derived inductively. Any conclusions take the form of hypotheses, which have to be tested by questions and the gathering of more facts. Judges possess vast experience on the subject of law problems. One of a judge's first tasks in resolving a law problem is imposing upon that problem its proper focus. Achieving the proper focus requires inductive analysis by way of generalisation and hypothesis.

Once the judge has asked the pertinent question, the inductive mode of problem-solving yields to the analogical mode and to rule selection. The judge must consult precedents similar to the case at hand and determine whether the similarities are sufficient to produce the same result as was achieved in the precedent.

How can it be said that a particular decision is justified? There are three forms of justification: formalist justification; justification through precedent; and justification through policy. Formalist justification is grounded on the idea that the legal syllogism justifies itself. The legal rule becomes the legal truth. The facts of a case depict the truth concerning certain events. When applied to the facts, the rule is capable of disclosing the legal truth surrounding these events.

But justification based on deduction has its problems. Most notably, deduction does not account for the process whereby a court identifies the rule best suited for resolving a case. Rule selection lies at the heart of legal decision-making. The rule will dictate the decision. That is why, when a court seeks to justify a decision's outcome, it is often justifying the selection of a particular rule. Rule selection occurs through analogy and any justification based on analogy inevitably entails justification based on precedent.

## INSTITUTIONS & ORGANISATIONS

**New wine in old bottles or new wine in new bottles?**
P Leighton
25 *J L & Soc* 1, 1998, pp 85–101

Polytechnics and other higher education institutions have come under much recent scrutiny and yet analysis of the law schools and the legal education within them has had barely a mention. Indeed, in the increasing number of publications devoted to the history and celebration of individual new universities with large law schools, the lack of analysis of those law schools is intriguing.

In questioning the particular contribution of the new universities, it is inevitable that issues of comparability with the old universities emerge. All too familiar 'league tables' relating to teaching quality and research have pushed this issue to the forefront. League tables and the like are generally presented on an institutional basis, but individual law schools may create a different picture. Nonetheless, it is impossible to disaggregate these issues of quality, comparability and 'pulling power' from an analysis of law schools generally, and new university law schools in particular. It is also impossible to disregard the tensions that sometimes exist in the relationship between old and new universities. It would be wrong also to deny the controversy, passion, and debate which have characterised the period during which old and new university law schools have co-existed.

At one level these questions are easy to answer. The new universities are the product of the 1992 Further and Higher Education Act for England and Wales, which had equivalent legislation in Scotland and Northern Ireland. The long-established polytechnics were converted into universities.

Until recently there has been little research to facilitate both identification of trends and comparison between old and new institutions. The data reveal some differences. In comparison with old universities, new ones are far more likely to offer law degrees on a part-time basis, by distance learning, and to offer a degree which combines law with other disciplines. New university law courses are also more likely to be delivered on a modularised and/or semesterised basis. There are also some differences in the way in which students are admitted to law degrees. Although 'A' level points and/or grades dominate, there is a stronger tendency for new university law schools to accept non-'A' level qualifications and to have access course arrangements.

The major contribution of the new universities in terms of course provision is clearly in the vocational area. This has great significance for staffing, resources, learning methods, and research. Law schools which have staff involved in this work inevitably have a different culture from those that do not or have it as a marginal activity. It can be argued that the emphasis on vocational and skills based programmes, often available on part-time and other flexible bases, has been the particular contribution of the new university sector.

Less research, longer teaching hours, an emphasis on legal skills rather than scholarship and often inadequate learning and working environments can lead some to see new university law schools as inevitably second-rate. However, whilst it cannot be denied that the emphasis on and output of works of scholarship in general is lower in new universities, on the other hand, the contribution to professional legal education, teaching and

learning skills, and in providing a wider access to legal education is higher. Thus, new university law schools are not second-rated but, rather, are different.

Compared to the position of overseas law schools which provide postgraduate professional legal education and emphasise effective teaching and learning strategies, the status of university law schools in the United Kingdom, especially in the new university sector, appears relatively low. So we have a complex conundrum. New university law schools have predominantly provided more diverse and professional legal education; they have done so economically, often with innovation. However, despite the need for professional legal skills, the key formal indicators of legal education continue to reward law schools which emphasise scholarship and intellectual debate.

All law schools are currently facing massive challenge and changes, some arising from the funding and structure of higher education itself, but many from developments in the legal profession and legal education. Few commentators expect a massive cash injection into higher education. Indeed, the likelihood is of law as a subject remaining as one of the 'cheapest' disciplines and the cost burden moving yet further from the State to the student. Student demands will increase. In this climate, the new universities with their generally lower-quality working environments will face particular problems.

New university law schools will need to respond effectively, possibly by developing radical learning strategies which provide students with a broad range of learning opportunities, such as postgraduate study. More importantly, they will need to prepare students on vocational courses for the professional and business world of the next millennium. Much has been written about the future direction of professional legal practice. Much, though, fails to appreciate not only the globalisation of various professional marketplaces but also likely competition from non-law professionals who have the skills and experience to compete with traditional lawyers. Somehow, law schools will have to prepare students for a world increasingly dependent on information technology, for new types of business opportunities and threats.

Finally, there is the spectre of universities being categorised as research or teaching universities. Most have assumed that the new universities will populate overwhelmingly the second group. Some even fear that several new universities will slip back into the further education sector or become the equivalent of many United States liberal arts universities of colleges. Whether this happens will depend on United Kingdom government policy and the ability of institutions to respond to new challenges.

## LEGAL EDUCATION GENERALLY

**The political economy of Canadian legal education**
H W Arthurs
25 *J L & Soc* 1, 1998, pp 14–32

Legal education is lodged in a political economy whose contending forces shape universities, the legal profession and, of course, the encompassing society, economy, culture and polity. Hence, legal education is not an autonomous regime capable of defining and redefining itself from within, in response to national reports, the prescriptions of professional bodies or even the initiatives of a reformist professoriate, though all of these make their contribution.

Prior to the 1960s in Canada, legal education was dominated by the profession in at least three senses. It was largely education by the profession: given the small number of full-time legal academics, much instruction was offered by practising lawyers. To some extent, it was education in the profession: in all provinces, articling remained a strong component of the process of professional formation and in several only graduates of the profession's own law school could be admitted to practice; and almost everywhere, the profession played a formal or informal role in the governance of the local law school.

Thus, until the 1960s, there was little occasion to be concerned about the internal governance of legal education. But occasion soon arose. In law schools, as elsewhere in the university and in society generally, the 1960s were a time of upheaval. Traditional values and the institutions through which they were conveyed were under attack. By the end of the decade, the profession's role in society, its recruitment policies, its culture and governance had become matters of vigorous debate, especially in the law schools which were mapped as commanding heights whose seizure would transform the legal system and all of its emanations, if not society in general. One characteristic passion of the period, especially in Canada, was the democratisation of universities and their faculties.

Those aspirations were in part procedural, in the sense that young professors wished to operate free of professional requirements, the professional ethos of law faculties, or the authority of deans and senior professors. However, the aspirations were substantive as well. The professoriate sought to undermine the very basis of professional monopoly and power, its distinctive forms of knowledge. The