

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 or 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

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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



new academics wanted to use the social sciences to overthrow the profession's intellectual orthodoxy, the positivist school of black-letter law, and to redefine the mission of law schools. That mission, they contended, was not merely to replicate the profession but to transform it and to develop new empirical and critical perspectives on law, the legal system and the profession; and to share them with present and future policy makers, scholars, administrators, and informed citizens in all walks of life. The movement to democratise the governance of law schools, then, was part of a larger project of transforming law as an intellectual discipline, as a profession, and as a technique of social ordering.

Students tended to be a political drag on the intellectual revolution in Canadian law faculties. While eager to gain the democratic right to decide things for themselves, they were not much inclined to exercise this right to explore the foundations and frontiers of law. When the idealism of the 1960s was ultimately replaced by neo-conservatism and market discipline in the 1980s and 1990s, students began to reconceptualise themselves as consumers, with consumers' motivations and consumers' rights.

Legal education remains subject to influences emanating both from the profession and from the university. Although these influences seldom take the form of explicit directions, law schools respond to them in part to avoid negative consequences, in part to gain institutional advantages, but in part because internal constituencies align themselves opportunistically with or against the profession or the university. Thus, the internal political dynamic of Canadian law schools is often destabilised by the competing visions of legal education.

Most western, industrialised countries have been experiencing the combined effects of globalisation, technological change, and the retreat from the welfare state. Almost all Canadian universities are public institutions. However, government grants have been moving down an increasingly steep gradient; students are having to pay higher fees; and greater reliance on corporate donations, contracts, and 'partnerships' is being encouraged, even required, as a matter of government policy.

Potentially more dangerous to universities is an anti-elite, anti-intellectual populism which is likely to express itself in demands to reduce funding for 'academic' activities in general and for research in particular, in the abolition of tenure and research leaves, in increased teaching loads, in enhanced transparency and attacks on traditional institutional autonomy, and in the ruthless translation of students into empowered 'customers' or 'consumers' of higher education, with economic and possibly legal power to force institutions to respond to their wishes. Within their universities, law faculties find themselves in a somewhat ambiguous position. Because they were not yet firmly established during the expansionary 1960s, law schools tended to receive inadequate per capita grants for teaching and they generally do not attract large research grants. On the other hand, law schools have been experiencing rapidly rising unit costs. Because they tend to be small faculties, still often regarded as marginal by larger and better-established parts of the university, law schools have limited capacity to influence the increasingly strident debates over internal resource allocation.

On the other hand, law schools do have certain advantages. Most of them have so far been able to sustain both the size and quality of their enrol-

ments. Because of their connection with the profession, they have been able to attract at least some financial support. And because they have always been run 'on the cheap', law schools are able to adjust to their declining fortunes somewhat more easily than historically privileged faculties.

Canadian law professors confront an awful choice. Since they cannot do much about the real source of their discontents, should they focus scarce talents and energies on sustaining law schools as long as possible, by all expedient means, including pandering to students and the profession, until better times arrive? Or should they commit their critical skills and intellectual talents to efforts to alter the larger political economy, despite the absence of institutions, processes and constructive strategies through which legal academics and other citizens can work for a brighter future?

### **Privatising the universities**

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For most of the 20th century, privatisation of state universities seemed inconceivable. As we move towards the new millennium, some would still argue that state universities are not being privatised. In the sense of selling off physical assets or enterprises, that is largely, though not wholly, true. The process of shifting from a state-centred to a market-driven system of university education, which is what the term 'privatisation' describes, has been more subtle, incremental and ad hoc. While the operational details and extent of this shift have varied across countries, the justifications have coalesced around three common themes.

The first involves a standard application of new institutional economics and new public management theory to the universities. Universities