noting that the profession had played 'a prominent part in the education of future professional lawyers (particularly of solicitors)' and that 'universities [had] not yet attained the dominant influence over professional legal education which their counterparts in other countries [had] enjoyed for a great many years' (and those counterparts included Scotland and Ireland). Their acceptance of this duality is evident in their own literature / historical review, eg their quotation of the words of the 1846 Select Committee on Legal Education: "'The province of the University is to teach the philosophy of the science, and to secure instruction in those branches for which it might be apprehended the more technical character of the special institution would inadequately provide'" (7).

5. The recommendations of the Committee were based upon a three-stage model of legal education: an academic stage, a professional stage (comprising 'institutional training and in-training') and continuing education or training stage (94). As the Committee observes, there was general support for such a model, though the submissions from regulators and scholarly bodies vary in what they expected to be the shape of such a model. The Committee observed that one important advantage of such a model would be that 'legal education will be in the hands of professional educationalists', whereas the profession itself could 'never be more than enlightened amateurs who can only give part-time attention to its problems' (47). The subsequent literature on legal education would contest at least one half of this assumption, and draw a distinction between professional academics and professional educationalists within universities. It was not until recently that academics were given even the most basic training in educational methods, and even now the provision of such training is left to the institution, and is not a mandatory element of professional training, as it is for schoolteachers, for example.

6. Perhaps because the Committee recognized the academy as professional in its teaching, the Committee gave only a sketchy outline of curriculum content (it suggested five "'basic core subjects'", 48) and no mandatory structures, eg core and elective curriculum. There was no indication in the Report as to how the Committee had arrived at this outline or, perhaps more significantly, who was consulted in the process, though clearly the subjects support at least to some degree the reserved legal activities.¹ The lack of information at this point is very significant. Most educational reports would examine the foundations of content choice. They would seek confirmation that the knowledge content described was valid and relevant, and had a deeper purpose in the curriculum; and that purpose would be specified, together with the process by which the report would have collected and analyzed data. Often the knowledge content would be described in terms of aims, objectives, standards or outcomes. The Ormrod Report does not engage in this process at all.

¹ The history of what came to be known as the reserved activities is analyzed comprehensively by Mayson (2010). He notes that they continue to be 'a fundamental pillar of the Legal Services Act', at s.12(1)(1). It should be noted that the Committee acknowledged that the aims and content of academic degrees extended well beyond the bare mention of the five core subjects.

Instead, it passes over this essential stage of educational foundation work, and moves on to structure.

7. Recognising the need for communication between the various stages that it approved, the Committee advocated the setting up of an Advisory Committee on Legal Education, comprising stakeholder representatives from the Council of Legal Education, the Law Society and the Society of Public Teachers, among others. This recommendation arose out of the recognition by the Committee that ‘for the purpose of training for the legal profession, academic and vocational legal education should as far as possible be integrated into a coherent whole’ (94). This is the Committee’s first main recommendation and it is symptomatic of two views. First it is the culmination of many statements scattered throughout the report where the Committee attempts to bring together the two halves of legal education. Second, it reveals why such a convergence should take place: ‘for the purpose of training for the legal profession’. Many academics in the decades to follow would disagree with this statement and as a result distance themselves from professional legal education, to the detriment of both halves of legal education.

8. Ormrod’s uncertainty about the structural roles and content should be seen in the context of the general change that Higher Education in England was undergoing at the time the Committee was reporting. The Committee was set up *post*-Robbins, and the striking new context of university study, introduced in the late sixties, is sketched out (15-16). While the Committee were well aware of the changing status of universities and the conditions under which staff and students were then studying, what they were studying and how, the Committee did little to look to the future and pursue the issue of how such conditions would change the nature of the relationship between tertiary education and professional forms of education that had subsisted throughout most of the twentieth century. Nor did it pursue in general terms the likely effects of Robbins upon the HE system and the more local effects of that upon legal education, eg in terms of access.

9. Others did sketch out some of these conditions and consequences. In Appendix F, ‘Memorandum by the Society of Public teachers of Law, January 1969’, SPTL cite with approval L.C.B. Gower’s statement of the aims of academic education in law. These include the nature of law and its function, what the law is and application of it to new situations, legal system, general principles of the ‘more basic legal subjects’, and the relationship of law ‘to the other social sciences and to the general framework of society’ (Gower, 1967, 434; see also Gower, 1950). SPTL here make the case for legal education as more than vocational training – ‘the basic legal education of the future practitioner is not the only concern of a university law faculty’ (226). The Committee however did not analyze what exactly ‘basic education’ might be, what one might presume more advanced education might look like, who might be involved in this study and where it might take place, under what conditions of study / work balance, and at which stages in a legal career.

10. If a law degree were to be recognised as a royal road into both branches of the profession (with exceptions for mature students, graduates of other disciplines and from institutions outwith the UK, and legal executives, for whom a two-year programme and CPE was advocated), the Committee’s sharing of powers on dual recognition of such a degree were apportioned in an interesting way. Professional

bodies were given the right to withdraw recognition if the law degree ‘were drastically altered in such a way as seriously to reduce its value as a professional qualification’ (47). The Committee advised that ‘[b]eyond this the professional bodies in our opinion ought not to go’, and the Committee urged a process of negotiation between the academic and professional bodies, hoping that ‘both sides will be able to agree on the objectives of the academic stage in the professional training scheme’ (47). It is interesting that the Committee should, on the one hand, describe the profession as ‘enlightened amateurs’ on educational matters, yet give them an effective veto on academic curriculum design. At the same time the ‘professional educationalists’ (ie academics) are given no such regulatory power over the professional curriculum. In spite of the statements that both sides needed to work together, it would appear that in some respects there were boundaries put up by the Committee between the professional bodies’ legal educational work and the legal educational work of academics that made it more difficult for them to do so.

11. The Committee was clear that vocational courses were as necessary as in-training (57), though once again the theoretical bases for this opinion were not made clear. It was more explicit about the structure of the vocational curriculum than it had been for the academic one, stipulating ‘practical exercises in professional problems and procedures’, ‘additional law subjects of a practical nature’, and an ‘introduction to certain non-legal subjects’ (61-4). The vocational course was to be ‘strongly orientated towards practice’ – lectures, for instance, were to be ‘kept to the absolute minimum’ (62). Legal aid clinics ‘should be explored’, and there was to be common training for barristers and solicitors (65). Paragraphs 138-149 (64-72), dealing with provision and design of vocational courses, are among the most interesting sections in the Report, where a number of crucial conclusions are not unanimous but stated explicitly to be majority only, reflecting the strength of feeling and the difficulty attending the topics. The first issue concerned whether vocational courses should be provided in institutions provided by the profession, or in ‘the existing structure of higher education’ (64-6). The majority of the Committee favoured the latter, with their arguments set out in 12 points. The first point acknowledged that institutional teaching should be ‘administered and organized by professional educators’ (66). The key issue, of course, is what is meant by course administration and course organization. How creative might a university become? Would there be a danger, in spite of the Committee’s insistence on the practical nature of the vocational course, that law faculties would interpret the course in the way that was easiest for them to understand, organize, teach, and assess?
12. The Committee was perceptive in a number of points in the debate – the potential to be flexible about course content, and the ways that the Inns of Court School of Law could be brought within the university structure, for instance. The College of Law was cited as another institution that could similarly be brought within universities (it is interesting that in recent years the College has opted to take a different route, and sought degree-awarding powers for itself). In other points the Committee assumed too much about the effectiveness of current university courses – for example when they pointed out the ‘satisfactory arrangements for vocational training for the medical profession’ (67) as a model of how professional vocational education might work within a university. This was at a time when the changes that would transform medical education were just beginning in the UK, precisely because such courses were seen as less than satisfactory as a preparation for life as a

physician. Medical education then, as has been often described, ‘included two elements – the content or what the students studied, and the examinations which were designed to assess the extent to which the students had learned the content’ (Harden, Crosby and Davis, 1999, 7). This traditional, academic form of education was never really going to be an effective model for professional education, either in medicine or in law.

13. The Committee then addressed the arguments for siting vocational courses in institutions other than law schools, which were also set out neatly, in 13 points. *Inter alia* the Committee pointed to the comparative simplicity of course organization if a ‘single professional school with a few branches’ organized the curriculum (68). Professional bodies would, under this model, ‘provide the central direction and control which will be necessary’ (69). It was acknowledged that ‘in the world of teaching the practitioners are amateurs’, but against this it was argued that ‘in the practical application of the law the practitioners are the professionals and so should be solely responsible for the content and control of the vocational courses’ (69). The contradiction is hard to miss: practitioners are acknowledged to be less than competent educational professionals, but they are held ‘solely responsible’ for the whole curriculum. It was an issue that the Committee was insufficiently troubled about to seek a more radical solution. It is symptomatic that the educational consequences of allowing professional bodies to control an educational project without major educational design support are not addressed by the Committee – a lacuna in Ormrod and subsequent legal reports.

14. The secondary literature on the Ormrod Report is extensive, as one might expect of a key report. Arthurs (1971, 642) questioned the Committee’s adherence to an evolutionary approach to legal educational change, and observed that while the profession’s influence over legal education was explored, it was not resolved in the Report. For him there was in the Report ‘a failure to confront the issue of professional control as a matter of principle’ which prevented ‘definitive statement of the role of the academic branch as a vital force within the profession’ (644). He also pointed out the failure of the Report to make a ‘public interest rationale for university-based professional education’ (644). The argument as to efficiency, he observed, occluded the more important issue that the interests of the public and the profession would be best served by the existence in the universities of ‘a vital centre of legal scholarship in which new ideas and skills and values will continuously be generated’ (644). In its argument for a three-year degree Arthurs argued the Report created a ‘flimsy foundation for continuing professional development’ and could not contribute to a ‘properly integrated educational experience’ (647). He foretold accurately what was to be the oft-repeated experience of students who at the academic stage were engaged in abstract intellectual debate, and were then asked to engage at the professional stage in ‘mundane, quasi-clerical work’ which would lead to a ‘severe loss in morale and idealism’ (647, 648).

15. Arthurs’ critique is persuasive because he draws parallels from medical education and from other jurisdictions to argue that the Report did not think radically about the future of legal education. He also argued, and rightly, that the Committee’s calculations of what might be needed for the future provision of lawyers should not be predicated on the then current requirements (652-3).

16. Robert Stevens also commented on Ormrod, from the point of view of US legal education, and while agreeing with Arthurs in many particulars, he went further in his scepticism of the liaison between the universities and the profession. Citing Weber, he wondered ‘will the profession really be prepared to abandon the Bar exams and the system of exemptions and hand over control of the syllabus to the universities, subject only to the teaching of five core subjects?’ (249).
17. Wilson, a member of the Committee, pointed out in an article on the Report that [t]he Ormrod Committee had two limbs in their terms of reference. The first was to consider and make recommendations on training for a legal professional qualification. This they have publicly done. The second was to advance legal education by furthering co-operation between the different bodies now actively engaged upon legal education but he observed that ‘it is yet to be seen what progress they have made in this’ (Wilson, 1971, 641). In a sense that element of the remit was always going to take a lot longer, since it required bodies that, historically, were suspicious of each other’s motives and backgrounds to work out methods of working with each other across a divide that, arguably, was exacerbated by the work of the Committee. Working as a Committee member and coming from a background in academia, Wilson was aware of the need for university law degrees to achieve status in the academy generally, as well as within the profession.
18. Others were prepared to be more radical. Commenting on Ormrod and critiquing the system of legal education as well, the organization Justice (1977) concluded that ‘[a] law degree should not be a necessary condition for admission to the legal profession’ (1977, 12), and that barristers’ clerks were important enough in the legal hierarchy to need professional training (14).
19. In more detail, Justice argued that deep knowledge of the detail of the law is not required: what is required is ‘a deep understanding of the *principles* of the law, and of the rules of construction, procedure and evidence, and a knowledge of where the finer details can be found when they are needed’ (98). They go on to state that ‘it is a fact that success in either branch of the law is not necessarily dependent on earlier success in university law schools’ (102), and from this they argued that a law degree should not be a necessary precondition for entry to the profession. They state the case for *any* degree being a useful foundation; acknowledge the usefulness of the ‘discipline of academic law’ (101); attach importance to ‘variety’ and diversity, and wanted to see greater emphasis on ‘practical training’, including ‘some training in office management’ for both branches of the profession, including ‘professional ethics’ (104).
20. Hepple spoke for many commentators when he identified in Ormrod the establishment of the duality of legal education in England and Wales: academic study on the one hand, and vocational or professional legal education on the other (1996, 477). He saw evidence of a rapprochement attempted by the Committee, but given the sheer weight of detail supporting the split, it is hard to see that much effort was made to integrate the two sides. There were, of course earlier attempts, not least Gardiner & Martin (1963), to consider plans for integration, but these failed to achieve much.
21. Boon & Webb (2008, 91) point to two different though related consequences: ‘while stressing the need for a continuum, [Ormrod] succeeded in establishing an often-

tense dynamic around academic legal education. Second, it marginalized academic legal education in professional formation'. Boon and Webb are right to deal with these two issues together because it could be argued that the second consequence is actually a cause of the first. Once a separation is set up between academic and professional learning, many unintended and often quite negative consequences result. Part of the reason has to do with labelling: what is academic learning, what is professional learning, and so forth. Once the dichotomy has been set up, however, then there are issues that arise of knowledge drift between the two stages, and the theory by which academic learning is applied to professional practice. In such circumstances theory about practice can be, as Eraut points out, an oppressive force within a profession: a body of prescriptive concepts which, though widely circulated, and attaining the status of revered shibboleths, 'offer no practical advantage' to professional practice. As Eraut points out, the reality is more complex. The prior knowledge that professionals acquire in academic curricula is rarely used in professional contexts in the form that it is learned: it needs to be transformed by its use in a new context (Eraut 1985; 1994).

22. Perhaps the most significant effect of the Ormrod Report was to influence the direction of future debates in legal education in England and Wales in how it set out the terms of the debate at a fairly deep level. Two issues will illustrate this. First, Ormrod tends to assume, in spite of much evidence to the contrary, a relatively stable state for legal education. Even before Ormrod this had been called into question for education generally and higher education in particular. Donald Schön, for example had developed this concept in his early books, *Invention and the Evolution of Ideas*, (1969, first published as *Displacement of Concepts*, in 1963) and *Technology and Change, The New Heraclitus* (1967), as well as in the publication of his 1970 Reith Lectures, *Beyond the Stable State* (1971). It could be argued that many of the problems of legal education are associated with an ever-increasing tempo of change, and the need to develop systems to learn and adapt to this state. Schön characterized typical institutional tendency in this regard as 'dynamic conservatism – a tendency to fight to remain the same', and we can see this at work in much of the politics of legal education subsequent to Ormrod.
23. Second, in many passages Ormrod conflated two quite separate things, practices and institutions, assuming that certain practices would take place in certain institutions. But institutions and practices are different and practices tend to be much more vulnerable to the cultural and political direction of the institution.² In this, we can see the seed of the later debates and attempts by stakeholders to control legal educational institutions, knowledge, values and practices.
24. The conflation of practices with institutions also brings with it, as Giroux and other educationalists have pointed out, too simplistic a view of how the hierarchical division of labour in capitalist society reproduces itself in education, and fails to

² Alasdair MacIntyre drew an important distinction here: '[p]ractices must not be confused with institutions. Chess, physics and medicine are practices; chess clubs, laboratories, universities and hospitals are institutions. Institutions are characteristically and necessarily concerned with what I have called external goods. They are involved in acquiring money and other material goods; they are structured in terms of power and status and they distribute money, power and status as rewards'. As MacIntyre points out, the result of this is that 'institutions and practices characteristically form a single causal order in which the ideals and the creativity of the practice are always vulnerable to the acquisitiveness of the institution, in which the co-operative care for the common goods of the practice is always vulnerable to the competitiveness of the institution'. (MacIntyre, 1985, 181. See Maharg, 2007).

account for the many subtle ways that students and teachers resist this process. Giroux give us an example of this – we can, he wrote, thus be blind to how ‘the dominant culture is mediated in schools through textbooks, through the assumptions that teachers use to guide their work, through the meanings that students use to negotiate their classroom experiences, and through the form and content of school subjects themselves’ (Giroux 1981, 92-3). The same can be said of the means by which professions reproduce their values in educational systems. As Giroux says, ‘reproduction is a complex phenomenon that not only serves the interest of domination but also contains the seeds of conflict and transformation’ (1981, 109).

25. Legal education as a process of learning was also viewed by the Ormrod Committee in rather a conventional form. Two points illustrate this: ‘sandwich’ courses and distance learning. The Committee considered what it called ‘sandwich courses’, whereby ‘practical training becomes an integral part of the academic stage’ (76). While acknowledging that such courses were ‘a worthwhile attempt’ to avoid the dichotomy of theory and practice, and while pointing out that sandwich courses were held at Trent Polytechnic (later Nottingham Trent University) and Brunel University, the Committee held that the benefits of converging theory and practice were ‘in fact achieved by the more usual three-year degree structure’. The Committee also rejected sandwich courses on practical grounds: they considered that the problems of organization of ‘suitable practical experience on a large scale are so formidable that we cannot recommend it as the normal method of training’ (77). What evidence base there was for these decisions is not given, probably because there was none. It is something of an irony that the following section, entitled ‘In-training’ (77-80) deals with the organization of both pupils and solicitors, the training of whom is not dismissed as overly elaborate or having taken place at the earlier academic stage – indeed pupillage at the Bar is described as having ‘no practical alternative’ (77).
26. The same attitude pervaded other innovative forms of learning, such as distance learning. The Committee did not consider it as a viable form of legal education – this in spite of the fact that the University of London LLB by External Study had been a route into legal study since 1858 and, later, to the profession (so long as the Qualifying Law Degree requirements were met by candidates). The Committee did note the rise of the BCL degree in Oxford in 1855, the Cambridge Tripos in 1873, and the foundation of law schools at LSE, University College and King’s College (8-9). Interestingly, while the Committee points out that university law faculties in the ‘provincial cities’ sprang from ‘courses financed by The Law Society to provide teaching for articled clerks for the Law Society’s Intermediate Examination’, it omits to mention that the faculties also prepared students for the UL external degrees in law – at Exeter, Nottingham and Keele for instance (9). In spite of the Committee’s view on the matter, distance learning was something that law schools were at least interested in developing, and not only in this jurisdiction. Twining (1990) noted that in Australia CLEA, at the suggestion of Professor John Goldring, initiated an ambitious project to ‘explore the needs, possibilities and methods of developing distance learning in law *at international level*’ (Goldring 1989, 58; see also Goldring 1990); and Maharg (2011, 158) notes the extensive developments in distance learning in the US, by private providers and higher education institutions such as Columbia University, as early as the 1920s.

Benson Report, 1979

27. The Benson Committee (1979) reported on legal services generally, and unlike the Ormrod Report, only a small proportion of the entire Report was given over to legal education. The Conclusions and Recommendations (790-93) did not depart substantially from the direction taken by Ormrod. The law degree was confirmed as the 'normal but not the exclusive mode of entry to the profession' (790). There was more detailed prescription of the law degree and vocational training – 'cramming' was to be discouraged (790), and pupillage training records were to be kept in a prescribed form (791), and the training record was to be triangulated with a report from the pupil's master confirming a pupil's fitness to practise (791).
28. Some of the detailed recommendations and the discussion that give rise to them lack evidential discussion. In their discussion of the future of legal education, for instance, the Committee discussed the use of spoken and written English by lawyers and law students, and observed that a student's 'capacity for clear expression on paper can readily be tested in the course of his written work and examinations' (646). However there was already, by 1979, much research in rhetoric and compositional studies to show that capability in spoken and written language depends heavily on context: a student may achieve competence in academic writing for essays, dissertations and examination, for instance, but this is no guarantee that he or she will be able to write a straightforward business letter to a client. The context and the needs of the two audiences are quite different, and students need to practise as a matter of habit these new forms of writing in their new contexts (Flower, 1994; Stratman, 2002).
29. Given the Benson Report's date of submission (1979), it could be argued that much of the legal educational discussion pre-dated the rise of the skills agenda in Higher Education. This is true, but it is also the case that Benson takes into account neither the literature on poor communication standards in the legal profession nor the body of research into writing practices generally. The Commission cites The National Centre for Industrial Language Training, but not the research that underpinned work of Centres such as this – work that stretched back to the 1950s. Moreover it assumed good practice was current in the profession. When, for example, it is argued that 'practitioners [...] should be attentive to their students' abilities with the spoken word and should train them to present arguments concisely and clearly and to avoid prolixity' (646), the Commission is implicitly assuming that those practitioners have sufficient expertise in such qualities themselves, and have the necessary skills and training to train others. These were significant assumptions that could not be warranted, as subsequent research and experience demonstrated.

Marre Report, 1988

30. The Marre Committee (1988) was given a wide remit on legal services. Perhaps the most important element of its work was not legal education, but the structure and practice of the profession, dealt with in Part IV of the Committee's report. This followed on disputes between the Law Society and the Bar over, *inter alia*, solicitors' rights of audience in the higher courts, the Bar's monopoly of judicial appointments and barristers' rights of direct access to clients. Legal education was therefore, it has to be said, a minority interest for the Committee. Its remit on legal education was to 'identify those areas where changes in the present education of the legal

profession, and in the structure and practices of the profession, might be in the public interest' (3).

31. In the period since Ormrod there had been substantial change that showed no sign of letting up. Student intake to law schools had more than doubled; the conventional duality of the HE system itself was breaking up, with the rise of the post-1992 institutions (the 'new universities') and the diversity of intake into those institutions adding to a more diverse student body³; growing diversification in academic programme content and structure (including the slow change-over to modularized courses and semesters); increasing use of distance learning; an emphasis on skills as well as knowledge (first the Bar introduced extensive skills education in the BVC, followed by the Law Society's development of similar initiatives on the LPC), and a growing interest in student-directed learning (Walker 1993). In addition, in the early and middle eighties there was a sharpening of the debate between what might be termed the liberal and vocational views of law schools. The debate had existed long before Ormrod of course, but the parties had managed to keep their distance from each other. Now, in the growing rapprochement between regulators, academics and professional schools, positions and roles were clarified – the debates in a 1987 edition of *The Law Society Gazette* are examples of such (Bradney, 1987; 1988; le Clezio, 1987; 1988; Glasser 1987).
32. The title of the report, *A Time for Change* might have given rise to hope that educational change was envisaged; but in the event, little substantial change from Benson's position was proposed. Given the membership of the Committee, this is perhaps not surprising. Remarkably, none of the independent members on the Committee was trained in education or in professional education (Professor Sir David Williams, though a distinguished Cambridge legal scholar, was not an educational specialist).⁴ Where the possibility of substantial change was mooted, it was elided – for instance in the convergence of academic and professional stages 'to form a four year university or polytechnic course (192). The Committee cited the complexity of the proposal, and the developments since Ormrod in the growth of the College of Law and the Inns of Court School of Law. Following Ormrod and Benson, the Committee proposed that the two professions share a common academic stage of training and therefore approved a Common Professional Examination. It examined the arguments for common vocational training (124-128), and in spite of making what looks like an impressive case for such an approach, it withdrew from radical change, observing that it was 'imprudent to make an positive recommendation for immediate change' (128). Smaller changes were proposed: data collection (145), the Erasmus Scheme (145). The Committee's replacement for the Lord Chancellor's Committee (the Joint Legal Education Council) was urged to investigate the possibility of a common system of vocational training (128). In the meantime, pupillage and articles were retained in more or less the same form, with more monitoring mechanisms in both (136-7), and improvements were recommended to pupillage awards, both in number and quality. The Bar's Code of Conduct was examined and found to be 'adequate' – 136). In terms of regulatory activity, there was little with regard to legal education that could be considered significant; and as with the Ormrod and Benson reports, there was little interest in generating legal educational standards.

³ Given status, in England and Wales, as proto-universities by the 1988 Education Reform Act and full university status by the 1992 Further and Higher Education Act.

⁴ See <http://www.lawgazette.co.uk/news/the-future-the-legal-profession-new-committee-appointed>

33. Perhaps the most interesting of the Marre proposals was for a ‘vigorous Lord Chancellor’s Advisory Committee on Legal Education. It was noted that this Committee had been set up after Ormrod, and that Benson had suggested improvements; but the Marre Committee proposed to invigorate it by replacing it with a Joint Legal Education Council (to be distinguished from the Council of Legal Education which controlled the Inns of Court Law School), which would provide regular written reports to both branches of the profession. In the event it was the Advisory Committee itself that took the next major step in legal education in England and Wales, and it did so with a vigour that surprised many.

ACLEC, First Report, 1996

34. The Lord Chancellor’s Advisory Committee on Legal Education and Conduct (ACLEC) was formed in April 1991 under the aegis of the Courts and Legal Services Act 1990 and was responsible for a major review of all stages of legal education in England and Wales. In October 1992 it began a thorough review of legal education. As the Committee observed in its final Report, altering any single element of the educational process inevitably involved a consideration of others, so that what began as a review of aspects of the primary professional training stage drew in analyses of the academic and CPD stages as well (1996, 6). In 1994-5 papers that analyzed the academic and vocational stages as well as CPD were published, and a further two reports in 1995: ‘Access To and Participation in Undergraduate Legal Education’ and ‘Funding Legal Education’. Further papers were issued in the period 1997-1999, including an extensive report on CPD for solicitors and barristers (ACLEC, 1997). ACLEC was disbanded in 1999.
35. By the time of the publication of ACLEC’s first major report in 1996, the academic and professional wings of legal education had diverged further. The fast-changing nature of legal education had been outlined by the Heads of University Law Schools in 1983 in a submission to the then University Grants Committee, in part to argue for the resource-needs of a discipline that was in the throes of swift change (Heads of University Law Schools, 1984).⁵ It cited an increase in the scale of legal education at every level; increased diversification of content and styles of undergraduate law degrees; entry into the EC and growth in international and comparative law courses; changes in legal practice leading to the creation of new subjects; the entry of universities and polytechnics to professional education; increased use of technology; increase in legal services and advice in law schools; diversification and intensification of legal research carried out by staff; European links and integration. To this one might add the emerging profile of access and diversity issues, a range of new teaching methods and further specialization in legal topics. In addition and beyond the universities, private providers had increased in profile – not just the expansion of traditional players such as the College of Law, but new institutions such as BPP and, later, Kaplan.
36. The Response made it clear that these changed conditions would, in their view, only intensify, and in that they were correct. But the professional arena was one of increasing turmoil, too. The boom of the later eighties, in both corporate and conveyancing work, had ended abruptly with the recession of the early nineties. The impact on legal education was considerable: the pinch-points of pupillages and

⁵ Also endorsed by Heads of Polytechnic Law Schools and, unusually, by Heads of Scottish Law Schools

training contracts exacerbated problems of excess-supply in both branches of the profession and, under these conditions, regulators increasingly faced questions of access and socioeconomic and ethnic diversity of intake to the profession. The profile of the profession itself was shifting, becoming more stratified and polarized, and with pressures increasing on both corporate and high street lawyers, under very different working conditions, to increase billable hours.

37. The ACLEC Review acknowledged these conditions. ACLEC, though, went considerably beyond the earlier reports on legal education, and marked a new maturity in dealing with education in its complex educational, social and political contexts. The Consultative Committees comprised many figures from the academy and those involved in legal education in the professions – not only what might be termed figureheads (Committee Chairs and suchlike) but persons involved in legal educational practice at every level and at all stages, as well as legal academics with a knowledge of legal pedagogy and the wider world of legal education. The Committee even went beyond the bounds of the jurisdiction and made study visits to New York, Leiden and the European Court of Justice, as well as liaising with practitioners and educators from Australia, Canada and Japan. This clearly went beyond the desk research and consultations of earlier reports, which had described legal education in other jurisdictions only in terms of procedure, as if an *educational* system could be described as if it were a *legal* system.
38. The breadth of consultation matched the breadth of vision. The First Report describes a ‘new partnership’ based, in the words of the Chair (Lord Steyn), on ‘a broad and intellectually demanding legal education, attuned to the context and needs of a modern European democracy’ (3). These words mark a new departure from previous approaches that viewed legal education as a process that see-sawed only between a narrowly-understood academic foundation and a vocational stage that was largely dominated by sets of increasingly profession-oriented rules. In particular the European and democratic dimensions were significant, one being an acknowledgement of the international dimension of legal education in a globalized world (given the effect of the Bologna Declaration and the future Lisbon protocols), and the other stating what might be regarded as a fundamental political and regulatory ground for legal education, in the concept of democratic engagement within legal educational processes and outputs.
39. The detailed working-out of this statement was more problematic, as might be expected. Recommendation 4.1 stated that ‘the degree course should stand as an independent liberal education in the discipline of law, not tied to any specific vocation’ (91). The statement seemed to strengthen the separation of academic from professional education: the key question was how specific the ‘specific vocation’ might be. What of programmes of undergraduate study that sought to integrate academic and professional learning, such as the exempting degree at Northumbria University? Recommendation 4.2 seemed to deal with this, in that it gave law schools the freedom to decide the structure and content of the curriculum (91-2); and the mechanism for this was set out at R4.4 and subsequent recommendations (92). In this we can see a strategy in ACLEC when dealing with problematic issues that is repeated throughout the document: a guideline is set broadly, more as a general direction, and then the detail of benchmarked performance is laid out in some detail that makes the general direction slightly less general than at first glance; but without specifying in detail the content of the

guideline. Thus ACLEC avoided being drawn into micro-management over detailed curricular matters such as the content of Foundation subjects.

40. We can see this in the way that ACLEC dealt with integration of academic and professional stages. Rather than dividing up curriculum content between the two stages, thus emphasising the split between the two, the Review described what both stages should aim for: intellectual integrity and independence of mind, core knowledge, contextual knowledge, legal values, and professional skills (20-1). In drawing these up the Review was careful not to label them as outcomes or aims and objectives or capabilities. The Review was also careful not to specify curriculum structure. At 2.9 for instance, the Review cited what it termed ‘interesting examples of structural variety’ – the Northumbria exempting degree, the external LLB London degree, part-time degrees at some 17 universities and sandwich law degrees (23-4). Reversing Ormrod’s dismissal of this latter variety, the Review observed that ‘[d]evelopments such as these may provide models for the multi-entry and multi-exit system which we favour’ (24).
41. In terms of professional structures, the Report suggested re-organizing the vocational stage into a ‘licentiate’ in general professional legal studies, around 15-18 weeks’ duration, followed by a more specific 15-18 weeks in a BVC or LPC. The programmes could run continuously or separated by a six-month in-service training period. After completion of the BVC/LPC a trainee would complete training by taking another period of in-service training. The aim of this more granular and flexible period of training was to broaden the scope of professional education, create a number of entry and exit points, and to develop the initial Licentiate as an entry point for others in legal employment such as paralegals. What was seen by the Review as imaginative flexibility and granularity, however, was interpreted by the profession and by professional educators as fragmentation and dilution of content and standards.
42. The reception of the ACLEC Report was significant for later events. While the Report was broadly welcomed in academic circles, and met with little enthusiasm amongst professional educators, its effect was to enhance the independence and status of academic law at the expense of professional education, which remained mired in structures that were increasing seen as being out of kilter. For instance, while rights of access to the higher courts were finally extended to solicitors and others, the Bar Council actually consolidated the advocacy components of the BVC. In the LPC, eight City law firms, after much criticism of the existing LPC for its lack of commercial practice and drafting skills, formed firm-specific LPCs with three programme providers. This has continued to the present, with more firms liaising with providers to develop niche LPCs for their trainees.
43. If the new structures proposed by the ACLEC Report were a distinctly qualified success, the Report achieved much in the way of setting new directions in policy. Significantly, it was the first document to deal comprehensively with educational standards.⁶ Its treatment of the subject is admirably wide, relating not just to the training of pupil barristers and trainees or academic standards, but the standards of programmes associated with those educational processes. In part this arose from the remit of the Committee, which had a general statutory duty to assist in the

⁶ The word appears in an educational sense nearly a hundred times in the course of the Report, in striking contrast to all earlier reports where it appears only occasionally, and in the lay sense of the word.

‘maintenance and development of standards in the education, training and conduct of those offering legal services’ (101).

44. The Review was the first major legal educational document to describe and analyze standards. It focused on standards in section seven: ‘Quality Assurance: guaranteeing standards in legal education’. The section draws heavily on the structures and data developed by HE Funding Councils and the QAA generally to accredit and review the quality of programmes and institutions in HE. It is interesting that, here and elsewhere in the First Report, ACLEC’S focus on standards led them to draw upon the increasingly sophisticated data that was becoming available within the legal educational field. The Marre Report had already noted how little data had been collected by regulators and advocated that more be collected, and Ormrod, Benson and Marre did cite what was relatively administrative data; but ACLEC was the first report to use significant amounts of field data on education, as well as wide reference to the growing critical literature on legal education. The Report cites broad overviews such as Abel (1988) on the legal profession, to detailed surveys on law libraries (Clinch 1994) and detailed reports on law teaching by Harris, Bellerby, Leighton and Hodgson (1993).
45. ACLEC’S view of standards, however, went beyond the descriptive and prescriptive standards that QA organizations and regulators would be interested in developing and enforcing. In the first section of the report, for instance (‘The Changing Needs of Legal Practice in the 21st Century’), the Committee declared the need to maintain ‘the high professional and ethical standards upon which our legal system and, it could be said, our democracy depend. Pro bono services had been remarked upon in earlier reports, but here the linkage of standards with democratic values that include pro bono services, and the growing significance of law ‘between government and the governed at various levels’ (1.5) reveal a much more sophisticated regulatory concept of what standards might entail.
46. ACLEC were prepared to step into this regulatory space and comment on the relationship between standards and ethics. Later in this section, the Report describes the high ethical standards of the ‘close-knit professional communities represented by such institutions as the Inns of Court and local law societies’, but commented that the ethical challenge goes beyond client-based services, to ‘wider social and political obligations’ such as protection of the rights of minorities (15-16). The eleven-point summary of this section (16-17) provides in many respects the core of the Report’s thinking on legal education; and in every point it is closely related to standards of competence, behaviour, values and ethics.
47. The integration of academic and professional programmes, together with the upholding of institutional autonomy, were two of the key themes of the Report. They posed significant issues for the monitoring of attainment in both. ACLEC commented on the monitoring of the quality of both themes, where the Committee noted that ‘traditional methods of professional validation’ had been supplemented more recently by ‘academic audit ... teaching quality assessment ... various industry standards ... and even branding processes such as Investors in People’ (46). The Committee described the common characteristics of these QA approaches as
- being an assessment not of an institution’s objectives but whether those objectives have been met

- relying on institutional self-assessment, which is seen as a key element of quality enhancement
- having an ethos that is evaluative rather than prescriptive. (47)

The Committee observed the difficulty that these approaches presented to models of professional accreditation: 'old-style professional validation of qualifying law degrees will have to acknowledge the intentions of modern quality assurance systems by tolerating greater institutional autonomy' (47).

48. If the argument for greater institutional autonomy held for universities, might it not also hold for the professional stage of legal education? The Committee again took the general route to answering this question. The new professional programme it envisaged would be based on '*integrated learning*' (65, Committee's emphasis). The Committee also made it clear that, in terms of standards, it was never their intention to suggest that "'academic" education is intellectually rigorous, while vocational skills training is not' (72). In terms of standards, the system emphasised the construction of minimum standards, and envisaged that the professional bodies 'should delegate quality assurance to [a] new single audit and assessment body in respect of those institutions which receive financial support through the Funding Councils' or, if impracticable, a system of 'linked assessment exercises', with professional bodies and the CPLS Board 'adding their additional requirements for vocational courses and common professional studies to the basic HEFC audit and assessment requirement' (88).
49. In a curious way, what we see in the ACLEC Report is a move away from entity-based regulation, and towards activity-based regulation of legal education – this in spite of the autonomy that ACLEC afforded institutions. Whether or not the subtlety of this approach was fully understood is debatable for, as we shall see, this direction for the development of legal education in England and Wales was not facilitated by the next significant legal educational review.

Training Framework Review (TFR) & Wood Review

Training Framework Review

50. The debate shifted to an altogether more complex level after the millennium, matching the increased complexity of legal education in England and Wales. The profession had become more occupationally diverse and 'functionally specialized' (Webb & Fancourt 2004, 297). The LPC was criticized on its treatment of skills, ethics, even law practice and practice environments (Webb & Fancourt 2004, 300). The Bar did not escape: it was criticized for the length and expense of the BVC. The QLD was also criticized for declining standards. The regulatory context had shifted too, with the Clementi Review taking place more or less simultaneously with the TFR, and presenting regulators with the problematic of an uncertain future *qua* regulator of the professions, and an uncomfortable present *qua* regulator of legal education.
51. The answer, the TFR papers concluded, lay in increasing flexibility. Such 'flexibilisation', as Webb & Fancourt termed it, has been critiqued as helping to change legal education only in that it shifted the focus from learning processes towards outcomes, thus encouraging 'the view that it is the destination that

matters, not how you get there' (Webb & Fancourt 2004, 305). Flexibility is always helpful in curriculum design, but if it is emphasized over other values in education then the result can be a programme of study that is less than the sum of its parts.

52. The TFR marked a significant departure from earlier reform processes in a number of ways. First it was a regulator, the Law Society, that instructed the Review, rather than an external body. ACLEC had no regulatory power: its functions were purely advisory. The Bar Council, the Law Society and other authorised bodies still prescribed regulations, and the Lord Chancellor and other designated judges approved qualification regulations. Second, the Review was ambitious: it aimed at what it termed 'cradle to grave' review, going further than Ormrod several decades earlier. Third (and again departing significantly from Ormrod), where Ormrod, Benson and Marre considered the review of procedures and processes to be the core of reform (and considered that reform of the relationships between the stakeholders only went so far as this), the TFRG took a different direction. Influenced in part by the educational shift in workplace education from aims and objectives to a focus on the *outcomes* of legal education it advocated a set of competences as descriptors of outcomes. At its simplest and most radical form, outcomes education states that the attainment of outcomes is the goal of educational interventions. The approach does not specify *how* the outcomes are to be attained, and therefore it follows that they can be achieved in a variety of procedures and methods; and this was the intention of the TFRG.
53. The approach marks a significant departure from the prior culture of regulation. Where Ormrod, Benson and Marre focused on procedural relationships and dealt with forms of learning, they left assessment largely untouched. Standards, too, though progressively formed, played little part in educational attainment, as we have seen. ACLEC, by contrast, strongly focused on standards to be enacted through teaching and learning methods. The TFR's advocacy of outcomes led it to focus not on learning and teaching methods but on assessment – the means by which attainment of outcomes would be monitored and classified. The regulatory space thus shifted from a static description of knowledge, skills and values components (the seven pillars) to assessment of those components.
54. Outcomes approaches appear logical, and the monitoring of assessment would seem to be much easier than attempting to regulate teaching and learning, particularly if assessment is aligned with teaching and learning, as most descriptions of good practice advocate that it should be (Biggs, 1999). However there are significant difficulties in practice to the development of qualification routes linked to assessment of standards in a professional programme of study that attempts to be a bridge to a huge variety of practice situations. The TFR debates, as they dragged out, revealed the labyrinthine complexity of the system being proposed. Compromises could not, it seemed, satisfy the often-competing interests of the stakeholders, particularly the providers of LPC education and training firms. Indeed because the regulatory focus was on assessment of outcomes, the vacuum that was left on the subject of teaching and learning began to create anxiety about the very existence of hitherto stable features of the legal educational landscape – the JASB Joint Statement, the LPC, the training contract. It might be argued that outcomes-based education is best used in the context where there is a unified approach to education, and where there is no such competing interest. However the historical development since before Ormrod has been to intensify the competition of

stakeholders, and increase their number and voices in the domain of legal education.

55. The TFRG members were well aware of this – at the conference held in October 2001 the Chair of the TFRG raised the point, characterizing it as the problem of creating a training programme that satisfies the needs of a sole practitioner in Carlisle and a global practice in the City (Mathews, 2001). His answer revealed the general approach of the TFRG: the creation of a framework in which similarities could be identified, and agreement on a general core of knowledge and skills for all solicitors (Mathews, 2001). For a programme as radical as the TFRG set out in its first papers, it was a curiously conventional approach; but in the circumstances it was predictable that the regulator would take this approach, for as Webb & Fancourt point out, it was a statement of ‘legitimative’ value to the Law Society in retaining its regulatory function. It could be argued that the Chair was stating what was generally agreed in the profession; but there was no research stated to indicate that this really was the case.
56. Further, the common core of knowledge and skills, easy to state in the abstract, was much more difficult to implement across the profession; and part of the problem that the TFRG found itself in was a vicious circle of regulation. The very notion of implementing basic levels of competence, adopted with the best of intentions as regards multi-entry and multi-exit curriculum points, was hardly a convincing argument to those who were convinced that the LPC’s standards required to be raised, not lowered to a basic threshold. Nevertheless, the multiplicity of entry / exit points was a bold solution to problems of access and diversity, for by refusing to match outcomes explicitly to stages the TFR created multiple routes to qualification. In turn, of course, this also multiplied the regulatory issues of quality and standards, as well as diversifying the structure and cultures of local LPCs; which brought the TFRG back to the notion of competence again. In the same circular fashion, the TFRG started out in its first consultation to address issues of over-assessment on the LPC: the process ended with the successor to the TFRG, the Law Society’s Regulation Board, actually increasing the volume of skills assessment in the core modules of Business, Property and Litigation.
57. The TFRG’s solutions involved centralizing assessment of much of the skills and knowledge in the vocational stage through accredited test centres; and it proposed a final test on practice readiness. In addition the work-based learning component of the stage was revised and a more exacting supervisory regime was constructed, using periodic appraisal, portfolio, closer monitoring by supervisors and closer monitoring of the whole process by the Law Society. The LPC elective subjects were also uncoupled from the rest of the core LPC and could be achieved later in the training period.
58. While the process of the TFR continued, the post-Clementi reforms took place. The statutory Legal Services Board was formed, and newly-formed ‘frontline regulators’ took responsibility for the regulation of legal education – the Law Society Regulation Board (later renamed as the Solicitors’ Regulation Authority, SRA) and the Bar Standards Board, BSB. The TFRG was dissolved, but not before LPC providers and the Legal Education & Training Group had expressed considerable dissatisfaction with many aspects of its work, not least the TFRG’s refusal to match outcomes to stages in the educational process.

59. In spite of this, as Webb & Fancourt pointed out, there are many useful elements to the work of the TFRG:

the broadening of the base beyond knowledge and skills narrowly defined; the potential to integrate academic and work-based learning, the capacity more generally to build-in greater innovation, to increase access to and diversity in the profession, to take ethics and values more seriously (323)

To this one might add the clarity of ‘day one outcomes’ that revived the argument as to standards.

60. Boon, Flood and Webb described the TFR as ‘aspiring to provide flexibility and accommodate diversity, differentiation, and mobility’ and noted that it thus ‘espouses distinctly postmodern themes’ (2005, 473). This is true. It is the case that the TFRG was genuinely concerned to increase access to the profession by providing less costly and more diverse routes to qualification. The proposals also tried to cater for specialism by encouraging trainees to opt for routes that were focused on particular specialisms, thus mapping an educational path that moves with more clarity and pace out of general legal education at QLD and into practice-based specialisms. The international dimension to legal education was given fresh impetus by the Bologna Process and in particular by the *Morganbesser* decision; and the TFRG saw the move to an educational outcomes framework as a step in the right direction, since it would allow for the comparison of qualifications and experience that the European Court required in its judgement.⁷

61. One problematic consequence of the TFR proposals was the perception of a vacuum at the level of teaching and learning, where in fact it was generally held that these are the areas where relationships and standards are formed, enacted and valued. Another was the flat, cold language of the outcomes, and its application to a whole range of different situations. As Nick Johnson put it, making clear first that he did not disagree with the validity of the LPC outcomes and their assessment methods:

My point ... is the simple and obvious point that the achievement, *word for word*, of identical learning outcomes *in different contexts*, will mean radically different things. Furthermore, these differences will be concealed by the language of outcomes which will obscure the subtle developmental processes which go on during the shift from one learning context to another. The question whether this actually matters goes to the heart of the debates on The Law Society’s Training Framework Review. (Johnson, 2005, 8, his italics)

62. The developmental issue is key to any outcomes framework, indeed to any educational relationship. The TFR appeared colourless, bleached-out, to adapt Wilkin’s phrase, and in spite of its emphasis on practice routes, the personalization of legal learning and ethics, was curiously unfocused in its technical detail. In addition, the means constrained the ends. We can describe what its educational effects would have been more accurately by using the terms of the critical project on the ‘educationalization’ of education. As Depaepe and Smeyers describe it, within the context of what they term ‘educationalization’,

the self constantly has to prove its market value by means of ‘employability’, ‘adaptability’, ‘flexibility’, ‘trainability’ and the like. This [leads] not only to the erosion of the idea of permanent education – all creativity is subordinated to the

⁷ *Christine Morgenbesser v. Consiglio dell’Ordine degli avvocati di Genova (Case C-313/01)* [2003] All E.R. (D) 190 (Nov.).

regulatory discourse of the knowledge economy and technology – but also of learning itself (Depaepe and Smeyers, 2008, 383)

We might contrast the warmth of another approach:

Education is at least partly about the overall aims that society has for itself and how these aims are realized in practice. It cannot, therefore, be a neutral technical exercise, but is invariably a deeply ethical, political and cultural one bound up with ideas about the good society and how life can be worthwhile.

(Winch and Gingell, 2006, 6; quoted Bridges, 2008, 467)

63. As Johnson points out, the TFRG's emphasis on assessment was highly ambitious. One planned assessment was an external assessment, taken after a tranche of work-based learning, and designed to assess abilities such as the ability recognize and solve ethical dilemmas. In the final section of his article he quotes the experience of the Law Society of Scotland (LSS) in this regard. The LSS wished to construct a test of practice competence, called the TPC – the Test of Professional Competence – that was designed as an open-book problem-based examination. Over the course of several years the LSS drew up outcomes, assessment procedures, trained assessors, wrote and validated assessments. It then hosted two pilots where the assessments were drawn from a number of practice areas, with volunteer trainees (from first and from second year of their traineeships). Maharg (2002a & 2002b) constructed the educational evaluation of the TPC and drafted two reports for the LSS upon the pilots. The results showed beyond doubt that the TPC failed to assess trainees' practice competence; and indeed gave very little useful information about trainee performance to LSS, training firms or the trainees themselves. However the process was educative for the LSS, revealing as it did how essential it is to use situated assessment practices to assess situated learning in workplaces.
64. The work of the TFRG was never going to be as neatly bounded as Ormrod or Benson. The tempo of change, the highly-charged nature of the debates, the much higher commercial stakes in which both universities and private providers were engaged, the greatly increased number of stakeholders and their competing interests – all this meant that the TFR became a much more public process than its predecessors. Much of its perceived problematic status arose from the fact that a regulator that was implicated in many decisions being made was itself undergoing regulation and review. De Friend contrasted the length of the process with that of the Wood Review of the BVC:
- [The Wood Review] was completed in a remarkably quick time and this despite its having included a specially commissioned survey among students taking the BVC. All stakeholders were thus spared the blight, analysis paralysis and consultation constipation which afflicted the Legal Practice Course over the seven or so years that it took the Law Society to complete the Training Framework Review. (de Friend, 2010)

The Wood Review

65. Throughout the early years of the millennium the Bar, facing many of the issues that the Law Society tried to deal with through the TFR process, commissioned a number of reports on various aspects of its professional programme, the Bar Vocational Course.
66. In the prior decade the content had been prescribed as recently as 2000 by the Elias Working Party, which made often sensible suggestions regarding course content and

ways of teaching specific skills of advocacy, for example. Other major aspects of the course had been reviewed successively by Bell (Bar Council, 2005), Neuberger (Bar Council, 2007), Wilson Committee Report, and then Wood (BSB, 2008); standards and quality had been monitored on the basis of course providers' annual reports and by Bar Council-appointed, later BSB-appointed external examiners and panels. Much of the process of consultation is described in Burton (2008). But as de Friend (2010) pointed out (and the interesting regulatory point is discussed in chapter three of the literature review), in spite of all the earlier regulatory activity, including annual reports and monitoring, there still appeared to be a significant problem with the BVC, namely the "gulf of misunderstanding", as Wood put it, between practising Bar and BVC.

67. Most of the reports made helpful suggestions as to the design of the BVC, which undoubtedly was improved in its detail. Some, like the Wilson Committee, adopted educational design principles of previous years, and updated them – the Wilson proposals suggested a national assessment, with national standards, to counter the variation of standards that was one criticism of the BVC. Neuberger made five useful recommendations (the importance of a guaranteed income in the early years, mentoring in Chambers, guidance on disability in Chambers, and ensuring that women and those with disability are not discriminated against, and the monitoring of equality), all of which were aimed at remedying in the current educational context. The Bell Report was arguably the more innovative. Focusing on curriculum design Bell explored the possibilities of work-based learning; and his plan may have reduced cost (one of the deterrent access factors) and enabled situated learning within Chambers.
68. The Wood Report clearly drew upon earlier reports, as one might expect. Drawing on consultation that took place before publication, the strength of the report lies in its clarity and focus. The report's data-collation and use was targeted on the issues that were identified from the outset. The concern about numbers of prospective BVC students attempting to enter the course, for example (and the subsequent pressure on pupillages as a result), was recast in Recommendation 7: '**We do not recommend** that numbers should be cut for their own sake' (3). Instead, Wood put the case in Recommendations 8 and 9 that the BSB should raise admission standards by requiring students to possess a First or Second-class degree (or pass at CPE/GDL), and should pass an aptitude test. The aptitude test is discussed elsewhere in the literature review (chapter four); but it is worth noting that the criteria for the test is well-designed in general terms, under Recommendations 9-14.
69. The Report went on to state that the content of the course was fundamentally sound and proposed minor changes; that the teaching was satisfactory, and that the pass threshold should be raised. In these and other recommendations we can see the course undergoing minor repair and upgrade, but no new major re-designs. To undertake that would have been beyond the remit of the Report. The BPTC currently is subject to continuing review by the BSB.

Themes arising from debates

Place of general educational debates in legal educational reform

70. In many ways the history of legal education in England since 1971 has been characterized by a general avoidance of education theory. It is significant that

throughout this period, Twining (1967; 1994; 2000), Goodrich (1996), Cownie (2003), Webb (2007), Maharg (2007), to quote only some of the many commentators on the issue, have made pleas for the theory of education to be read and applied to legal education. There is also a pressing need for legal educational theory to be generated within the discipline and for this to become the focus for further research and development.

71. One instance will suffice: the topic of curriculum. Even at the time of the earliest of the reports in our timespan, Ormrod and Benson, the debates in education surrounding the curriculum were vigorous and growing in sophistication. The debates dealt with, for example, how the curriculum is formed by elites (Bernstein 1971, Young 1971); how capitalist economics impacts on a curriculum (Goodson 1992); how bureaucracy shapes it (McKiernan 1993, Becher 1999), and the presence of the so-called hidden curriculum (Snyder 1971). The result of this critical investigation of what constituted ‘curriculum’ was that curriculum policy, whether created by institutions, regulatory bodies or the state, came to be seen less as coherent policy, and more as a field of conflicting debates – as Westbury (2003, 194) put it, ‘the term “curriculum” must always be seen as symbolizing a loosely-coupled system of ideologies, symbols, discourses, organizational forms, mandates and subject and classroom practices’. None of these debates find a place in Ormrod, Benson or Marre. ACLEC acknowledges some of them, less so the TFR (perhaps when there was even more need to do so, given the complexity of the situation by then); but the full sophistication of that debate is nowhere explored in any of the formal reports.

Academic / vocational divide

72. Acceptance of the academic and vocational divide was assumed by Ormrod and continued by later reports. It was an assumption that was to characterize many of the subsequent fissures in legal educational provision in the next 40 years or so. There are many issues that were not examined rigorously by reports. Need the initial stage be a university degree? If so need it be sited in a specific place called a university? Can it be organized elsewhere? Need it be a conventional degree course? What do the substantial minority of students at the initial stage of academic legal learning who do not enter the legal profession take forward into their varied future careers from that initial stage? Does professional education only begin with training contract and pupillage? Is this an efficient way to learn professionalism? How does initial and ongoing professional learning fuse with continuing professional development?
73. Such questions are symptomatic of deeper issues. How the law is perceived and enacted in the world operates almost invisibly to shape our understanding of how future generations should be inducted into it. Unless we are aware of this shaping culture, it is difficult to change our fundamental approach to legal education. This point may seem trivial in abstract, but its effects are complex, often self-sustaining and have been the subject of varied analysis by many commentators. As Flood (2011, 3) points out, ‘England has traditionally pursued education from [the] perspective of the profession rather than as an abstract body of knowledge’, so that the process of learning law was ‘essentially an empirical matter based on craft principles’. According to Flood (2011), and others have commented on this, the relation between knowledge and craft has been uneasy at best. Others have observed, often from a critical and jurisprudential basis, on aspects of these deeper

issues. As early as 1967, Twining outlined the general problem, updated by Sherr (1998). Hutchinson pointed to the endemic black-lettrism of academic education (1999); Boon & Webb pointed out that ‘many of the changes and tensions facing English legal education result from both an underlying epistemic uncertainty about the nature of the English legal education project and a tendency to respond *ad hoc* to national, regional, and globalizing pressures’ (2008, 79).

74. Epistemic uncertainty is one reason why the academic/vocational divide remains as it is, in spite of stringent criticism. That uncertainty extends to what the purpose of a law school is, and what the purpose of education for the profession might be. Such matters cannot be solved by reports that operate within a tight remit, as Ormrod, Benson and Marre did; nor by a critical literature that operates at the level of critique only, rather than critique and sustained practice. It can begin to be resolved by cycles of experimentation and implementation that involve academics from a range of disciplines, the profession and regulators, lay representation and many others.

Educational standards, professional legal standards and legal educational standards: general debates

75. The distinctions between the above three sets of standards was not always recognized in legal educational literature. An educational standard of drafting skill or knowledge acquisition is quite different from a professional legal standard of client care, for instance. The process by which one might arrive at an educational standard or an outcome or a competence is different, too (Resnick & Nolan, 1995). Because the standard is to be used in an educational context, the process in which the educational standard will be deployed will be different from the use to which a professional legal standard could be put. How learners come to attain an educational standard may be quite different to the process by which a professional comes to understand their performances and match them against a legal standard. The legal standard is a largely a quality standard. While an educational standard can be used as a quality standard, it is pre-eminently a statement about learning attainment. When a *legal educational* standard is created, it is primarily an educational standard, not a legal standard.
76. From the 1960s onwards, standards have been at the heart of many educational debates. Given their prevalence in the educational literature of the period, it is interesting that the parallel issues in legal educational standards are not referenced against these debates. Lawrence Stenhouse’s work on the Humanities Curriculum Project (1967-72), for example, is a case in point. This was an extensive government-funded and cross-disciplinary project that aimed to educate school pupils via small-group work under the direction of a teacher as a ‘neutral chairman’. It produced a wide variety of media for pupils and teachers to use – books, loose-leaf papers, posters, slides, filmstrips, and OHP transparencies. It employed innovative methods of discussion, project work, small-group work and evaluation (Stenhouse, 1983, xvii). Taken forward by Jean Ruddock’s work in the late 1970s and early 1980s, it influenced methods of small-group teaching in HE (Hopkins and Ruddock, 1985). At the time, it was an innovative form of school discourse, using new forms of structured and interdisciplinary materials
77. There is an analogy to the development of the legal casebook here, possibly also the

law in context movement; but Stenhouse went further and developed a pedagogy that rejected the then-fashionable aims and objectives movement. Stenhouse criticized the movement for centering on teaching rather than learning. Objectives, according to him,

- being general, gave little guidance in planning interventions
- tended to become 'ad hoc substitutes for hypotheses' (1983, 81)
- gave the illusion of predicting what ought to happen
- implied the idea of 'teacher-proofing' the curriculum, thus losing the value of 'divergent interpretations' (1983, 82)
- stopped pupils having their own objectives
- inhibited speculation
- had unexpected consequences for schools as institutions as well as teacher practice⁸

In their place Stenhouse advocated 'standards', based on learning process or input, rather than learning outcomes or output. Instead of describing knowledge as a set of observable behaviours and being for teachers a blueprint of what was expected as the learning outcomes of a class, the standards tried to 'produce a curricular specification which describes a range of possible learning outcomes and relates them to their causes. The style of its formulation is: "If you follow these procedures with these materials with this type of pupil, in this school setting, the effects will tend to be X"' (1983, 82–3).

78. Stenhouse also had a distinct idea of the teacher-as-researcher: the teacher who researches his or her own teaching practice. Almost nowhere in any of the major legal education reports do we find this concept clearly set out. In its time, it was this aspect of the HCP that was perhaps most misunderstood. In the US, for instance, there was a parallel project to HCP in the Harvard Social Studies Project, where the teacher-as-researcher was similarly developed. The Project was abandoned, however, under the pressure for top-down, even 'teacher-proofed' curricula, following the post-sputnik return to conservative and instructionist educational practices.⁹
79. The teacher-as-researcher movement was an integral part of the educational movement in England in the sixties and seventies. It was taken forward by progressive LEAs such as Oxfordshire and Yorkshire, and by HMIs such as Christian Schiller and Robin Tanner, who began the process of holding regular professional practice seminars and workshops. Regulatory figures, in other words, led by example and gathered a community of practice around the idea of teachers learning about their practice, bringing their practices to show to other teachers, and developing expertise in a community that was dedicated to raising the standards of its own professionalism. Schiller and Tanner set the events, requested that teachers attend; but did not monitor this or the output of the events (which were very popular). Instead they wanted to see arising out of the workshops evidence of innovation, creativity, imagination and standards-setting in classroom practice.
80. Stenhouse's approach can be compared with Schön's project to develop a *phronesis* of practice and with other attempts to define an epistemology of practice. R.S.

⁸ It is striking that this list corresponds in a number of aspects to the summary of Boon & Webb's Report on Consultative Paper 1 of the TFR, particularly as summarised in Webb & Fancourt 2004, 312.

⁹ Like HCP, the Harvard Project emphasized interdisciplinary resourcing, teacher-as-researcher and discovery teaching strategies. For an account of the Harvard Project see Oliver and Shaver (1966). True to the Deweyan tradition, it contains a ringing declaration of the ethical commitments of modern democratic society, much of which is aligned to the underlying transformational assumptions of the HCP.

Peters, for instance, was quoted by Stenhouse:

... most of the important things in education are passed on [...] by example and explanation. An attitude, a skill, is caught; sensitivity, a critical mind, respect for people and facts develop where an articulate and intelligent exponent is on the job. Yet the model of means to ends is not remotely applicable to the transaction that is taking place. Values, of course, are involved in the transaction; if they were not it would not be called 'education'. Yet they are not end-products or terminating points of the process. They reside both in the skills and cultural traditions that are passed on and in the procedure for passing them on. (1983, 48, quoting Peters, 1959, 92)

81. Other educationalists took up his idea of the teacher-as-researcher. Giroux for instance analyzed the ideological and contextual constraints that stopped teachers becoming 'transformative intellectuals' by reducing them to 'specialized technicians within the school bureaucracy, whose function then becomes one of managing and implementing curricular programs' (1988a, 124-8). The concept goes back at least as far as John Dewey in the early twentieth century.
82. None of these ideas, however, feed through to the major legal education reports in the last 40 years. Legal education standards are those of the profession or of the strengthening academy. Neither side paid much attention to the often intense debates going on between the political left and right on educational process during this period, a debate that culminated in the development of a National Curriculum under the first Thatcher administration (Lowe, 2007). As Giroux points out, the educational debates took place, in the 1980s, in a political environment where a newly-emergent and radical politics of the right recast public philosophy to define 'citizenship in a political vacuum, that is, as an unproblematic social practice' (1988b, 12). Few of these educational debates or the wider cultural and socio-political debates about the nature of knowledge, power, the professions and the like appear in the major documents that chart and guide legal education in England and Wales.
83. Standards, however, are at the forefront of the debates engendered by the Legal Services Act (2007). Under s.4, 'Standards of regulation, education and training', the Board is required to assist in the maintenance and development of standards in relation to
- (a) the regulation by approved regulators of person authorized by them to carry on activities which are reserved legal activities, and
 - (b) the education and training of persons so authorized.
- The Board's Chair, Edmonds clarified the Board's role in his Upjohn Lecture. In his eyes Regulatory Objective 6 (encouragement of an independent, strong, diverse and effective legal profession) was inextricably part of the Board's role to 'assist in the maintenance and development of standards in relation to the education and training of authorized persons' (Edmonds 2011, 5, citing s.4(b)); and he saw these issues as underpinning 'the entirety of our wider agenda'.
84. However, just what was interpreted as 'standards' was unclear. Edmonds described the need to 'constantly update both skills and knowledge', and makes it clear that it is a function of regulation to ensure that this takes place; but there is much more to be explored about the place of values, attitudes, ethics, what other professions consider what standards might be and how they could be developed, and the wider democratic context to all of this. When one compares the definitions of standards created by Stenhouse and more recent critical thinkers in education such as Stronach (2002) and Giroux (1988a & b, 2006), and the wider debates in professional

education (for example in medical education), it becomes clear that the debate over the educational standards within legal education needs substantial development at research level as well as pilot implementation.

The shifting professional agenda and identity

85. The professional dimension also needs discussion. None of the reports discuss in any detail the shifting status of the professional, and the extent to which legal professionals are manifestations of that shift. Only recently has legal educational literature begun to consider the wider literatures on professionalism, globalization, commodification of education, educationalization, segmentation of learning, and the implications of this for regulation of legal education. Very seldom at undergraduate stage and almost nowhere at the vocational or ‘professional’ stage is there any serious analysis or attempt to create a systematic description, narrative or metanarrative of legal professionalism, and this at the time when the very notion of unitary professionals is called into question, not just by occupational conditions but by the larger economic ecosphere – recently, the appearance of ABSs, for instance. It might be easier to think of professionals not in a typical postmodernist fashion as fragmenting, but as if there were a scattergram of identities on XY axes of purpose and culture. Professional narratives, therefore, far from being unitary, will be coherent given purpose and culture, but only as subplots or instances within a much larger and more complicated picture of role-plurality, uneasy allegiances and mixed motives, caught, as Stronach expressed it, between ‘economies of performance’ and ‘ecologies of practice’ (137).
86. From Ormrod to TFR and the Wood Report there is little in the primary reports to suggest that the legal profession was generally aware, or taking seriously, this critical literature. Commentators such as Abel pointed out some of the issues involved but it was not until the ACLEC Report that the nature of professionalism, often a source of unease, became problematic. In part this was because of the link between standards and outcomes; but it was also partly the result of the historical process of a fragmenting profession that, by the time of ACLEC, could no longer be ignored. The situation in the early twenty-first century is even more pressing, with a multiplicity of regulators and regulated niche or sub-professions in law; and it applies even to the sectors of the legal profession whose purpose and identity was traditionally strong – the Bar, for instance.
87. This has direct effect upon legal education in many ways. As we have pointed out, it is not possible to have outcomes unless there is first some body of standards to which the outcomes can be referenced; but a body of standards suggests a unitary core of values and attitudes to which each professional fragment will assent. We shall explore aspects of the literature on this in subsequent sections of the literature review.

Political context and the fragmentation of consensus

88. Finally the political context should be mentioned. From Ormrod to Marr, the political debates involving state and regulators shifted from an understanding to a consensus to a more fissured set of agreements and disagreements. ACLEC increased the process of that fissuring; but it is with the fiercely argued disagreements surrounding the TFR that we see the real fragmentation of interests

and the breakdown of consensus. It appeared vividly to the participants at the time, who commented on the abrasive nature of the debates, and who explained why they thought this came about (Johnson, 2005; Boon & Webb, 2008).

89. It also became clear in the process of the TFR debates on different routes to qualification that the diversity of legal employment made the educational routes less of a defensible unity construct. For some time it was unclear what, apart from qualification, defined a solicitor, as niche practice grew more elaborate and more regulated. The same began to be true of CILEX, which required to define more clearly the position of its members in the growing activities and status of paralegals, legal secretaries and other employment categories.
90. If the context of professional work contributed to the fragmentation of educational discourse in ACLEC and the TFR, the changed political framework did not help to bring together interests. Ormrod was instructed as a Committee that was safely external to regulatory structures, as was Benson and Marr. ACLEC's conclusions, ambitious, unattained, were blessed by the Lord Chancellor's Dept. However the TFR was instructed by the Law Society of whom it might be said that it was too close to the participants to give *imprimatur* to the results. In addition the Society was, more or less at the same time, dealing with the possibility of Clementi reforms; and it could be said that this lessened the authority it might otherwise have had to implement TFR. This was particularly true of the development of standards and the relation of standards to educational practice.

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