

From theory of practice into practice

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There is a kaleidoscope of meaning of the word 'theory' and of the place of theory. There is, of course, a sense in which all legal education is based on theory about the nature of law and of legal professional practice, and educational theory. This may be denied, where the theory or theories which are operating are those of which we are inclined to disapprove, where they are only dimly recognised or they are functioning without clear articulation. Sometimes theories are perceived to be too self-referencing. It has been pointed out that legal education is often discussed without reference to a wider educational or institutional context.

This article is limited to a brief discussion of some issues in legal education and training that are revealed as students move from more academic legal study into vocational education and training contracts in order to qualify as solicitors. It includes observations on the issue of theory in the more popular sense, as this also throws up challenges which cannot be ignored. It is based mainly on empirical research into vocational legal education carried out by the College of Law in the United Kingdom into the views of students and trainees and of solicitors' firms in the context of the introduction of the Legal Practice Course (LPC).

One issue that recurs throughout the movement from law degree into vocational education and then training contracts is the question of relevance for practice. Students appreciate relevance. One of the reasons for the spread of the legal skills movement in the English-speaking world has been the need to make legal education more relevant to legal practice and thus more relevant to students' needs. Students tended to rate the vocational objectives of law degrees as more important than the general ones. Legal education has to find a way of working with the breadth of vision or appearing to ignore the large numbers of law graduates who will not qualify as solicitors or barristers in the traditional way.

What kind of vocational education do students and firms believe is appropriate? The College of Law's research revealed the most support from trainees and students for a range of objectives for vocational education and training which comprise both practical skills and the application (and, by implication, the acquisition) of legal and procedural knowledge. They did not appear to desire either a mainly skills-based or a mainly knowledge-based vocational course.

If it is accepted that there is increasing recognition that more integration is desirable between the practical and theoretical elements of legal education, the question still remains: for what is vocational legal education supposed to be relevant? As a guiding principle, relevance has considerable drawbacks. For example, it may be very difficult to anticipate what may be relevant in five years' time. There is a danger that a course may simply replicate rather than challenge or develop current practice. But however problematic, relevance to practice has to play a large part in vocational education. Clearly, one aspect is that students should be better prepared for the next stage of their education and training.

However, looking beyond the detail, on what model of legal practice is vocational education for solicitors based? The Law Society's Final Examination Course, which was introduced in 1979, was a significant step in the development of vocational education. However, it appears to have been based largely on a model of prosperous, provincial practice in which a partner advised his clients and went home to lunch.

Trainees and firms have shown clear evidence of a desire that legal education should be more focused on the type of practice in which trainees are to practise. Following the 1996 review the increased emphasis on elective subjects in the revised LPC from 1997 recognised this. However, a wish for more focus does not mean a desire for premature specialisation.

But is the model of legal practice adequate, even with the increased emphasis in the revised LPC on business law and

practice? This increased emphasis has itself been criticised as merely reflecting the influence of city firms which, between them, provide a very large number of available training contract places. However, this criticism is to overlook the increasingly commercial flavour of even traditional high street practice or perhaps to confuse it with city-oriented work.

The implications for legal practice of the routinisation of many tasks is not yet fully worked out but raises questions for the nature of education and training, for example about the extent to which young lawyers are being trained in managerial, financial and marketing skills. It also raises questions about the legal education and technical training necessary for the increasing use of paralegal and other support staff.

Clearly, legal education needs to face many practical challenges. The increasing focus of vocational legal education on the needs of professional practice reflects the pressure on higher education generally to respond to the needs of employers. It is also clear that the new challenges cannot be dealt with simply by continually adding to curriculum overload in the early stages of a lawyer's education and career. Hard thinking and hard choices are essential. Whilst it may be appropriate for different phases of legal education to deal more with some aspects than with others or for particular approaches to predominate at different stages, it is important to think of it as an ongoing process.

Equally, any model(s) of legal practice underlying legal education in the early stages must reflect reality if they are going to facilitate students in making the transition from theory into practice. Real knowledge of the demands of practice and its diversity can enhance rather than diminish the educational enterprise. This requires partnership and creative dialogue between the legal profession and education, not fear of shared responsibility. It also requires a wide vision of the provision of legal services which goes beyond traditional categories and commercial imperatives.